

Tab 1 SB 378 by Lee (CO-INTRODUCERS) Rouson; (Similar to H 00771) Motor Vehicle Insurance						
198434	A	S		BI, Lee	btw L.1506 - 1507:	02/10 07:03 PM
Tab 2 SB 380 by Baxley; (Similar to H 00397) Bank Property of Deceased Account Holders						
190298	D	S	RCS	BI, Baxley	Delete everything after	02/11 04:37 PM
Tab 3 CS/SB 478 by IT, Perry; (Compare to CS/CS/H 00377) Motor Vehicle Rentals						
493334	D	S		BI, Perry	Delete everything after	02/04 08:13 AM
520364	AA	S		BI, Rouson	Delete L.242 - 248:	02/07 01:10 PM
834662	AA	S		BI, Rouson	Delete L.341 - 345:	02/10 04:00 PM
272308	A	S		BI, Rouson	Delete L.216 - 222:	02/03 12:12 PM
Tab 4 CS/SB 792 by HP, Albritton (CO-INTRODUCERS) Harrell; (Similar to H 00467) Physical Therapy Practice						
175922	A	S	RCS	BI, Albritton	Delete L.33 - 36:	02/11 04:37 PM
Tab 5 SB 924 by Brandes; Civil Actions Against Insurers						
669964	D	S		BI, Brandes	Delete everything after	02/11 01:56 PM
Tab 6 SB 1334 by Brandes; (Compare to CS/H 00359) Financial Services						
632742	D	S	FAV	BI, Brandes	Delete everything after	02/12 03:45 PM
~~527860~~	AA	S	WD	BI, Rouson	btw L.53 - 54:	02/12 03:45 PM
~~527424~~	AA	S	WD	BI, Rouson	btw L.53 - 54:	02/12 03:45 PM
452858	AA	S	FAV	BI, Brandes	Delete L.145 - 187:	02/12 03:45 PM
386996	AA	S	FAV	BI, Brandes	Delete L.653 - 654:	02/12 03:45 PM
265338	A	S		BI, Rouson	btw L.148 - 149:	02/04 12:32 PM
647130	A	S		BI, Rouson	Delete L.149 - 163:	02/04 09:22 AM
788146	A	S		BI, Broxson	btw L.183 - 184:	02/04 09:07 AM
777928	A	S		BI, Thurston	Delete L.184 - 231.	02/03 12:14 PM
794740	A	S		BI, Taddeo	Delete L.252 - 270.	02/03 12:13 PM
472784	A	S		BI, Thurston	Delete L.485 - 493.	02/03 12:22 PM
548082	A	S		BI, Taddeo	Delete L.494 - 513.	02/03 12:14 PM
787114	A	S		BI, Taddeo	Delete L.497 - 504:	02/03 12:15 PM
461914	SA	S		BI, Taddeo	Delete L.497 - 504:	02/04 11:34 AM
670458	A	S		BI, Rouson	Delete L.514 - 544.	02/03 12:14 PM
392164	SA	S		BI, Brandes	Delete L.516 - 544:	02/04 12:40 PM
893146	A	S		BI, Brandes	Delete L.536 - 542.	02/03 12:14 PM
586530	SA	S		BI, Brandes	btw L.693 - 694:	02/04 09:54 AM
600108	A	S		BI, Brandes	Delete L.536 - 543:	02/04 09:51 AM
Tab 7 CS/SB 1464 by IS, Flores; (Similar to CS/H 01095) Underground Facility Damage Prevention and Safety						
846968	D	S	RCS	BI, Flores	Delete everything after	02/11 04:37 PM
Tab 8 SB 1556 by Bean; (Similar to CS/H 01179) Nondiscrimination in Organ Transplants						
844372	D	S	RCS	BI, Bean	Delete everything after	02/11 04:37 PM
Tab 9 SB 1618 by Diaz; (Similar to CS/H 01047) Construction Materials Mining Activities						
Tab 10 SB 1626 by Flores; (Identical to H 01205) Price Transparency in Health Care Services						
716996	D	S		BI, Flores	Delete everything after	02/10 02:39 PM

Tab 11 SB 1828 by Broxson; (Similar to H 07041) Litigation Financing Consumer Protection						
793752	D	S	BI, Broxson	Delete everything after	02/10 06:11 PM	
469258	AA	S	BI, Thurston	Delete L.7:	02/11 01:14 PM	
481944	AA	S	BI, Thurston	Delete L.7:	02/11 01:15 PM	
504878	AA	S	BI, Thurston	Delete L.99 - 117:	02/11 01:14 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 11, 2020

TIME: 2:00—4:00 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 378 Lee (Similar H 771, Compare CS/CS/H 395)	Motor Vehicle Insurance; Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising garage liability insurance requirements for motor vehicle dealer applicants; revising minimum liability coverage requirements for motor vehicle owners or operators, etc. IS 01/21/2020 Favorable BI 02/11/2020 Not Considered AP	Not Considered
2	SB 380 Baxley (Similar H 397, Compare CS/H 1439)	Bank Property of Deceased Account Holders; Authorizing a financial institution to pay to the authorized family member of a decedent depositor, without any court proceeding, order, or judgment authorizing the payment and not earlier than a specified time, the funds in the decedent's qualified accounts if the sum does not exceed a specified amount; requiring the authorized family member to provide the financial institution with a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds, etc. BI 02/11/2020 Fav/CS JU RC	Fav/CS Yeas 7 Nays 0
3	CS/SB 478 Innovation, Industry, and Technology / Perry (Compare CS/CS/H 377, CS/H 723)	Motor Vehicle Rentals; Revising the applicability of the rental car surcharge; imposing the surcharge on certain motor vehicle leases or rentals by a peer-to-peer car-sharing program; specifying motor vehicle insurance requirements for shared vehicles on a peer-to-peer car-sharing program; requiring a peer-to-peer car-sharing program to assume specified liability of a shared vehicle owner; requiring a shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances, etc. IT 01/27/2020 Fav/CS BI 02/04/2020 Temporarily Postponed BI 02/11/2020 Temporarily Postponed AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 11, 2020, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 792 Health Policy / Albritton (Similar H 467)	Physical Therapy Practice; Revising and defining terms; revising the powers and duties of the Board of Physical Therapy Practice; requiring the board to establish minimum standards of practice for the performance of dry needling by physical therapists, etc. HP 01/21/2020 Fav/CS BI 02/11/2020 Fav/CS RC	Fav/CS Yeas 7 Nays 0
5	SB 924 Brandes	Civil Actions Against Insurers; Providing that, in third-party bad faith actions against insurers, insureds and claimants have the burden to prove that an insurer acted in reckless disregard for insured rights which resulted in damage to the insured or the claimant; providing that insured or claimant actions or inactions are relevant in bad faith actions; providing that an insurer is not liable if certain conditions are met; providing that an insurer is not liable beyond available policy limits as to certain competing third-party claims if it files an interpleader action within a certain timeframe, etc. BI 01/28/2020 Temporarily Postponed BI 02/04/2020 Temporarily Postponed BI 02/11/2020 Temporarily Postponed JU RC	Temporarily Postponed
6	SB 1334 Brandes (Compare CS/H 359, CS/H 895)	Financial Services; Redefining the term "covered policy" under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; revising requirements for the civil remedy notice provided to insurers and the Department of Financial Services; deleting a requirement for certain persons acting on behalf of an insurer to provide certain notice before scheduling a meeting or onsite inspection for certain purposes; requiring named insureds to provide insurers with a specified notice as a condition precedent to filing suit under a property insurance policy, etc. BI 02/04/2020 Temporarily Postponed BI 02/11/2020 Amendments Adopted - Temporarily Postponed IS RC	Amendments Adopted - Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 11, 2020, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1464 Infrastructure and Security / Flores (Similar CS/H 1095, Compare CS/H 487, S 1092)	Underground Facility Damage Prevention and Safety; Defining the term "permanent marker" for purposes of the Underground Facility Damage Prevention and Safety Act; providing noncriminal violations relating to the transportation of certain hazardous materials; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshal, the local fire chief, a local or state law enforcement officer, a government code inspector, or a code enforcement officer; creating an underground facility damage prevention review panel under the Division of State Fire Marshal within the Department of Financial Services, etc. IS 01/27/2020 Fav/CS BI 02/11/2020 Fav/CS RC	Fav/CS Yeas 7 Nays 0
8	SB 1556 Bean (Similar CS/H 1179)	Nondiscrimination in Organ Transplants; Prohibiting certain entities from making certain determinations or engaging in certain actions related to organ transplants solely on the basis of an individual's disability; specifying an instance where certain entities may consider an individual's disability, with an exception; requiring certain entities to take certain necessary steps to ensure an individual with a disability is not denied services, with exceptions; prohibiting insurers, nonprofit health care service plans, and health maintenance organizations that provide coverage for organ transplants from denying coverage solely on the basis of an individual's disability under certain circumstances, etc. HP 01/28/2020 Favorable BI 02/11/2020 Fav/CS AP	Fav/CS Yeas 7 Nays 0
9	SB 1618 Diaz (Similar CS/H 1047, Compare H 1431)	Construction Materials Mining Activities; Creating a pilot program within the Division of State Fire Marshal to monitor and report on the use of explosives in construction materials mining activities in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts occurring in connection with construction materials mining activities in Miami-Dade County and to post the reports of the seismologists on the division's website; requiring a person who engages in construction materials mining activities in Miami-Dade County to submit certain written notice relating to the use of an explosive to the State Fire Marshal, etc. EN 01/27/2020 Favorable BI 02/11/2020 Favorable RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 11, 2020, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 1626 Flores (Identical H 1205)	Price Transparency in Health Care Services; Prohibiting a health insurer from limiting a contracted health care provider's ability to disclose certain pricing information to a patient; prohibiting a health insurer from requiring an insured to pay an amount for covered services which exceeds a certain price, etc. BI 02/11/2020 Not Considered HP RC	Not Considered
11	SB 1828 Broxson (Similar H 7041)	Litigation Financing Consumer Protection; Creating the Litigation Financing Consumer Protection Act; requiring litigation financiers to register with the Office of Financial Regulation; prohibiting litigation financiers from engaging in specified conduct; providing for a contingent right to civil action proceeds assignability; providing that specified communications between attorneys and litigation financiers do not limit or waive statutory or common-law privilege, etc. BI 02/11/2020 Not Considered JU 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 378

INTRODUCER: Senators Lee and Rouson

SUBJECT: Motor Vehicle Insurance

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Favorable
2.	Knudson	Knudson	BI	Pre-meeting
3.			AP	

I. Summary:

SB 378 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain Personal Injury Protection (PIP) coverage. Beginning January 1, 2021, the bill enacts financial responsibility requirements for liability for damages that result from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle, as follows:

- For bodily injury (BI) or death of one person in any one crash, \$25,000, and
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

The bill retains the existing \$10,000 financial responsibility requirement for property damage (PD).

The bill also revises required coverage amounts for garage liability and commercial motor vehicle insurance, and increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.

The bill replaces the PIP coverage mandate with optional medical payments coverage which must provide coverage of at least \$5,000 for medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage also includes a death benefit of at least \$5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

The insurer must offer medical payments coverage at limits of \$5,000 and \$10,000, with an option for no deductible or a \$500 deductible. Insurers may also offer other limits greater than \$5,000, and other deductibles not exceeding \$500. Policies are presumed to include medical payments coverage with a limit of \$10,000 with no deductible unless the insured declines medical payments coverage or selects coverage at a different limit or with a deductible.

The bill also requires the insurer to reserve \$5,000 of benefits for payment to specified physicians or dentists who provide emergency services and care or who provide hospital inpatient care for 30 days after the date the insurer receives notice of the accident.

Medical payments coverage insurers are authorized to include provisions in their policies allowing for subrogation for payment of medical payments benefits to an insured if the payments resulted from the wrongful act of another. However, the bill makes this subrogation right inferior to the rights of the injured insured and available only after all of the insured's damages are recovered. Once fully recovered, if the insured delivers a release or satisfaction that impairs an insurer's subrogation right, the insured is made liable to the insurer for repayment of the benefits, less certain costs and expenses.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury. Under the bill, the legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

Additionally, the bill authorizes the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, with the written consent of the policyholder.

The bill appropriates \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act.

The bill takes effect January 1, 2021, except as otherwise provided, and except that provisions relating to application of the laws during the transition from PIP coverage to the new financial responsibility requirements, and the effective date section, take effect upon becoming a law.

II. Present Situation:

Under the Florida Motor Vehicle No-Fault Law (No-Fault Law),¹ owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.² Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.³ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and

¹ Sections 627.730-627.7405, F.S.

² Section 627.733, F.S.

³ See s. 627.731, F.S.

suffering) below a specified injury threshold.⁴ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.⁵ The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.⁶ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,⁷ 60 percent of loss of income,⁸ and 100 percent of replacement services,⁹ for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.¹⁰

PIP Medical Benefits

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.¹¹ To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.¹² Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider.¹³ Follow-up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.¹⁴

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.¹⁵ An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.¹⁶ If a provider who rendered treatment or services does not determine that the insured had an emergency medical condition,

⁴ Section 627.737, F.S.

⁵ See ss. 324.022, F.S. and 627.733, F.S.

⁶ Section 627.736(1), F.S.

⁷ Section 627.736(1)(a), F.S.

⁸ Section 627.736(1)(b), F.S.

⁹ *Id.*

¹⁰ Section 627.736(1)(c), F.S.

¹¹ Chapter 2012-197, L.O.F. (CS/CS/HB 119)

¹² Section 627.736(1)(a), F.S.

¹³ Section 627.736(1)(a)1., F.S.

¹⁴ Section 627.736(1)(a)2., F.S.

¹⁵ Section 627.736(1)(a)3., F.S.

¹⁶ Section 627.732(16), F.S.

the PIP medical benefit limit is \$2,500.¹⁷ Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.¹⁸

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

Medical Fee Limits for PIP Reimbursement

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For services supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of Medicare Part B;
- For durable medical equipment, 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B;
- For all other medical services, supplies, and care, 200 percent of the participating physicians fee schedule of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.¹⁹ In addition, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.²⁰

In 2012, the Legislature enacted chapter 2012-197, Laws of Florida, to revise the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The law clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The law

¹⁷ Section 627.736(1)(a)4., F.S.

¹⁸ Section 627.736(1)(a)5., F.S.

¹⁹ Section 627.736(5)(a)3., F.S.

²⁰ Section 627.736(5)(a)4., F.S.

also provided that Medicare fee schedule in effect on March 1, is applicable for the remainder of that year.²¹ Insurers were authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit.²² The law also required insurers to include notice of the fee schedule in their policies.²³

Attorney Fees

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.²⁴ Chapter 2012-197, L.O.F., amended provisions related to attorney fee awards in No-Fault disputes. The law prohibited the application of attorney fee multipliers.²⁵ The law also required that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.²⁶ The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.²⁷

Mandatory Rate Filings and Data Call

Chapter 2012-197, L.O.F., required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.²⁸ The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.²⁹ The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from ch. 2012-197, L.O.F., against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile PIP insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. The Legislature required a second mandatory rate filing due January 1, 2014, that provided at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explained in detail its reasons for failing to achieve those savings.

The Office of Insurance Regulation performed a comprehensive PIP data call on January 1, 2015, that analyzed the impact of the 2012 act's reforms on the PIP insurance market. The top

²¹ Section 627.736(5)(a)2., F.S.

²² Section 627.736(5)(a)3., F.S.

²³ Section 627.736(5)(a)5., F.S.

²⁴ Section 627.736(8), F.S.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ Section 15, Ch. 2012-197, L.O.F.

²⁹ Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012) available at <https://www.floir.com/siteDocuments/HB119ImpactAnalystFINAL08202012.pdf> (last viewed February 9, 2020).

25 personal lines automobile insurers³⁰ generally failed to achieve a 25 percent rate reduction and instead reduced PIP rates an average of 13.6 percent.³¹ Rates were only reduced an average of 0.1 percent for a full auto insurance premium consisting of PIP, property damage, bodily injury, uninsured motorists, collision and comprehensive coverages.³² The OIR noted that though the required rate filings were on the low end of 2012 Pinnacle report, prior to the 2012 act, the statewide average approved rate changes were a 46.3 percent increase in PIP rates, and a 12.9 percent rate increase for full auto insurance.³³

Rate filings by top 25 auto insurers from January 1, 2015, to January 18, 2017, reversed the entirety of the rate reductions achieved post the 2012 act, resulting in average premiums higher than those charged before that act became law.³⁴ Generally, motor vehicle insurance rates increased nationally.³⁵ Recent data from the United States Department of Labor indicates that the consumer price index for motor vehicle insurance (U.S. city average for urban consumers) remained unchanged from December of 2018, to December of 2019.³⁶ The number of crashes and crashes involving injuries reported to the Florida Department of Highway Safety and Motor Vehicles in the most recent 4 years is shown in the table below.

Florida Motor Vehicle Crashes ³⁷			
Calendar Year	Total Crashes	Injury Crashes	Fatalities
2016	395,785	165,940	3,176
2017	402,385	166,612	3,116
2018	403,626	167,219	3,135
2019	399,087	158,999	3,137

Motor Vehicle Insurance Fraud

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled “Florida’s Motor Vehicle No-Fault Law”, which was a comprehensive review of Florida’s No-Fault system.³⁸ The report indicated fraud was at an “all-time” high at the time, noting:

³⁰ On an earned premium basis.

³¹ Office of Insurance Regulation, *Report on Review of the Data Call Pursuant to HB 119 – Motor Vehicle Personal Injury Protection (PIP) Insurance*, Pg. 43 (January 1, 2015) available at <https://www.floir.com/siteDocuments/HB119DataCallReport.pdf> (last viewed February 9, 2020).

³² *Id.*

³³ *Id.* at pg. 41.

³⁴ See Office of Insurance Regulation, *Florida Personal Auto Market Presented to The Florida Senate Committee on Banking and Insurance*, pg. 3 (January 24, 2017) available at <https://www.floir.com/siteDocuments/SenateBIFLPersonalAutoMarketPresentation01242017.pdf> (last viewed February 9, 2020).

³⁵ See National Association of Insurance Commissioners, *Auto Insurance Database Report 2015/2016*, pg. 26 (2018) https://naic.org/prod_serv/AUT-PB-15.pdf (last viewed February 9, 2020).

³⁶ United States Department of Labor, *Economic News Release Consumer Price Index Summary* (December 2019) available at <https://www.bls.gov/news.release/cpi.t02.htm> (last viewed February 9, 2020).

³⁷ See email from the DHSMV to committee staff, January 17, 2020 (on file in the Senate Infrastructure and Security Committee).

³⁸ See Florida’s Motor Vehicle No-Fault Law, *Report Number 2006-102*, available at http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf (last viewed February 9, 2020).

“Florida’s no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...”

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. The 2012 act contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.³⁹ All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.⁴⁰ The act also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

Financial Responsibility Law

Florida’s financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.⁴¹ The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.⁴² At that time, a driver’s financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.⁴³ The driver’s license and registration of the driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.⁴⁴ A driver’s license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.⁴⁵

Review of Auto Insurance Systems

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other

³⁹ Section 627.736(4)(i), F.S.

⁴⁰ Section 627.736(5)(h), F.S.

⁴¹ See ch. 324, F.S.

⁴² Section 324.011, F.S.

⁴³ Section 324.022, F.S.

⁴⁴ Section 324.0221(2), F.S.

⁴⁵ Section 324.0221(3), F.S.

parties in an accident.⁴⁶ Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as “add-on” states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.⁴⁷ Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first-party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.⁴⁸ All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims, and the use of fee schedules or treatment protocols vary widely among these entities. Each state has either a “verbal” or “monetary” threshold regarding the seriousness of a person’s injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage and traditional tort liability coverage, which does not include PIP benefits.

Tort-Based Motor Vehicle Insurance Jurisdictions

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

If Florida repeals PIP and mandates BI coverage, it will be important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party’s BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. If the at-fault party is uninsured (or underinsured), the not at-fault party would utilize his/her Uninsured Motorist (UM) coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party’s PD coverage would compensate for physical damages to the not at-fault driver’s vehicle. If the not-at-fault party has Med Pay coverage, it can be used to cover his or her own medical expenses, which could then be subrogated into the BI claim by the not at-fault driver’s insurer.

⁴⁶ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁴⁷ Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

⁴⁸ Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

With respect to the at-fault party, that driver's own health insurance, if available, would cover his or her own expenses. Med Pay coverage, if purchased, would pay for his/her medical expenses up to the Med Pay limits, at which point health insurance would apply. In the event the at-fault party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider.

For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion resulting in the fact that only non-family occupants can pursue a tort claim. Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

III. Effect of Proposed Changes:

Repeal of the Florida Motor Vehicle No-Fault Law

Section 1 repeals ss. 627.730-627.7405, F.S., which constitute the Florida Motor Vehicle No-Fault Law.

Two of the most significant provisions repealed are the requirement to maintain PIP coverage under s. 627.736, F.S., and the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

Section 2 repeals s. 627.7407, F.S., which explained how the Florida Motor Vehicle No-Fault Law was to be applied after being reinstated by ch. 2007-324, Laws of Florida.

Mandatory Bodily Injury Liability Coverage Requirements

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond to damages for liability because of crashes arising out of the use of a motor vehicle.⁴⁹ This requirement is usually met through the purchase of motor vehicle insurance.

Sections 12 and 13 amend ss. 324.021 and 324.022, F.S., respectively, to require beginning January 1, 2021, every owner or operator of a motor vehicle registered in this state to maintain the ability to respond to damages for liability that results from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle as follows:

- For BI or death of one person in any one crash, \$25,000.
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

⁴⁹ Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.

The bill retains current law that requires drivers to maintain the ability to respond to damages of \$10,000 for damage to, or the destruction of, other's property in a crash.

Financial responsibility may be met through motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. Beginning January 1, 2021, the minimum combined single limit will be \$60,000.

Section 36 amends s. 627.0651, F.S., providing that initial rate filings for motor vehicle liability policies submitted to the OIR on or after January 1, 2021, must reflect the financial responsibility requirements of the amended s. 324.022, F.S., and may be approved only through the file and use process for making rates for motor vehicle insurance set out in that section of law.

Required Provisions in Motor Vehicle Liability Policies

Section 22 amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility to contain certain provisions. The bill requires policies issued to the owner of a motor vehicle that is required to be registered in this state to insure all named insureds, except for a named driver excluded pursuant to new s. 727.747, F.S., discussed below; and to also insure:

- Any resident relative⁵⁰ of a named insured, and
- Any operator using the vehicle with the permission of the owner of the vehicle insured by the policy from liability resulting from the use of the motor vehicle referenced in the policy.

The bill authorizes an insurer to include provisions in its policy excluding coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle,⁵¹ does not qualify as a temporary substitute vehicle,⁵² and was owned by the insured or furnished for an insured's regular use for more than 30 consecutive days before an event giving rise to a claim.

A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must insure the named insureds against liability for damages arising out of the use of any motor vehicle not owned by the named insureds.

All motor vehicle liability policies providing coverage for accidents occurring within the United States or Canada must provide liability coverage with the minimum limits of \$25,000 for BI or death of one person in any one crash; \$50,000 for BI or death of two or more people in any one crash; and \$10,000 for PD.

⁵⁰ Defined by the bill to mean "a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily live elsewhere."

⁵¹ Defined by the bill to mean "a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident."

⁵² Defined by the bill to mean "any motor vehicle, as defined in s. 320.01(1), F.S., which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction."

Section 43 amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include the minimum limits of BI liability coverage and PD liability coverage as required by s. 324.022, F.S.

Motor vehicle insurance under policies made available to applicants seeking reinstatement of the applicant's driving privileges after such privileges were revoked or suspended for driving under the influence must provide coverage of at least the minimum limits of BI and PD liability coverage under s. 324.021(7), F.S.,⁵³ or s. 324.023,⁵⁴ F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Meeting Financial Responsibility through a Certificate of Self-Insurance

Section 17 amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy covering the motor vehicle being operated. Two alternatives are also available under the statute. A person may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth.

A person furnishing a certificate of self-insurance showing a deposit of cash must, beginning January 1, 2021, furnish a certificate of deposit equal to the number of vehicles owned times \$60,000, to a maximum of \$240,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. The bill retains current law that all persons using this method shall maintain excess coverage of the amount deposited with limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit.

Under **Section 23** of the bill amending s. 324.161, F.S., the proof of a certificate of deposit must be provided annually, and must be from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The second alternative method is obtaining a certificate of self-insurance issued by the DHSMV. **Section 24** amends s. 324.171, F.S., effective January 1, 2021, to provide that a certificate of self-insurance from the DHSMV pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$100,000. Current law requires a net unencumbered worth of at least \$40,000. A person other than a natural person may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional vehicle. Current law requires a net unencumbered worth of \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons.

⁵³ \$10,000/\$20,000 for BI or death and \$10,000 for PD.

⁵⁴ \$100,000/\$300,000 for BI or death and \$50,000 for PD.

Garage Liability Insurance Requirement

Section 7 amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill defines “garage liability insurance” to mean, beginning January 1, 2021, combined single-limit liability coverage, including PD and BI liability coverage, of at least \$60,000.

Current law only requires at least \$25,000 in such coverage and requires \$10,000 of PIP coverage.

Section 8 amends s. 320.771, F.S., and applies the same garage liability insurance requirement to recreational vehicle dealers.

Financial Responsibility Requirement for For-Hire Vehicles

Section 18 amends s. 324.032, F.S., which provides the financial responsibility requirements for for-hire passenger vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and retains the minimum limits of coverage, which are \$125,000/\$250,000 of BI and \$50,000 of PD. The bill amends current law by specifying the coverage must be purchased by an insurer that is a member of the Florida Insurance Guaranty Association.

Optional Medical Payments Coverage***Medical Payments Coverage Benefits***

Section 41 creates s. 627.7265, F.S., which authorizes the inclusion of medical payments coverage of at least \$5,000 in each motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S. Medical payments coverage must provide coverage of at least \$5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. Medical payments coverage must pay for reasonable expenses for necessary medical, diagnostic, and rehabilitative services lawfully provided, supervised, ordered, or prescribed by specified physicians, dentists, or chiropractic physicians, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. The coverage also includes a death benefit of at least \$5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

Before issuing a motor vehicle liability policy furnished as proof of financial responsibility, an insurer must offer medical payments coverage at limits of \$5,000 and \$10,000, with an option for no deductible or a \$500 deductible. Insurers may also offer such coverage at any limit greater than \$5,000, and deductibles not exceeding \$500.

Each motor vehicle liability policy furnished as proof of financial responsibility is deemed to have:

- Medical payments coverage to a limit of \$10,000, unless the policyholder, in writing on an approved form, refuses the coverage or selects coverage at a limit other than \$10,000.
- No medical payments coverage deductible, unless the policyholder, in writing on an approved form, selects a deductible of up to \$500.⁵⁵

The forms must be approved by the OIR and fully advise the applicant of the nature of the coverage being rejected or the policy limit or deductible being selected. The named insured's signature on such form constitutes a conclusive presumption of an informed, knowing rejection or selection. If the policyholder does not request in writing the specified coverage, the coverage need not be provided in any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if the policyholder has rejected the coverage or has selected an alternative coverage limit or deductible. An insurer must provide at least annually a notice of availability of coverage, which must be attached to the notice of premium and provide a means allowing the insured to request medical payments coverage at the limits and deductibles specified. Receipt of the notice does not constitute a waiver of an insured's right to medical payments coverage if the insured has not signed a selection or rejection form.

Upon receiving notice of an accident potentially covered by medical payments coverage benefits, the insurer must reserve \$5,000 for payment to licensed physicians and licensed dentists who provide emergency services and care or who provide hospital indigent care. The reserve amount may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice may be used by the insurer to pay other claims.

An insurer providing medical payments coverage benefits may not have a:

- Lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached; or
- Cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when benefits are paid by reason of fraud by such person.

The bill authorizes an insurer providing medical payments coverage to include provisions in its policy allowing for subrogation⁵⁶ for payment of medical payments coverage benefits if the payments resulted from the wrongful act or omission of another who is not also insured under the policy paying the benefits. However, the bill makes this subrogation right inferior to the rights of the injured insured and available only after all of the insured's damages are recovered and the insured is made whole.⁵⁷

⁵⁵ These provisions are similar to current law applicable to selection or rejection of uninsured motorist vehicle coverage in s. 627.727, F.S., which provisions are retained.

⁵⁶ Subrogation is the principle establishing that when an insurance company pays an insured's claim of loss caused by a third party's negligence, the insurance company stands in the place of the insured with respect to the insured's right to sue the negligent third party for damages.

⁵⁷ This appears to be a codification of the "made whole" doctrine acknowledged by the Florida Supreme Court in *Insurance Co. of North America v. Lexow*, 602 So.2d 528 (Fla. 1992). See also *Magsipock v. Larsen*, 639 So.2d 1038 (Fla. App. 1994). Generally, the principle is that an insurer does not have a common law right to subrogation, or reimbursement, against a third party causing the damages sustained by the insured unless the insured has been compensated for all of the insured's damages.

Under the bill, if an insured obtains a recovery from a third party of the full amount of the damages sustained and delivers a release or satisfaction that impairs an insurer's subrogation right, the insured is liable to the insurer for repayment of the medical payments benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs, and the insured is required to hold that net recovery in trust to be delivered to the medical payments insurer. The bill prohibits an insurer from including any provision in its policy allowing for subrogation for any death benefit paid.

Section 26 amends s. 400.9905, F.S., providing that an entity is deemed a "clinic" and must be licensed in order to receive medical payments coverage reimbursement under s. 627.7265, F.S., unless the entity is:

- Wholly owned by a licensed physician, a licensed dentist, or a licensed chiropractic physician; or by the physician, dentist, or chiropractic physician and the spouse, parent, child, or sibling of the physician, dentist, or chiropractic physician;
- A licensed hospital or ambulatory surgical center;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a licensed hospital or hospitals;
- A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic certified under federal law to provide outpatient physical therapy and speech pathology services; or
- Owned by a publicly traded corporation which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for operations of the entity are licensed health care practitioners in this state and are responsible for supervising the business and the entity's compliance with state law.

This section of the bill also revises the definition of a "clinic" contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to medical payments coverage.

Uninsured and Underinsured Motor Vehicle Insurance Coverage

Section 42 amends s. 627.727, F.S., which governs uninsured and underinsured motor vehicle insurance coverage. Current law specifies that the legal liability of an uninsured motorist insurer does not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is of sufficient severity under "verbal threshold" provisions in s. 627.737(2), F.S. Under PIP, a person cannot recover "pain and suffering" damages from the at-fault driver's bodily injury coverage unless the person's injuries exceed a certain severity threshold,⁵⁸ commonly referred to as the "verbal threshold." Personal injury protection is considered a no-fault coverage because the injured person trades a limitation on the ability to recover pain and

and been "made whole." However, the made whole doctrine may be overridden by contractual agreement under current case law. See *Florida Farm Bureau Ins. Co. v. Martin*, 377 So.2d 827 (Fla. 1979) and *Blue Cross & Blue Shield of Fla. v. Matthews*, 498 So.2d 421, 422 (Fla 1986).

⁵⁸ The injury or disease must consist in whole or in part of significant and permanent loss of an important bodily function; permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; significant and permanent scarring or disfigurement; or death. See s. 627.737(2), F.S.

suffering damages for the ability to get PIP benefits even if the injured person is at fault in the accident. Uninsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. The bill repeals the “verbal threshold” provisions contained in the No-Fault Law in s. 627.737, F.S.

Under the bill, the legal liability of an uninsured motorist insurer *includes* damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

Named Driver Exclusion

Section 48 creates s. 627.747, F.S., authorizing a private passenger motor vehicle policy to exclude an identified individual from coverages. Currently, the OIR requires insurers to provide exceptions to named driver exclusions up to statutorily required minimum limits for PIP coverage, BI liability coverage if the policy is used to meet financial responsibility requirements, UM coverage, and property damage liability coverage.⁵⁹

Under the bill, if an identified individual is specifically excluded by name on the policy declarations page or by endorsement, and a policyholder consents to such exclusion in writing, a private passenger motor vehicle policy may exclude an identified individual from the following coverages:

- Property damage liability coverage.
- Bodily injury liability coverage.
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the Office of Insurance Regulation; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

An individual would not be covered for damages that occur while operating a motor vehicle that is insured under a policy that excludes the individual, under the conditions specified, from any or all of the specified coverages, unless the individual is injured while not operating a motor vehicle, the exclusion is unfairly discrimination, or if the exclusion is inconsistent with the insurer’s underwriting rules.

Commercial Motor Vehicle Coverage Requirements

Section 47 amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

⁵⁹ See Office of Insurance Regulation, *2018 Agency Bill Analysis SB 518*, pg. 2 (Oct. 30, 2017). On file with the Senate Banking and Insurance Committee.

Beginning January 1, 2021, a commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$60,000. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$120,000 per occurrence beginning January 1, 2021. Current law requires \$100,000 of coverage.

Technical and Conforming Changes

Section 3 amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill makes conforming changes necessitated by the bill's amendment or repeal of other sections of law and inserts a cross-reference to the revised s. 324.071(7), F.S., containing the minimum insurance requirements for purposes of proof of financial responsibility beginning January 1, 2021.

Section 4 amends s. 318.18(2), F.S., regarding nonmoving traffic violations, to remove a reference to PIP and conform cross references.

Section 5 amends s. 320.02, F.S., which contains the requirements to register a motor vehicle. The bill amends the section to require proof of motor vehicle insurance that meets the minimum limits of BI and PD liability, remove references to PIP, and make other conforming changes.

Section 6 amends s. 320.0609, F.S., regarding transfer and exchange of registration license plates to eliminate a reference to PIP.

Section 9 amends s. 322.251, F.S., regarding notice of cancellation, suspension, or revocation of a driver's license to repeal references to the No-Fault Law.

Section 10 amends s. 322.34, F.S., regarding driving on a suspended, revoked, canceled, or disqualified driver's license, to delete a reference to the No-Fault Law.

Section 11 amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that under the chapter all owners or operators of a motor vehicle required to be registered in this state must establish, maintain and show proof of financial responsibility. Currently, financial responsibility requirements only apply after an operator is involved in a crash or convicted of certain traffic offenses.

Section 14 amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and PD coverage, insert references to BI liability coverage, and conform cross references.

Section 16 corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Section 19 amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

Section 20 amends s. 324.071, F.S., to provide stylistic changes to provisions governing the reinstatement of a suspended license.

Section 21 amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to an automobile liability policy while retaining references to a motor vehicle liability policy.

Section 25 amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the “Financial Responsibility Law of 2020” and state it will be effective at 12:01 a.m., on January 1, 2021. Currently the chapter is the “Financial Responsibility Law of 1955.”

Sections 27 and 28 amend s. 400.991, F.S., and s. 400.9935, F.S., respectively, of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to medical payments coverage.

Section 29 revises the definition of a “third party benefit” in s. 409.901, F.S., for purposes of Medicaid to refer to medical payments coverage rather than PIP coverage.

Section 30 amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

Section 31 amends s. 456.057, F.S., regarding patient records, to correct a cross-reference.

Section 32 amends s. 456.072, F.S., which allows the Department of Health to discipline licensees for submitting claims for PIP reimbursement when treatment was not rendered or that are intentionally upcoded, to relocate from the repealed s. 627.732, F.S., the existing definition of “upcoded” and refer instead to medical payments coverage.

Section 33 amends s. 626.9541(1)(i) and (o), F.S., regarding unfair insurance trade practices related to motor vehicle insurance. The bill deletes the unfair trade practice in paragraph (i) for failing to pay claims within statutory time periods required under the No-Fault Law to conform to the repeal of those time frames by the bill. The section makes a technical amendment to paragraph (o) to reference BI liability coverage, PD liability coverage, and medical payments coverage, rather than PIP, in the prohibitions against the unfair insurance trade practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

Section 34 amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to medical payments coverage, rather than the No-Fault Law.

Section 35 amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to medical payments.

Sections 37 and 38 amend s. 627.0652, F.S., and s. 627.0653, F.S., respectively, relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to medical payments coverage.

Section 39 amends s. 627.4132, F.S., regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

Section 40 amends s. 627.7263, F.S., which generally makes the rental and leasing driver's insurance primary, to delete references to PIP and insert references to medical payments coverage.

Section 45 amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of "policy."

Section 46 amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and inserting references to BI liability coverage and make other conforming and editorial changes.

Section 49 amends s. 627.748, F.S., relating to insurance requirements for transportation network companies, to remove references to PIP required under the repealed No-Fault law and insert a cross-reference to the revised financial responsibility requirements for for-hire passenger transportation vehicles in Section 17 of the bill.

Section 50 amends s. 627.749, F.S., relating to insurance requirements for autonomous vehicles, to delete a reference to PIP in those insurance requirements.

Section 51 amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies, to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD.

Section 52 amends s. 627.915, F.S., which requires private passenger automobile insurers to report annually information to the office, to remove references to PIP.

Section 53 amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

Section 54 amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 55 amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 56 amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to medical payments coverage.

Application of Bill and Effective Date

Section 44 creates s. 627.7278, F.S., applying financial responsibility requirements and optional medical payments coverage created by the bill as follows:

- Effective January 1, 2021:
 - All motor vehicle insurance policies issued or renewed may not include PIP.
 - All persons must maintain at least minimum security requirements, which is the ability to respond to damages for liability because of motor vehicle crashes in the amounts required in s. 324.021(7), F.S., for private use motor vehicles, for-hire passenger transportation vehicles, commercial motor vehicles, and nonpublic sector buses.
 - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
 - An existing motor vehicle insurance policy that provides PIP and property damage liability coverage but does not meet the new bodily injury liability requirements is deemed to meet the bodily injury requirements until the policy is renewed, non-renewed or cancelled on or after January 1, 2021, and the provisions of the No-Fault law and other related statutes remain in full force and effect for motor vehicle accidents covered under a policy issued under the No-Fault law before that date, until the policy is renewed, nonrenewed, or canceled.
- Insurers must allow each insured who has a policy providing PIP which is effective before January 1, 2021, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements effective on or after January 1, 2021. The insurer is also required to offer each insured the optional medical payments coverage required by the bill. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2020, each motor vehicle insurer shall provide notice that:
 - The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2021, and that PIP coverage is no longer required or available for purchase.
 - Effective January 1, 2021, a person subject to the financial security requirements of s. 324.022, F.S., must maintain minimum security requirements for BI and PD liability in the following amounts:
 - \$25,000 for BI or death of one person in any one crash and, subject to such limits, \$50,000 for BI or death of two or more persons in any one crash, and
 - \$10,000 for PD in any one crash.
 - BI liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.
 - Effective January 1, 2021, each holder of a motor vehicle liability insurance policy purchased as proof of financial responsibility must be offered the optional medical payments coverage benefits at limits of \$5,000 and \$10,000 without a deductible, may be offered such coverage at limits greater than \$5,000, and may be offered coverage with a deductible of up to \$500. Medical payments coverage pays covered medical expenses, up to the limits, for injuries sustained in a motor vehicle crash by the named insured,

- resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle. Medical payments coverage pays for reasonable expenses for necessary medical, diagnostic, and rehabilitative services that are lawfully provided, supervised, ordered, or prescribed by a licensed physician, a licensed dentist, or a licensed chiropractic physician, or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Medical payments coverage also provides a death benefit of at least \$5,000.
- A policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
 - A policy effective before January 1, 2021, is deemed to meet minimum security requirements until it is renewed, non-renewed, or canceled on or after January 1, 2021.
 - A policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
 - If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective upon the act becoming a law.

Section 15 creates s. 324.0222, F.S., requiring all driver license and motor vehicle registration suspensions for failure to maintain security as required by law in effect before January 1, 2021, to remain in full force and effect after January 1, 2021. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

Section 57 appropriates for the 2020-2021 fiscal year \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing the act.

Section 58 provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective January 1, 2021.

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:

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15. The bill retains this reinstatement fee for a license suspension based upon a crash report under s. 324.051(2), F.S.; a registration suspension under s. 324.072, F.S., based on a license suspension pursuant to s. 322.26, F.S., or s. 322.27, F.S.; suspension of the operating privileges of a nonresident driver under s. 324.081, F.S.; or suspension of license and registration under s. 324.121, F.S., for failure to satisfy a judgment.

The bill retains the current reinstatement fees under s. 324.0221, F.S., for a suspended license or registration for failure to maintain required insurance based on a report by an insurer. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

B. Private Sector Impact:

The fiscal impact to policyholders, health insurers, health care providers, and injured claimants is indeterminate. However, in a 2016 report, *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, provided, among other information, actuarial estimates of the savings expected from repealing the No-Fault Law.⁶⁰ The report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of \$25,000/\$50,000, that a 5.6 percent savings would be realized in the statewide average premium charge.⁶¹ The 2016 PIP Study estimated that health insurers would cover approximately \$469.7 million of current PIP loss if No-Fault were repealed.⁶² Health care providers would cover approximately \$32.8 million of current PIP losses.⁶³ Injured claimants would cover approximately \$82.9 million of current PIP losses.⁶⁴

⁶⁰ Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016), Appendix 3, p. 1. Available at <http://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last viewed February 9, 2020).

⁶¹ That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.

⁶² See Office of Insurance Regulation fn. 52 at pg. 68.

⁶³ See *id.*

⁶⁴ See *id.*

The actuarial consulting firm Milliman, Inc., estimated the impact of similar, but not identical, legislation in 2018, on behalf of the Property and Casualty Insurers Association of America. The Milliman report, dated January 25, 2018, estimated that repealing PIP and mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$67 (5.3 percent), increase premiums on average for drivers that currently purchase full coverage by \$105 (7.2 percent), and increase premiums on average \$230 (50.1 percent) for drivers who currently purchase only PIP and PD at the minimum mandatory limits.⁶⁵ The report estimates that *mandating* \$5,000 of MedPay in addition to mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$115.85 (9.2 percent).⁶⁶ The report identifies as cost-drivers increasing premium the elimination of the No-Fault verbal threshold for noneconomic damages and the elimination of the PIP co-insurance provisions (20 percent for medical expenses and 40 percent for loss of income expenses).⁶⁷

Policyholders who reside in the same household as a high-risk individual who is of driving age could see a decrease in their rates if they exclude such drivers from one or more of the specified coverages.

C. Government Sector Impact:

The bill appropriates for the 2020-2021 fiscal year \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act. The fiscal impact to state and local governments is otherwise indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.032, 324.051, 324.071, 324.091, 324.151, 324.161, 324.171, 324.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 627.06501, 627.0651, 627.0652, 627.0653, 627.4132, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.7415, 627.748, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

This bill creates the following sections of the Florida Statutes: 324.0222, 627.7265, 627.7278, and 627.747.

⁶⁵ Milliman, Inc., *Florida Personal Auto Insurance Impact of Repealing No-Fault Coverage – Prepared for Property Casualty Insurers Association of America*, pg. 4 (Jan. 25, 2018). Available at http://floridapolitics.com/wp-content/uploads/2018/02/Impact-of-Repealing-No-Fault_Final.pdf (last viewed February 9, 2020).

⁶⁶ See Milliman at pg. 6.

⁶⁷ See Milliman at pgs. 9-10.

This bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, 627.7405, and 627.7407.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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



198434

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 1506 and 1507

insert:

Section 33. Subsection (1) of section 624.155, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer when such person is damaged:



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(a) By a violation of any of the following provisions by the insurer:

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;
3. Section 626.9705;
4. Section 626.9706;
5. Section 626.9707; or
6. Section 627.7283.

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under the totality of 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 paragraphs (a) and (b) ~~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.

(10) The provisions of this subsection apply to an action against a motor vehicle insurer for third-party bad faith under



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40 this chapter or at common law.

41 (a) It is a condition precedent to such action that the
42 insurer first receive written notice that the insurer has
43 violated its duty to act in good faith toward its insured. A
44 notice shall state with specificity the alleged violation and
45 the facts and circumstances giving rise to the violation. The
46 insurer's receipt of written notice does not preclude subsequent
47 written notices that an insurer violated its duty to act in good
48 faith toward its insured. The insurer shall save and document
49 any notice.

50 (b) In handling claims, an insurer stands as a fiduciary
51 for its insured. Accordingly, an insurer shall act in good faith
52 toward its insured throughout the entirety of the claim.

53 (c) A bad faith failure to settle means an insurer's
54 failure to settle a claim when, under the totality of the
55 circumstances, it could and should have done so had it acted
56 fairly, honestly, and with due regard for the interests of an
57 insured. The claimant has the burden to establish through the
58 greater weight of the evidence that specific conduct by the
59 insurer is the cause or substantial cause of the insurer's bad
60 faith failure to settle.

61 1. An insurer's negligent actions alone are insufficient to
62 establish the insurer's bad faith failure to settle, but an
63 insurer's negligent actions are relevant when considering the
64 totality of the circumstances.

65 2. The actions or inactions of the insured or claimant are
66 relevant in an action for a bad faith failure to settle. An
67 insurer may assert as a defense that the conduct of the insured
68 or claimant caused, in whole or in part, the failure to settle



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the claim.

(d) No action against a motor vehicle insurer for third-party bad faith shall lie if, within 45 days after the motor vehicle insurer receives notice pursuant to paragraph (a), the insurer cures the circumstances giving rise to the alleged breach of duty of good faith to the insured. A third party may proceed with a bad faith action against the insurer if the insurer fails to cure the violation within this period.

(e) Paragraph (d) does not create a duty that the insurer must offer policy limits or the amount of a demand that is less than policy limits within 45 days after it receives notice under paragraph (a). However, the absence of such offer may be considered as part of the totality of the circumstances in determining whether the insurer in bad faith failed to settle.

(f) 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 third party claimants, a motor vehicle 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 such insurer continues to comply with its good faith duties to its insured throughout the entirety of the claim, including the pendency of an interpleader action filed under the Florida Rules of Civil Procedure within 90 days after receiving notice of the competing claims in excess of the available policy limits. The competing third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact.



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

And the title is amended as follows:

Delete line 89

and insert:

professions; amending s. 624.155, F.S.; providing applicability; requiring that a civil remedy notice be provided to a motor vehicle insurer before a third-party bad faith action is brought against the insurer; specifying requirements for the notice; providing construction relating to the notice; requiring the insurer to save and document any notice; providing construction relating to an insurer's duty of good faith, a bad faith failure to settle, the claimant's burden of proof, negligent actions of an insurer, and actions or inactions of the insured or claimant; providing that such bad faith actions are barred if the insurer cures certain circumstances within a certain timeframe; providing that an insurer is not liable beyond policy limits in certain third-party claims if it meets certain conditions; providing that competing third-party claimants are entitled to a prorated share of policy limits as determined by the trier of fact; amending s. 626.9541, F.S.; conforming a

By Senator Lee

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1 A bill to be entitled
 2 An act relating to motor vehicle insurance; repealing
 3 ss. 627.730, 627.731, 627.7311, 627.732, 627.733,
 4 627.734, 627.736, 627.737, 627.739, 627.7401,
 5 627.7403, and 627.7405, F.S., which comprise the
 6 Florida Motor Vehicle No-Fault Law; repealing s.
 7 627.7407, F.S., relating to application of the Florida
 8 Motor Vehicle No-Fault Law; amending s. 316.646, F.S.;
 9 revising a requirement for proof of security on a
 10 motor vehicle and the applicability of the
 11 requirement; amending s. 318.18, F.S.; conforming a
 12 provision to changes made by the act; amending s.
 13 320.02, F.S.; revising the motor vehicle insurance
 14 coverages that an applicant must show to register
 15 certain vehicles with the Department of Highway Safety
 16 and Motor Vehicles; conforming a provision to changes
 17 made by the act; revising construction; amending s.
 18 320.0609, F.S.; conforming a provision to changes made
 19 by the act; amending s. 320.27, F.S.; defining the
 20 term "garage liability insurance"; revising garage
 21 liability insurance requirements for motor vehicle
 22 dealer applicants; conforming a provision to changes
 23 made by the act; amending s. 320.771, F.S.; revising
 24 garage liability insurance requirements for
 25 recreational vehicle dealer license applicants;
 26 amending ss. 322.251 and 322.34, F.S.; conforming
 27 provisions to changes made by the act; amending s.
 28 324.011, F.S.; revising legislative intent; amending
 29 s. 324.021, F.S.; revising definitions of the terms

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30 "motor vehicle" and "proof of financial
 31 responsibility"; revising minimum coverage
 32 requirements for proof of financial responsibility for
 33 specified motor vehicles; defining the term "for-hire
 34 passenger transportation vehicle"; conforming
 35 provisions to changes made by the act; amending s.
 36 324.022, F.S.; revising minimum liability coverage
 37 requirements for motor vehicle owners or operators;
 38 revising authorized methods for meeting such
 39 requirements; deleting a provision relating to an
 40 insurer's duty to defend certain claims; revising the
 41 vehicles that are excluded from the definition of the
 42 term "motor vehicle"; providing security requirements
 43 for certain excluded vehicles; conforming provisions
 44 to changes made by the act; conforming cross-
 45 references; amending s. 324.0221, F.S.; revising
 46 coverages that subject a policy to certain insurer
 47 reporting and notice requirements; conforming
 48 provisions to changes made by the act; creating s.
 49 324.0222, F.S.; providing that driver license or
 50 registration suspensions for failure to maintain
 51 required security which were in effect before a
 52 specified date remain in full force and effect;
 53 providing that such suspended licenses or
 54 registrations may be reinstated as provided in a
 55 specified section; amending s. 324.023, F.S.;
 56 conforming cross-references; amending s. 324.031,
 57 F.S.; specifying a method of proving financial
 58 responsibility; revising the amount of a certificate

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59 of deposit required to elect a certain method of proof
 60 of financial responsibility; revising excess liability
 61 coverage requirements for a person electing to use
 62 such method; amending s. 324.032, F.S.; revising
 63 financial responsibility requirements for owners or
 64 lessees of for-hire passenger transportation vehicles;
 65 amending ss. 324.051, 324.071, and 324.091, F.S.;
 66 making technical changes; amending s. 324.151, F.S.;
 67 revising requirements for motor vehicle liability
 68 insurance policies relating to coverage, and exclusion
 69 from coverage, for certain drivers and vehicles;
 70 defining terms; conforming provisions to changes made
 71 by the act; making technical changes; amending s.
 72 324.161, F.S.; revising requirements for a certificate
 73 of deposit that is required if a person elects a
 74 certain method of proving financial responsibility;
 75 amending s. 324.171, F.S.; revising the minimum net
 76 worth requirements to qualify certain persons as self-
 77 insurers; conforming provisions to changes made by the
 78 act; amending s. 324.251, F.S.; revising the short
 79 title and an effective date; amending s. 400.9905,
 80 F.S.; revising the definition of the term "clinic";
 81 amending ss. 400.991 and 400.9935, F.S.; conforming
 82 provisions to changes made by the act; amending s.
 83 409.901, F.S.; revising the definition of the term
 84 "third-party benefit"; amending s. 409.910, F.S.;
 85 revising the definition of the term "medical
 86 coverage"; amending s. 456.057, F.S.; conforming a
 87 cross-reference; amending s. 456.072, F.S.; revising

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88 specified grounds for discipline for certain health
 89 professions; amending s. 626.9541, F.S.; conforming a
 90 provision to changes made by the act; revising the
 91 type of insurance coverage applicable to a certain
 92 prohibited act; amending s. 626.989, F.S.; revising
 93 the definition of the term "fraudulent insurance act";
 94 amending s. 627.06501, F.S.; revising coverages that
 95 may provide for a reduction in motor vehicle insurance
 96 policy premium charges under certain circumstances;
 97 amending s. 627.0651, F.S.; specifying requirements
 98 for initial rate filings for motor vehicle liability
 99 policies submitted to the Office of Insurance
 100 Regulation beginning on a specified date; amending s.
 101 627.0652, F.S.; revising coverages that must provide a
 102 premium charge reduction under certain circumstances;
 103 amending s. 627.0653, F.S.; revising coverages subject
 104 to premium discounts for specified motor vehicle
 105 equipment; amending s. 627.4132, F.S.; revising the
 106 coverages of a motor vehicle policy which are subject
 107 to a stacking prohibition; amending s. 627.7263, F.S.;
 108 revising coverages that are deemed primary, except
 109 under certain circumstances, for the lessor of a motor
 110 vehicle for lease or rent; revising a notice that is
 111 required if the lessee's coverage is to be primary;
 112 creating s. 627.7265, F.S.; specifying persons whom
 113 medical payments coverage must protect; requiring
 114 medical payments coverage to cover reasonable expenses
 115 for certain medical services provided by specified
 116 providers and facilities and to provide a death

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117 benefit; specifying the minimum medical expense and
 118 death benefit limits; specifying coverage options an
 119 insurer must and may offer; providing that motor
 120 vehicle liability insurance policies are deemed to
 121 have medical payments coverage at a certain limit and
 122 with no deductible unless rejected or modified by the
 123 policyholder by certain means; specifying requirements
 124 for certain forms approved by the office; requiring
 125 insurers to provide policyholders with a certain
 126 annual notice; providing construction relating to
 127 limits on certain other coverages; requiring insurers,
 128 upon receiving certain notice of an accident, to hold
 129 a specified reserve for certain purposes for a certain
 130 timeframe; providing that the reserve requirement does
 131 not require insurers to establish a claim reserve for
 132 accounting purposes; specifying that an insurer
 133 providing medical payments coverage benefits may not
 134 have a lien on a certain recovery and may not have a
 135 certain cause of action; authorizing insurers to
 136 include policy provisions allowing for subrogation,
 137 under certain circumstances, for medical payments
 138 benefits paid; providing construction; specifying a
 139 requirement for an insured for repayment of medical
 140 payments benefits under certain circumstances;
 141 prohibiting insurers from including policy provisions
 142 allowing for subrogation for death benefits paid;
 143 amending s. 627.727, F.S.; revising the legal
 144 liability of an uninsured motorist coverage insurer;
 145 conforming provisions to changes made by the act;

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146 amending s. 627.7275, F.S.; revising required
 147 coverages for a motor vehicle insurance policy;
 148 conforming provisions to changes made by the act;
 149 creating s. 627.7278, F.S.; defining the term "minimum
 150 security requirements"; providing requirements,
 151 applicability, and construction relating to motor
 152 vehicle insurance policies as of a certain date;
 153 requiring insurers to allow certain insureds to make
 154 certain coverage changes, subject to certain
 155 conditions; requiring an insurer to provide, by a
 156 specified date, a specified notice to policyholders
 157 relating to requirements under the act; amending s.
 158 627.728, F.S.; conforming a provision to changes made
 159 by the act; amending s. 627.7295, F.S.; revising the
 160 definitions of the terms "policy" and "binder";
 161 revising the coverages of a motor vehicle insurance
 162 policy for which a licensed general lines agent may
 163 charge a specified fee; conforming a provision to
 164 changes made by the act; amending s. 627.7415, F.S.;
 165 revising additional liability insurance requirements
 166 for commercial motor vehicles; creating s. 627.747,
 167 F.S.; providing that private passenger motor vehicle
 168 policies may exclude certain identified individuals
 169 from specified coverages under certain circumstances;
 170 providing that such policies may not exclude coverage
 171 under certain circumstances; amending s. 627.748,
 172 F.S.; revising insurance requirements for
 173 transportation network company drivers; conforming
 174 provisions to changes made by the act; amending s.

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175 627.749, F.S.; conforming a provision to changes made
 176 by the act; amending s. 627.8405, F.S.; revising
 177 coverages in a policy sold in combination with an
 178 accidental death and dismemberment policy which a
 179 premium finance company may not finance; revising
 180 rulemaking authority of the Financial Services
 181 Commission; amending ss. 627.915, 628.909, 705.184,
 182 and 713.78, F.S.; conforming provisions to changes
 183 made by the act; amending s. 817.234, F.S.; revising
 184 coverages that are the basis of specified prohibited
 185 false and fraudulent insurance claims; conforming
 186 provisions to changes made by the act; providing an
 187 appropriation; providing effective dates.
 188

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

190
 191 Section 1. Sections 627.730, 627.731, 627.7311, 627.732,
 192 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403,
 193 and 627.7405, Florida Statutes, are repealed.

194 Section 2. Section 627.7407, Florida Statutes, is repealed.

195 Section 3. Subsection (1) of section 316.646, Florida
 196 Statutes, is amended to read:

197 316.646 Security required; proof of security and display
 198 thereof.—

199 (1) Any person required by s. 324.022 to maintain liability
 200 security for property damage, liability security, required by s.
 201 324.023 to maintain liability security for bodily injury, or
 202 death, or required by s. 627.733 to maintain personal injury
 203 protection security on a motor vehicle shall have in his or her

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204 immediate possession at all times while operating such motor
 205 vehicle proper proof of maintenance of the ~~required~~ security
 206 required under s. 324.021(7).

207 (a) Such proof ~~must~~ shall be in a uniform paper or
 208 electronic format, as prescribed by the department, a valid
 209 insurance policy, an insurance policy binder, a certificate of
 210 insurance, or such other proof as may be prescribed by the
 211 department.

212 (b)1. The act of presenting to a law enforcement officer an
 213 electronic device displaying proof of insurance in an electronic
 214 format does not constitute consent for the officer to access any
 215 information on the device other than the displayed proof of
 216 insurance.

217 2. The person who presents the device to the officer
 218 assumes the liability for any resulting damage to the device.

219 Section 4. Paragraph (b) of subsection (2) of section
 220 318.18, Florida Statutes, is amended to read:

221 318.18 Amount of penalties.—The penalties required for a
 222 noncriminal disposition pursuant to s. 318.14 or a criminal
 223 offense listed in s. 318.17 are as follows:

224 (2) Thirty dollars for all nonmoving traffic violations
 225 and:

226 (b) For all violations of ss. 320.0605, 320.07(1), 322.065,
 227 and 322.15(1). A ~~Any~~ person who is cited for a violation of s.
 228 320.07(1) shall be charged a delinquent fee pursuant to s.
 229 320.07(4).

230 1. If a person who is cited for a violation of s. 320.0605
 231 or s. 320.07 can show proof of having a valid registration at
 232 the time of arrest, the clerk of the court may dismiss the case

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and may assess a dismissal fee of up to \$10, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain a valid registration certificate must submit an affidavit detailing the reasons for the impossibility or impracticality. The reasons may include, but are not limited to, the fact that the vehicle was sold, stolen, or destroyed; that the state in which the vehicle is registered does not issue a certificate of registration; or that the vehicle is owned by another person.

2. If a person who is cited for a violation of s. 322.03, s. 322.065, or s. 322.15 can show a driver license issued to him or her and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General Revenue Fund.

3. If a person who is cited for a violation of s. 316.646 can show proof of security as required by s. 324.021(7) ~~s. 627.733~~, issued to the person and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10, from which the clerk shall remit \$2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain proof of security must submit an affidavit detailing the reasons for the impracticality. The reasons may include, but are not limited to, the fact that the vehicle has since been sold, stolen, or destroyed; ~~that the owner or registrant of the vehicle is not required by s. 627.733 to maintain personal injury protection insurance;~~ or that the vehicle is owned by

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another person.

Section 5. Paragraphs (a) and (d) of subsection (5) of section 320.02, Florida Statutes, are amended to read:

320.02 Registration required; application for registration; forms.—

(5) (a) Proof that bodily injury liability coverage and property damage liability coverage ~~personal injury protection benefits~~ have been purchased if required under s. 324.022, s. 324.032, or s. 627.742 ~~s. 627.733~~, ~~that property damage liability coverage has been purchased as required under s. 324.022~~, that bodily injury liability ~~or death~~ coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased if required under s. 627.7415 must ~~shall~~ be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that is subject to such requirements. The issuing agent may not ~~shall refuse to~~ issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards in a paper or electronic format in a form prescribed by the department and include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card must contain a statement notifying the applicant of the penalty specified under s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other

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291 proof as may be prescribed by the department constitutes ~~shall~~
 292 ~~constitute~~ sufficient proof of purchase. If an affidavit is
 293 provided as proof, it must be in substantially the following
 294 form:

295
 296 Under penalty of perjury, I ...(Name of insured)... do hereby
 297 certify that I have ...(bodily injury liability and Personal
 298 ~~Injury Protection~~, property damage liability, ~~and, if required,~~
 299 ~~Bodily Injury Liability~~)... insurance currently in effect with
 300 ...(Name of insurance company)... under ...(policy number)...
 301 covering ...(make, year, and vehicle identification number of
 302 vehicle).... ...(Signature of Insured)...

303
 304 Such affidavit must include the following warning:

305
 306 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
 307 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
 308 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
 309 SUBJECT TO PROSECUTION.

310
 311 If an application is made through a licensed motor vehicle
 312 dealer as required under s. 319.23, the original or a photocopy
 313 ~~photostatic copy~~ of such card, insurance policy, insurance
 314 policy binder, or certificate of insurance or the original
 315 affidavit from the insured must ~~shall~~ be forwarded by the dealer
 316 to the tax collector of the county or the Department of Highway
 317 Safety and Motor Vehicles for processing. By executing the
 318 ~~aforsaid~~ affidavit, a ~~no~~ licensed motor vehicle dealer is not
 319 ~~will be~~ liable in damages for any inadequacy, insufficiency, or

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320 falsification of any statement contained therein. ~~A card must~~
 321 ~~also indicate the existence of any bodily injury liability~~
 322 ~~insurance voluntarily purchased.~~

323 (d) The verifying of ~~proof of personal injury protection~~
 324 ~~insurance, proof of property damage liability insurance, proof~~
 325 ~~of combined bodily liability insurance and property damage~~
 326 ~~liability insurance, or~~ proof of financial responsibility
 327 insurance and the issuance or failure to issue the motor vehicle
 328 registration under the ~~provisions of this chapter~~ may not be
 329 construed in any court as a warranty of the reliability or
 330 accuracy of the evidence of such proof, or as meaning that the
 331 provisions of any insurance policy furnished as proof of
 332 financial responsibility comply with state law. Neither the
 333 department nor any tax collector is liable in damages for any
 334 inadequacy, insufficiency, falsification, or unauthorized
 335 modification of any item of the ~~proof of personal injury~~
 336 ~~protection insurance, proof of property damage liability~~
 337 ~~insurance, proof of combined bodily liability insurance and~~
 338 ~~property damage liability insurance, or~~ proof of financial
 339 responsibility before insurance prior to, during, or subsequent
 340 to the verification of the proof. The issuance of a motor
 341 vehicle registration does not constitute prima facie evidence or
 342 a presumption of insurance coverage.

343 Section 6. Paragraph (b) of subsection (1) of section
 344 320.0609, Florida Statutes, is amended to read:

345 320.0609 Transfer and exchange of registration license
 346 plates; transfer fee.—

347 (1)

348 (b) The transfer of a license plate from a vehicle disposed

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of to a newly acquired vehicle does not constitute a new registration. The application for transfer ~~must shall~~ be accepted without requiring proof of ~~personal injury protection or~~ liability insurance.

Section 7. Paragraph (g) is added to subsection (1) of section 320.27, Florida Statutes, and subsection (3) of that section is amended, to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(g) "Garage liability insurance" means, beginning January 1, 2021, combined single-limit liability coverage, including property damage and bodily injury liability coverage, in the amount of at least \$60,000.

(3) APPLICATION AND FEE.—~~The application for the license application must shall~~ be in such form as may be prescribed by the department and ~~is shall be~~ subject to such rules ~~with respect thereto~~ as may be so prescribed by the department ~~it~~. Such application ~~must shall~~ be verified by oath or affirmation and ~~must shall~~ contain a full statement of the name and birth date of the person or persons applying for the license ~~therefor~~; the name of the firm or copartnership, with the names and places of residence of all members ~~thereof~~, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or

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places of residence of the applicant; and the prior business in which the applicant has been engaged and ~~its the~~ location ~~thereof~~. ~~The~~ Such application ~~must shall~~ describe the exact location of the place of business and ~~must shall~~ state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease ~~must shall~~ be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which ~~must shall~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business that will ~~which shall~~ be conducted at that location. The application ~~must shall~~ contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell ~~must shall~~ be included, or an independent (nonfranchised) motor vehicle dealer. The application ~~must shall~~ contain other relevant information as may be required by the department. The applicant shall furnish, including evidence, in a form approved by the department, that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy having the

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407 coverages and limits of the garage liability insurance coverage
 408 in accordance with paragraph (1) (g), which shall include, at a
 409 minimum, \$25,000 combined single-limit liability coverage
 410 including bodily injury and property damage protection and
 411 \$10,000 personal injury protection. However, a salvage motor
 412 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 413 from the requirements for garage liability insurance and
 414 personal injury protection insurance on those vehicles that
 415 cannot be legally operated on roads, highways, or streets in
 416 this state. Franchise dealers must submit a garage liability
 417 insurance policy, and all other dealers must submit a garage
 418 liability insurance policy or a general liability insurance
 419 policy coupled with a business automobile policy. Such policy
 420 must ~~shall~~ be for the license period, and evidence of a new or
 421 continued policy must ~~shall~~ be delivered to the department at
 422 the beginning of each license period. Upon making an initial
 423 application, the applicant shall pay to the department a fee of
 424 \$300 in addition to any other fees required by law. Applicants
 425 may choose to extend the licensure period for 1 additional year
 426 for a total of 2 years. An initial applicant shall pay to the
 427 department a fee of \$300 for the first year and \$75 for the
 428 second year, in addition to any other fees required by law. An
 429 applicant for renewal shall pay to the department \$75 for a 1-
 430 year renewal or \$150 for a 2-year renewal, in addition to any
 431 other fees required by law. Upon making an application for a
 432 change of location, the applicant person shall pay a fee of \$50
 433 in addition to any other fees now required by law. The
 434 department shall, in the case of every application for initial
 435 licensure, verify whether certain facts set forth in the

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436 application are true. Each applicant, general partner in the
 437 case of a partnership, or corporate officer and director in the
 438 case of a corporate applicant ~~shall, must~~ file a set of
 439 fingerprints with the department for the purpose of determining
 440 any prior criminal record or any outstanding warrants. The
 441 department shall submit the fingerprints to the Department of
 442 Law Enforcement for state processing and forwarding to the
 443 Federal Bureau of Investigation for federal processing. The
 444 actual cost of state and federal processing must ~~shall~~ be borne
 445 by the applicant and is in addition to the fee for licensure.
 446 The department may issue a license to an applicant pending the
 447 results of the fingerprint investigation, which license is fully
 448 revocable if the department subsequently determines that any
 449 facts set forth in the application are not true or correctly
 450 represented.

451 Section 8. Paragraph (j) of subsection (3) of section
 452 320.771, Florida Statutes, is amended to read:

453 320.771 License required of recreational vehicle dealers.—

454 (3) APPLICATION.—The application for such license shall be
 455 in the form prescribed by the department and subject to such
 456 rules as may be prescribed by it. The application shall be
 457 verified by oath or affirmation and shall contain:

458 (j) A statement that the applicant is insured under a
 459 garage liability insurance policy in accordance with s.
 460 320.27(1) (g), which shall include, at a minimum, \$25,000
 461 combined single-limit liability coverage, including bodily
 462 injury and property damage protection, and \$10,000 personal
 463 injury protection, if the applicant is to be licensed as a
 464 dealer in, or intends to sell, recreational vehicles.

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The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 9. Subsections (1) and (2) of section 322.251, Florida Statutes, are amended to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(1) All orders of cancellation, suspension, revocation, or disqualification issued under ~~the provisions of this chapter, chapter 318, or chapter 324 must, or ss. 627.732-627.734 shall~~ be given either by personal delivery thereof to the licensee whose license is being canceled, suspended, revoked, or disqualified or by deposit in the United States mail in an envelope, first class, postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department. Such mailing by the department constitutes notification, and any failure by the person to receive the mailed order will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification of the licensee's driving privilege.

(2) The giving of notice and an order of cancellation, suspension, revocation, or disqualification by mail is complete upon expiration of 20 days after deposit in the United States mail for all notices except those issued under chapter 324 ~~or ss. 627.732-627.734~~, which are complete 15 days after deposit in the United States mail. Proof of the giving of notice and an

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order of cancellation, suspension, revocation, or disqualification in either manner must ~~shall~~ be made by entry in the records of the department that such notice was given. The entry is admissible in the courts of this state and constitutes sufficient proof that such notice was given.

Section 10. Paragraph (a) of subsection (8) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(8)(a) Upon the arrest of a person for the offense of driving while the person's driver license or driving privilege is suspended or revoked, the arresting officer shall determine:

1. Whether the person's driver license is suspended or revoked, or the person is under suspension or revocation equivalent status.

2. Whether the person's driver license has remained suspended or revoked, or the person has been under suspension or revocation equivalent status, since a conviction for the offense of driving with a suspended or revoked license.

3. Whether the suspension, revocation, or suspension or revocation equivalent status was made under s. 316.646 ~~or s. 627.733~~, relating to failure to maintain required security, or under s. 322.264, relating to habitual traffic offenders.

4. Whether the driver is the registered owner or co-owner of the vehicle.

Section 11. Section 324.011, Florida Statutes, is amended to read:

324.011 Legislative intent and purpose of chapter.—It is the Legislature's intent of this chapter to ensure that the

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523 privilege of owning or operating a motor vehicle in this state
 524 is exercised recognize the existing privilege to own or operate
 525 a motor vehicle on the public streets and highways of this state
 526 when such vehicles are used with due consideration for others'
 527 safety ~~others~~ and their property, and to promote safety, and to
 528 provide financial security requirements for such owners and or
 529 operators whose responsibility it is to recompense others for
 530 injury to person or property caused by the operation of a motor
 531 vehicle. Therefore, this chapter requires that every owner or
 532 operator of a motor vehicle required to be registered in this
 533 state establish, maintain, and it is required herein that the
 534 operator of a motor vehicle involved in a crash or convicted of
 535 certain traffic offenses meeting the operative provisions of s.
 536 324.051(2) shall respond for such damages and show proof of
 537 financial ability to respond for damages arising out of the
 538 ownership, maintenance, or use of a motor vehicle in future
 539 accidents as a requisite to owning or operating a motor vehicle
 540 in this state his or her future exercise of such privileges.

541 Section 12. Subsections (1) and (7) and paragraph (c) of
 542 subsection (9) of section 324.021, Florida Statutes, are
 543 amended, and subsection (12) is added to that section, to read:

544 324.021 Definitions; minimum insurance required.—The
 545 following words and phrases when used in this chapter shall, for
 546 the purpose of this chapter, have the meanings respectively
 547 ascribed to them in this section, except in those instances
 548 where the context clearly indicates a different meaning:

549 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is
 550 designed and required to be licensed for use upon a highway,
 551 including trailers and semitrailers designed for use with such

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552 vehicles, except traction engines, road rollers, farm tractors,
 553 power shovels, and well drillers, and every vehicle that is
 554 propelled by electric power obtained from overhead wires but not
 555 operated upon rails, but not including any personal delivery
 556 device or mobile carrier as defined in s. 316.003, bicycle, or
 557 moped. ~~However, the term "motor vehicle" does not include a~~
 558 ~~motor vehicle as defined in s. 627.732(3) when the owner of such~~
 559 ~~vehicle has complied with the requirements of ss. 627.730-~~
 560 ~~627.7405, inclusive, unless the provisions of s. 324.051 apply,~~
 561 ~~and, in such case, the applicable proof of insurance provisions~~
 562 ~~of s. 320.02 apply.~~

563 (7) PROOF OF FINANCIAL RESPONSIBILITY.—That Proof of
 564 ability to respond in damages for liability on account of
 565 crashes arising out of the ownership, maintenance, or use of a
 566 motor vehicle:

567 (a) Beginning January 1, 2021, with respect to a motor
 568 vehicle that is not a commercial motor vehicle, nonpublic sector
 569 bus, or for-hire passenger transportation vehicle, in the amount
 570 of:

571 1. Twenty-five thousand dollars for \$10,000 because of
 572 bodily injury to, or the death of, one person in any one crash
 573 and,

574 ~~(b)~~ subject to such limits for one person, in the amount of
 575 \$50,000 for \$20,000 because of bodily injury to, or the death
 576 of, two or more persons in any one crash; and

577 2. ~~(e)~~ Ten thousand dollars for damage in the amount of
 578 \$10,000 because of injury to, or destruction of, property of
 579 others in any one crash. ~~and~~

580 ~~(b)(d)~~ With respect to commercial motor vehicles and

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581 ~~nonpublic sector buses~~, in the amounts specified in s. 627.7415
 582 ~~ss. 627.7415 and 627.742, respectively.~~

583 (c) With respect to nonpublic sector buses, in the amounts
 584 specified in s. 627.742.

585 (d) With respect to for-hire passenger transportation
 586 vehicles, in the amounts specified in s. 324.032.

587 (9) OWNER; OWNER/LESSOR.—

588 (c) *Application.*—

589 1. The limits on liability in subparagraphs (b)2. and 3. do
 590 not apply to an owner of motor vehicles that are used for
 591 commercial activity in the owner's ordinary course of business,
 592 other than a rental company that rents or leases motor vehicles.
 593 For purposes of this paragraph, the term "rental company"
 594 includes only an entity that is engaged in the business of
 595 renting or leasing motor vehicles to the general public and that
 596 rents or leases a majority of its motor vehicles to persons with
 597 no direct or indirect affiliation with the rental company. The
 598 term also includes a motor vehicle dealer that provides
 599 temporary replacement vehicles to its customers for up to 10
 600 days. The term "rental company" also includes:

601 a. A related rental or leasing company that is a subsidiary
 602 of the same parent company as that of the renting or leasing
 603 company that rented or leased the vehicle.

604 b. The holder of a motor vehicle title or an equity
 605 interest in a motor vehicle title if the title or equity
 606 interest is held pursuant to or to facilitate an asset-backed
 607 securitization of a fleet of motor vehicles used solely in the
 608 business of renting or leasing motor vehicles to the general
 609 public and under the dominion and control of a rental company,

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610 as described in this subparagraph, in the operation of such
 611 rental company's business.

612 2. Furthermore, with respect to commercial motor vehicles
 613 as defined in s. 207.002 or s. 320.01 ~~s. 627.732~~, the limits on
 614 liability in subparagraphs (b)2. and 3. do not apply if, at the
 615 time of the incident, the commercial motor vehicle is being used
 616 in the transportation of materials found to be hazardous for the
 617 purposes of the Hazardous Materials Transportation Authorization
 618 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is
 619 required pursuant to such act to carry placards warning others
 620 of the hazardous cargo, unless at the time of lease or rental
 621 either:

622 a. The lessee indicates in writing that the vehicle will
 623 not be used to transport materials found to be hazardous for the
 624 purposes of the Hazardous Materials Transportation Authorization
 625 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

626 b. The lessee or other operator of the commercial motor
 627 vehicle has in effect insurance with limits of at least \$5
 628 million ~~\$5,000,000~~ combined property damage and bodily injury
 629 liability.

630 (12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every for-
 631 hire vehicle as defined in s. 320.01(15) which is offered or
 632 used to provide transportation for persons, including taxicabs,
 633 limousines, and jitneys.

634 Section 13. Section 324.022, Florida Statutes, is amended
 635 to read:

636 324.022 Financial responsibility requirements ~~for property~~
 637 ~~damage.~~—

638 (1) (a) Beginning January 1, 2021, every owner or operator

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of a motor vehicle required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for \$10,000 because of damage to, or destruction of, property of others in any one crash.

(b) The requirements of paragraph (a) this section may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining a motor vehicle liability insurance policy that an insurance policy providing coverage for property damage liability in the amount of at least \$10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which provides combined property damage liability and bodily injury liability coverage for any one crash arising out of the ownership, maintenance, or use of a motor vehicle and that conforms to the requirements of s. 324.151 in the amount of at least \$60,000 for every owner or operator subject to the financial responsibility required in paragraph (a) \$30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements

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~~of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims.~~

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

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include the following:

1. A mobile home as defined in s. 320.01.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25, which must maintain security as required under s. 316.615.

4. A commercial motor vehicle as defined in s. 207.002 or s. 320.01, which must maintain security as required under ss. 324.031 and 627.7415.

5. A nonpublic sector bus, which must maintain security as required under ss. 324.031 and 627.742.

~~6.4. A vehicle providing for-hire passenger transportation vehicle, which must that is subject to the provisions of s. 324.031. A taxicab shall maintain security as required under s. 324.032 s. 324.032(1).~~

~~7.5. A personal delivery device as defined in s. 316.003.~~

(b) "Owner" means the person who holds legal title to a

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motor vehicle or the debtor or lessee who has the right to possession of a motor vehicle that is the subject of a security agreement or lease with an option to purchase.

(3) Each nonresident owner or registrant of a motor vehicle that, whether operated or not, has been physically present within this state for more than 90 days during the preceding 365 days shall maintain security as required by subsection (1). The security must be that is in effect continuously throughout the period the motor vehicle remains within this state.

(4) An The owner or registrant of a motor vehicle who is exempt from the requirements of this section if she or he is a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation is exempt from this section while he or she. The exemption provided by this subsection applies only as long as the member of the Armed Forces is on such active duty. This exemption outside the United States and applies only while the vehicle covered by the security is not operated by any person. Upon receipt of a written request by the insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section. Notwithstanding s. 324.0221(2) s. 324.0221(3), the department may not suspend the registration or operator's license of an any owner or registrant of a motor vehicle during the time she or he qualifies for the an exemption under this subsection. An Any owner or registrant of a motor vehicle who qualifies for the an exemption under this subsection shall immediately notify the department before prior to and at the end of the expiration of the exemption.

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Section 14. Subsections (1) and (2) of section 324.0221, Florida Statutes, are amended to read:

324.0221 Reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.—

(1) (a) Each insurer that has issued a policy providing ~~personal injury protection coverage or property damage~~ liability coverage shall report the cancellation or nonrenewal thereof to the department within 10 days after the processing date or effective date of each cancellation or nonrenewal. Upon the issuance of a policy providing ~~personal injury protection coverage or property damage~~ liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report must ~~shall~~ be in the form ~~and format~~ and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. Failure by an insurer to file proper reports with the department as required by this subsection constitutes a violation of the Florida Insurance Code. These records may ~~shall~~ be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing ~~personal injury protection coverage or property damage~~ liability coverage, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will

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be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain bodily injury liability ~~personal injury protection~~ coverage and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver license of any owner or registrant of a motor vehicle for with respect to which security is required under s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

(a) The department's records showing that the owner or registrant of such motor vehicle did not have the in full force and effect when required security in full force and effect that ~~complies with the requirements of ss. 324.022 and 627.733~~; or

(b) Notification by the insurer to the department, in a form approved by the department, of cancellation or termination of the required security.

Section 15. Section 324.0222, Florida Statutes, is created to read:

324.0222 Application of suspensions for failure to maintain security; reinstatement.—All suspensions for failure to maintain required security as required by law in effect before January 1, 2021, remain in full force and effect after January 1, 2021. A driver may reinstate a suspended driver license or registration as provided under s. 324.0221.

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Section 16. Section 324.023, Florida Statutes, is amended to read:

324.023 Financial responsibility for bodily injury or death.—In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2)~~, establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of \$100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of \$300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of \$50,000 because of property damage in any one crash. If the owner or operator chooses to establish and maintain such ability by furnishing a certificate of deposit pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of deposit must be at least \$350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator is ~~shall be~~ exempt from this section.

Section 17. Section 324.031, Florida Statutes, is amended

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813 to read:

814 324.031 Manner of proving financial responsibility.-

815 ~~(1) The owner or operator of a taxicab, limousine, jitney,~~
 816 ~~or any other for-hire passenger transportation vehicle may prove~~
 817 ~~financial responsibility by providing satisfactory evidence of~~
 818 ~~holding a motor vehicle liability policy as defined in s.~~
 819 ~~324.021(8) or s. 324.151, which policy is issued by an insurance~~
 820 ~~carrier which is a member of the Florida Insurance Guaranty~~
 821 ~~Association. The operator or owner of a motor vehicle other than~~
 822 ~~a for-hire passenger transportation vehicle any other vehicle~~
 823 may prove his or her financial responsibility by:

824 (a)(1) Furnishing satisfactory evidence of holding a motor
 825 vehicle liability policy as defined in ss. 324.021(8) and
 826 324.151 which provides liability coverage for the motor vehicle
 827 being operated;

828 (b)(2) Furnishing a certificate of self-insurance showing a
 829 deposit of cash in accordance with s. 324.161; or

830 (c)(3) Furnishing a certificate of self-insurance issued by
 831 the department in accordance with s. 324.171.

832 (2) (a) Beginning January 1, 2021, any person, including any
 833 firm, partnership, association, corporation, or other person,
 834 other than a natural person, electing to use the method of proof
 835 specified in paragraph (1)(b) subsection (2) shall furnish a
 836 certificate of deposit equal to the number of vehicles owned
 837 times \$60,000 ~~\$30,000~~, to a maximum of \$240,000. ~~\$120,000~~.

838 (b) In addition, any such person, other than a natural
 839 person, shall maintain insurance providing coverage conforming
 840 to the requirements of s. 324.151 in excess of the amount of the
 841 certificate of deposit, with limits of at least:

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842 1. One hundred twenty-five thousand dollars for bodily
 843 injury to, or the death of, one person in any one crash and,
 844 subject to such limits for one person, in the amount of \$250,000
 845 for bodily injury to, or the death of, two or more persons in
 846 any one crash, and \$50,000 for damage to, or destruction of,
 847 property of others in any one crash; or

848 2. Three hundred thousand dollars for combined bodily
 849 injury liability and property damage liability for any one crash
 850 \$10,000/20,000/10,000 or \$30,000 combined single limits, and
 851 such excess insurance shall provide minimum limits of
 852 \$125,000/250,000/50,000 or \$300,000 combined single limits.
 853 These increased limits shall not affect the requirements for
 854 proving financial responsibility under s. 324.032(1).

855 Section 18. Section 324.032, Florida Statutes, is amended
 856 to read:

857 324.032 ~~Manner of proving~~ Financial responsibility ~~for~~
 858 ~~for-hire passenger transportation vehicles. Notwithstanding the~~
 859 ~~provisions of s. 324.031.~~

860 (1) An owner or lessee of a for-hire passenger
 861 transportation vehicle that is required to be registered in this
 862 state shall establish and continuously maintain the ability to
 863 respond in damages for liability on account of accidents arising
 864 out of the ownership, maintenance, or use of the for-hire
 865 passenger transportation vehicle, in the amount of:

866 (a) One hundred twenty-five thousand dollars for bodily
 867 injury to, or the death of, one person in any one crash and,
 868 subject to such limits for one person, in the amount of \$250,000
 869 for bodily injury to, or the death of, two or more persons in
 870 any one crash; and A person who is either the owner or a lessee

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871 ~~required to maintain insurance under s. 627.733(1)(b) and who~~
 872 ~~operates one or more taxicabs, limousines, jitneys, or any other~~
 873 ~~for-hire passenger transportation vehicles may prove financial~~
 874 ~~responsibility by furnishing satisfactory evidence of holding a~~
 875 ~~motor vehicle liability policy, but with minimum limits of~~
 876 ~~\$125,000/250,000/50,000.~~

877 (b) Fifty thousand dollars for damage to, or destruction
 878 of, property of others in any one crash ~~A person who is either~~
 879 ~~the owner or a lessee required to maintain insurance under s.~~
 880 ~~324.021(9)(b) and who operates limousines, jitneys, or any other~~
 881 ~~for-hire passenger vehicles, other than taxicabs, may prove~~
 882 ~~financial responsibility by furnishing satisfactory evidence of~~
 883 ~~holding a motor vehicle liability policy as defined in s.~~
 884 ~~324.031.~~

885 (2) Except as provided in subsection (3), the requirements
 886 of this section must be met by the owner or lessee providing
 887 satisfactory evidence of holding a motor vehicle liability
 888 policy conforming to the requirements of s. 324.151 which is
 889 issued by an insurance carrier that is a member of the Florida
 890 Insurance Guaranty Association.

891 ~~(3)(2) An owner or a lessee who is required to maintain~~
 892 ~~insurance under s. 324.021(9)(b) and who operates at least 300~~
 893 ~~taxicabs, limousines, jitneys, or any other for-hire passenger~~
 894 ~~transportation vehicles may provide financial responsibility by~~
 895 ~~complying with the provisions of s. 324.171, which must such~~
 896 ~~compliance to be demonstrated by maintaining at its principal~~
 897 ~~place of business an audited financial statement, prepared in~~
 898 ~~accordance with generally accepted accounting principles, and~~
 899 ~~providing to the department a certification issued by a~~

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900 certified public accountant that the applicant's net worth is at
 901 least equal to the requirements of s. 324.171 as determined by
 902 the Office of Insurance Regulation of the Financial Services
 903 Commission, including claims liabilities in an amount certified
 904 as adequate by a Fellow of the Casualty Actuarial Society.
 905

906 Upon request by the department, the applicant shall ~~must~~ provide
 907 the department at the applicant's principal place of business in
 908 this state access to the applicant's underlying financial
 909 information and financial statements that provide the basis of
 910 the certified public accountant's certification. The applicant
 911 shall reimburse the requesting department for all reasonable
 912 costs incurred by it in reviewing the supporting information.
 913 The maximum amount of self-insurance permissible under this
 914 subsection is \$300,000 and must be stated on a per-occurrence
 915 basis, and the applicant shall maintain adequate excess
 916 insurance issued by an authorized or eligible insurer licensed
 917 or approved by the Office of Insurance Regulation. All risks
 918 self-insured shall remain with the owner or lessee providing it,
 919 and the risks are not transferable to any other person, unless a
 920 policy complying with subsections (1) and (2) ~~subsection (1)~~ is
 921 obtained.

922 Section 19. Paragraph (b) of subsection (2) of section
 923 324.051, Florida Statutes, is amended to read:

924 324.051 Reports of crashes; suspensions of licenses and
 925 registrations.—

926 (2)

927 (b) This subsection does ~~shall~~ not apply:

928 1. To such operator or owner if such operator or owner had

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in effect at the time of such crash or traffic conviction a
~~motor vehicle an automobile~~ liability policy with respect to all
of the registered motor vehicles owned by such operator or
owner.

2. To such operator, if not the owner of such motor
vehicle, if there was in effect at the time of such crash or
traffic conviction a motor vehicle ~~an automobile~~ liability
policy or bond with respect to his or her operation of motor
vehicles not owned by him or her.

3. To such operator or owner if the liability of such
operator or owner for damages resulting from such crash is, in
the judgment of the department, covered by any other form of
liability insurance or bond.

4. To any person who has obtained from the department a
certificate of self-insurance, in accordance with s. 324.171, or
to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection
unless it contains limits of not less than those specified in s.
324.021(7).

Section 20. Section 324.071, Florida Statutes, is amended
to read:

324.071 Reinstatement; renewal of license; reinstatement
fee.—~~An~~ Any operator or owner whose license or registration has
been suspended pursuant to s. 324.051(2), s. 324.072, s.
324.081, or s. 324.121 may effect its reinstatement upon
compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or
s. 324.081(2) and (3), as the case may be, and with one of the
provisions of s. 324.031 and upon payment to the department of a

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nonrefundable reinstatement fee of \$15. Only one such fee may
~~shall~~ be paid by any one person regardless irrespective of the
number of licenses and registrations to be then reinstated or
issued to such person. ~~All~~ Such fees must shall be deposited to
a department trust fund. ~~If when~~ the reinstatement of any
license or registration is effected by compliance with s.
324.051(2)(a)3. or 4., the department may shall not renew the
license or registration within ~~a period of~~ 3 years after from
such reinstatement, nor may shall any other license or
registration be issued in the name of such person, unless the
operator continues ~~is continuing~~ to comply with ~~one of the~~
~~provisions of~~ s. 324.031.

Section 21. Subsection (1) of section 324.091, Florida
Statutes, is amended to read:

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in a crash or
conviction case within the purview of this chapter shall furnish
evidence of ~~automobile liability insurance or~~ motor vehicle
liability insurance within 14 days after the date of the mailing
of notice of crash by the department in the form and manner as
it may designate. Upon receipt of evidence that ~~a an automobile~~
~~liability policy or~~ motor vehicle liability policy was in effect
at the time of the crash or conviction case, the department
shall forward to the insurer such information for verification
in a method as determined by the department. The insurer shall
respond to the department within 20 days after the notice as to
whether ~~or not~~ such information is valid. If the department
determines that ~~a an automobile liability policy or~~ motor
vehicle liability policy was not in effect and did not provide

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coverage for both the owner and the operator, it ~~must shall~~ take action as it is authorized to do under this chapter.

Section 22. Section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy that serves as to be proof of financial responsibility under s. 324.031(1)(a) ~~must s. 324.031(1), shall~~ be issued to owners or operators of motor vehicles under the following provisions:

(a) A motor vehicle ~~An owner's~~ liability insurance policy issued to an owner of a motor vehicle required to be registered in this state must shall designate by explicit description or by appropriate reference all motor vehicles for with respect to which coverage is thereby granted. The policy must and shall insure the person or persons ~~owner~~ named therein and, except for a named driver excluded pursuant to s. 627.747, must insure any resident relative of a named insured other person as operator ~~using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss~~ from the liability imposed by law for damage arising out of the ownership, maintenance, or use of any such motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7). Except for a named driver excluded pursuant to s. 627.747, the policy must also insure any person operating an insured motor vehicle with the express or implied permission of a named insured against loss from the liability imposed by law for

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damage arising out of the use of any vehicle. However, the insurer may include provisions in its policy excluding liability coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle, does not qualify as a temporary substitute vehicle, and was owned by the insured or was furnished for an insured's regular use for more than 30 consecutive days before the event giving rise to the claim. Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed \$500. In the event of a property damage loss covered by a policy containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

(b) A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must ~~An operator's motor vehicle liability policy of insurance shall~~ insure the person or persons named therein against loss from the liability imposed upon him or her by law for damages arising out of the use ~~by the person~~ of any motor vehicle not owned by him or her, ~~with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.~~

(c) All such motor vehicle liability policies must provide liability coverage with limits, exclusive of interest and costs, as specified under s. 324.021(7) for accidents occurring within the United States or Canada. The policies must shall state the name and address of the named insured, the coverage afforded by

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the policy, the premium charged therefor, the policy period, and the limits of liability, and ~~must shall~~ contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter ~~as respects bodily injury and death or property damage or both~~ and is subject to ~~all~~ provisions of this chapter. ~~The said~~ policies ~~must shall~~ also contain a provision that the satisfaction by an insured of a judgment for such injury or damage ~~may shall~~ not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and ~~must shall~~ also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate ~~may shall~~ not relieve the insurance carrier of any of its obligations under ~~the said~~ policy.

(2) ~~The provisions of~~ This section ~~is shall~~ not be applicable to any motor vehicle automobile liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then applies only from ~~and after~~ the date ~~the said~~ policy is ~~so~~ furnished.

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

(a) "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

(b) "Resident relative" means a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily lives elsewhere.

(c) "Temporary substitute vehicle" means any motor vehicle

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as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

Section 23. Section 324.161, Florida Statutes, is amended to read:

324.161 Proof of financial responsibility; deposit.—~~If a person elects to prove his or her financial responsibility under the method of proof specified in s. 324.031(1)(b), he or she annually must obtain and submit to the department proof of a certificate of deposit in the amount required under s. 324.031(2) from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration~~ Annually, before any certificate of insurance may be issued to a person, including any firm, partnership, association, corporation, or other person, other than a natural person, proof of a certificate of deposit of \$30,000 issued and held by a financial institution must be submitted to the department. A power of attorney will be issued to and held by the department and may be executed upon a judgment issued against such person making the deposit, for damages ~~for~~ because of bodily injury to or death of any person or for damages ~~for~~ because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money so deposited ~~is shall~~ not be subject to attachment or execution unless such attachment or execution ~~arises shall arise~~ out of a lawsuit ~~suit~~ for such damages ~~as~~ aforsaid.

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Section 24. Subsections (1) and (2) of section 324.171, Florida Statutes, are amended to read:

324.171 Self-insurer.—

(1) ~~A Any~~ person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department, ~~which may, in its discretion and~~ Upon application of such a person, ~~the department may issue a said~~ certificate of self-insurance to an applicant who satisfies ~~when such person has satisfied~~ the requirements of this section. Effective January 1, 2021 ~~to~~ qualify as a self-insurer under this section:

(a) A private individual with private passenger vehicles shall possess a net unencumbered worth of at least \$100,000 ~~\$40,000~~.

(b) A person, including any firm, partnership, association, corporation, or other person, other than a natural person, shall:

1. Possess a net unencumbered worth of at least \$100,000 ~~\$40,000~~ for the first motor vehicle and \$50,000 ~~\$20,000~~ for each additional motor vehicle; or

2. Maintain sufficient net worth, in an amount determined by the department, to be financially responsible for potential losses. The department annually shall determine the minimum net worth sufficient to satisfy this subparagraph as determined annually by the department, pursuant to rules adopted ~~promulgated~~ by the department, with the assistance of the Office of Insurance Regulation of the Financial Services Commission, ~~to be financially responsible for potential losses.~~ The rules must consider any ~~shall take into consideration~~ excess insurance carried by the applicant. The department's determination must

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~~shall~~ be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

(c) The owner of a commercial motor vehicle, as defined in s. 207.002 or s. 320.01, may qualify as a self-insurer subject to the standards provided ~~for~~ in subparagraph (b)2.

(2) The self-insurance certificate must ~~shall~~ provide limits of liability insurance in the amounts specified under s. 324.021(7) ~~or s. 627.7415 and shall provide personal injury protection coverage under s. 627.733(3)(b).~~

Section 25. Section 324.251, Florida Statutes, is amended to read:

324.251 Short title.—This chapter may be cited as the "Financial Responsibility Law of 2020 ~~1955~~" and ~~is~~ shall become effective at 12:01 a.m., January 1, 2021 ~~October 1, 1955~~.

Section 26. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) (a) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

1. (a) ~~Entities~~ licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-

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1161 383.332, chapter 390, chapter 394, chapter 397, this chapter
 1162 except part X, chapter 429, chapter 463, chapter 465, chapter
 1163 466, chapter 478, chapter 484, or chapter 651; end-stage renal
 1164 disease providers authorized under 42 C.F.R. part 405, subpart
 1165 U; providers certified under 42 C.F.R. part 485, subpart B or
 1166 subpart H; providers certified by the Centers for Medicare and
 1167 Medicaid Services under the federal Clinical Laboratory
 1168 Improvement Amendments and the federal rules adopted thereunder;
 1169 or any entity that provides neonatal or pediatric hospital-based
 1170 health care services or other health care services by licensed
 1171 practitioners solely within a hospital licensed under chapter
 1172 395.

1173 2.(b) Entities that own, directly or indirectly, entities
 1174 licensed or registered by the state pursuant to chapter 395;
 1175 entities that own, directly or indirectly, entities licensed or
 1176 registered by the state and providing only health care services
 1177 within the scope of services authorized pursuant to their
 1178 respective licenses under ss. 383.30-383.332, chapter 390,
 1179 chapter 394, chapter 397, this chapter except part X, chapter
 1180 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter
 1181 484, or chapter 651; end-stage renal disease providers
 1182 authorized under 42 C.F.R. part 405, subpart U; providers
 1183 certified under 42 C.F.R. part 485, subpart B or subpart H;
 1184 providers certified by the Centers for Medicare and Medicaid
 1185 Services under the federal Clinical Laboratory Improvement
 1186 Amendments and the federal rules adopted thereunder; or any
 1187 entity that provides neonatal or pediatric hospital-based health
 1188 care services by licensed practitioners solely within a hospital
 1189 licensed under chapter 395.

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1190 3.(e) Entities that are owned, directly or indirectly, by
 1191 an entity licensed or registered by the state pursuant to
 1192 chapter 395; entities that are owned, directly or indirectly, by
 1193 an entity licensed or registered by the state and providing only
 1194 health care services within the scope of services authorized
 1195 pursuant to their respective licenses under ss. 383.30-383.332,
 1196 chapter 390, chapter 394, chapter 397, this chapter except part
 1197 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 1198 478, chapter 484, or chapter 651; end-stage renal disease
 1199 providers authorized under 42 C.F.R. part 405, subpart U;
 1200 providers certified under 42 C.F.R. part 485, subpart B or
 1201 subpart H; providers certified by the Centers for Medicare and
 1202 Medicaid Services under the federal Clinical Laboratory
 1203 Improvement Amendments and the federal rules adopted thereunder;
 1204 or any entity that provides neonatal or pediatric hospital-based
 1205 health care services by licensed practitioners solely within a
 1206 hospital under chapter 395.

1207 4.(d) Entities that are under common ownership, directly or
 1208 indirectly, with an entity licensed or registered by the state
 1209 pursuant to chapter 395; entities that are under common
 1210 ownership, directly or indirectly, with an entity licensed or
 1211 registered by the state and providing only health care services
 1212 within the scope of services authorized pursuant to their
 1213 respective licenses under ss. 383.30-383.332, chapter 390,
 1214 chapter 394, chapter 397, this chapter except part X, chapter
 1215 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter
 1216 484, or chapter 651; end-stage renal disease providers
 1217 authorized under 42 C.F.R. part 405, subpart U; providers
 1218 certified under 42 C.F.R. part 485, subpart B or subpart H;

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providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

5.(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, any community college or university clinic, and any entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

6.(f) A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

7.(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners,

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or the licensed health care practitioners set forth in this ~~subparagraph~~ paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

8.(h) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

9.(i) Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

10.(j) Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

11.(k) Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure

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1277 under this subparagraph ~~paragraph~~ must provide documentation
 1278 demonstrating compliance.

1279 12.(1) Orthotic, prosthetic, pediatric cardiology, or
 1280 perinatology clinical facilities or anesthesia clinical
 1281 facilities that are not otherwise exempt under subparagraph 1.
 1282 or subparagraph 11. ~~paragraph (a) or paragraph (k)~~ and that are
 1283 a publicly traded corporation or are wholly owned, directly or
 1284 indirectly, by a publicly traded corporation. As used in this
 1285 subparagraph ~~paragraph~~, a publicly traded corporation is a
 1286 corporation that issues securities traded on an exchange
 1287 registered with the United States Securities and Exchange
 1288 Commission as a national securities exchange.

1289 13.(m) Entities that are owned by a corporation that has
 1290 \$250 million or more in total annual sales of health care
 1291 services provided by licensed health care practitioners where
 1292 one or more of the persons responsible for the operations of the
 1293 entity is a health care practitioner who is licensed in this
 1294 state and who is responsible for supervising the business
 1295 activities of the entity and is responsible for the entity's
 1296 compliance with state law for purposes of this part.

1297 14.(n) Entities that employ 50 or more licensed health care
 1298 practitioners licensed under chapter 458 or chapter 459 where
 1299 the billing for medical services is under a single tax
 1300 identification number. The application for exemption under this
 1301 subsection must include ~~shall contain information that includes:~~
 1302 the name, residence, and business address and telephone ~~phone~~
 1303 number of the entity that owns the practice; a complete list of
 1304 the names and contact information of all the officers and
 1305 directors of the corporation; the name, residence address,

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1306 business address, and medical license number of each licensed
 1307 Florida health care practitioner employed by the entity; the
 1308 corporate tax identification number of the entity seeking an
 1309 exemption; a listing of health care services to be provided by
 1310 the entity at the health care clinics owned or operated by the
 1311 entity; and a certified statement prepared by an independent
 1312 certified public accountant which states that the entity and the
 1313 health care clinics owned or operated by the entity have not
 1314 received payment for health care services under medical payments
 1315 ~~personal injury protection~~ insurance coverage for the preceding
 1316 year. If the agency determines that an entity that ~~which~~ is
 1317 exempt under this subsection has received payments for medical
 1318 services under medical payments ~~personal injury protection~~
 1319 insurance coverage, the agency may deny or revoke the exemption
 1320 from licensure under this subsection.

1321 (b) Notwithstanding paragraph (a) ~~this subsection~~, an
 1322 entity is ~~shall be~~ deemed a clinic and must be licensed under
 1323 this part in order to receive medical payments coverage
 1324 reimbursement under s. 627.7265 unless the entity is: ~~the~~
 1325 ~~Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless~~
 1326 ~~exempted under s. 627.736(5)(h).~~

1327 1. Wholly owned by a physician licensed under chapter 458
 1328 or chapter 459, or by the physician and the spouse, parent,
 1329 child, or sibling of the physician;

1330 2. Wholly owned by a dentist licensed under chapter 466, or
 1331 by the dentist and the spouse, parent, child, or sibling of the
 1332 dentist;

1333 3. Wholly owned by a chiropractic physician licensed under
 1334 chapter 460, or by the chiropractic physician and the spouse,

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1335 parent, child, or sibling of the chiropractic physician;
 1336 4. A hospital or ambulatory surgical center licensed under
 1337 chapter 395;
 1338 5. An entity that wholly owns or is wholly owned, directly
 1339 or indirectly, by a hospital or hospitals licensed under chapter
 1340 395;
 1341 6. A clinical facility affiliated with an accredited
 1342 medical school at which training is provided for medical
 1343 students, residents, or fellows;
 1344 7. Certified under 42 C.F.R. part 485, subpart H; or
 1345 8. Owned by a publicly traded corporation, either directly
 1346 or indirectly through its subsidiaries, which has \$250 million
 1347 or more in total annual sales of health care services provided
 1348 by licensed health care practitioners, if one or more of the
 1349 persons responsible for the operations of the entity are health
 1350 care practitioners who are licensed in this state and are
 1351 responsible for supervising the business activities of the
 1352 entity and the entity's compliance with state law for purposes
 1353 of this subsection.
 1354 Section 27. Subsection (5) of section 400.991, Florida
 1355 Statutes, is amended to read:
 1356 400.991 License requirements; background screenings;
 1357 prohibitions.—
 1358 (5) All agency forms for licensure application or exemption
 1359 from licensure under this part must contain the following
 1360 statement:
 1361
 1362 INSURANCE FRAUD NOTICE.—A person commits a fraudulent
 1363 insurance act, as defined in s. 626.989, Florida

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1364 Statutes, if the person ~~who~~ knowingly submits a false,
 1365 misleading, or fraudulent application or other
 1366 document when applying for licensure as a health care
 1367 clinic, seeking an exemption from licensure as a
 1368 health care clinic, or demonstrating compliance with
 1369 part X of chapter 400, Florida Statutes, with the
 1370 intent to use the license, exemption from licensure,
 1371 or demonstration of compliance to provide services or
 1372 seek reimbursement under a motor vehicle liability
 1373 insurance policy's medical payments coverage the
 1374 Florida Motor Vehicle No-Fault Law, commits a
 1375 fraudulent insurance act, as defined in s. 626.989,
 1376 Florida Statutes. A person who presents a claim for
 1377 benefits under medical payments coverage, ~~personal~~
 1378 ~~injury protection benefits~~ knowing that the payee
 1379 knowingly submitted such health care clinic
 1380 application or document, commits insurance fraud, as
 1381 defined in s. 817.234, Florida Statutes.
 1382 Section 28. Paragraph (g) of subsection (1) of section
 1383 400.9935, Florida Statutes, is amended to read:
 1384 400.9935 Clinic responsibilities.—
 1385 (1) Each clinic shall appoint a medical director or clinic
 1386 director who shall agree in writing to accept legal
 1387 responsibility for the following activities on behalf of the
 1388 clinic. The medical director or the clinic director shall:
 1389 (g) Conduct systematic reviews of clinic billings to ensure
 1390 that the billings are not fraudulent or unlawful. Upon discovery
 1391 of an unlawful charge, the medical director or clinic director
 1392 shall take immediate corrective action. If the clinic performs

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only the technical component of magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography, and provides the professional interpretation of such services, in a fixed facility that is accredited by a national accrediting organization that is approved by the Centers for Medicare and Medicaid Services for magnetic resonance imaging and advanced diagnostic imaging services and if, in the preceding quarter, the percentage of scans performed by that clinic which was billed to motor vehicle ~~all personal injury protection~~ insurance carriers under medical payments coverage was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

Section 29. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(28) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for bodily personal injury or for death of the recipient, but specifically excluding ~~policies of~~

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life insurance policies on the recipient, unless available under terms of the policy to pay medical expenses before ~~prior to~~ death. The term includes, without limitation, collateral, as defined in this section; ~~health insurance;~~ any benefit under a health maintenance organization, a preferred provider arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or medical payments coverage; ~~or personal injury protection coverage;~~ medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 30. Paragraph (f) of subsection (11) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(11) The agency may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal or administrative proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgment, award, or settlement from a third party, the amount recovered shall be distributed as follows:

1. After attorney ~~attorney's~~ fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to the agency up to the total

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amount of medical assistance provided by Medicaid.

2. The remaining amount of the recovery shall be paid to the recipient.

3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.

4. Notwithstanding any other provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, the term "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under ~~coverage for~~ workers' compensation coverage, motor vehicle insurance coverage, ~~personal injury protection~~, and casualty coverage.

Section 31. Paragraph (k) of subsection (2) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or

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chapter under which they are licensed or regulated:

(k) Persons or entities practicing under s. 627.7265 ~~or~~ ~~627.736(7)~~.

Section 32. Paragraphs (ee) and (ff) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

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

(ee) With respect to making a medical payments coverage ~~personal injury protection~~ claim under s. 627.7265 ~~as required by s. 627.736~~, intentionally submitting a claim, statement, or bill that has been upcoded. As used in this paragraph, the term "upcoded" means an action that submits a billing code that would result in a greater payment amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service ~~"upcoded" as defined in s. 627.732.~~

(ff) With respect to making a medical payments coverage ~~personal injury protection~~ claim as required under s. 627.7265 ~~by s. 627.736~~, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

Section 33. Paragraphs (i) and (o) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

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1509 626.9541 Unfair methods of competition and unfair or
1510 deceptive acts or practices defined.—

1511 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
1512 ACTS.—The following are defined as unfair methods of competition
1513 and unfair or deceptive acts or practices:

1514 (i) *Unfair claim settlement practices.*—

1515 1. Attempting to settle claims on the basis of an
1516 application, when serving as a binder or intended to become a
1517 part of the policy, or any other material document which was
1518 altered without notice to, or knowledge or consent of, the
1519 insured;

1520 2. A material misrepresentation made to an insured or any
1521 other person having an interest in the proceeds payable under
1522 such contract or policy, for the purpose and with the intent of
1523 effecting settlement of such claims, loss, or damage under such
1524 contract or policy on less favorable terms than those provided
1525 in, and contemplated by, such contract or policy; ~~or~~

1526 3. Committing or performing with such frequency as to
1527 indicate a general business practice any of the following:

1528 a. Failing to adopt and implement standards for the proper
1529 investigation of claims;

1530 b. Misrepresenting pertinent facts or insurance policy
1531 provisions relating to coverages at issue;

1532 c. Failing to acknowledge and act promptly upon
1533 communications with respect to claims;

1534 d. Denying claims without conducting reasonable
1535 investigations based upon available information;

1536 e. Failing to affirm or deny full or partial coverage of
1537 claims, and, as to partial coverage, the dollar amount or extent

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1538 of coverage, or failing to provide a written statement that the
1539 claim is being investigated, upon the written request of the
1540 insured within 30 days after proof-of-loss statements have been
1541 completed;

1542 f. Failing to promptly provide a reasonable explanation in
1543 writing to the insured of the basis in the insurance policy, in
1544 relation to the facts or applicable law, for denial of a claim
1545 or for the offer of a compromise settlement;

1546 g. Failing to promptly notify the insured of any additional
1547 information necessary for the processing of a claim; or

1548 h. Failing to clearly explain the nature of the requested
1549 information and the reasons why such information is necessary.

1550 ~~1. Failing to pay personal injury protection insurance~~
1551 ~~claims within the time periods required by s. 627.736(4) (b). The~~
1552 ~~office may order the insurer to pay restitution to a~~
1553 ~~policyholder, medical provider, or other claimant, including~~
1554 ~~interest at a rate consistent with the amount set forth in s.~~
1555 ~~55.03(1), for the time period within which an insurer fails to~~
1556 ~~pay claims as required by law. Restitution is in addition to any~~
1557 ~~other penalties allowed by law, including, but not limited to,~~
1558 ~~the suspension of the insurer's certificate of authority.~~

1559 4. Failing to pay undisputed amounts of partial or full
1560 benefits owed under first-party property insurance policies
1561 within 90 days after an insurer receives notice of a residential
1562 property insurance claim, determines the amounts of partial or
1563 full benefits, and agrees to coverage, unless payment of the
1564 undisputed benefits is prevented by an act of God, prevented by
1565 the impossibility of performance, or due to actions by the
1566 insured or claimant that constitute fraud, lack of cooperation,

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or intentional misrepresentation regarding the claim for which benefits are owed.

(o) *Illegal dealings in premiums; excess or reduced charges for insurance.*—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer. Notwithstanding any other provision of law, this provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a

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universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for bodily injury liability coverage, property damage liability coverage ~~a policy of motor vehicle liability, personal injury protection, medical payments coverage payment, or collision coverage in a motor vehicle liability insurance policy insurance~~ ~~or any combination thereof~~ or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

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1625 (V) Not convicted of a moving traffic violation in
 1626 connection with the accident, but the operator of the other
 1627 automobile involved in such accident was convicted of a moving
 1628 traffic violation;

1629 (VI) Finally adjudicated not to be liable by a court of
 1630 competent jurisdiction;

1631 (VII) In receipt of a traffic citation which was dismissed
 1632 or nolle prossed; or

1633 (VIII) Not at fault as evidenced by a written statement
 1634 from the insured establishing facts demonstrating lack of fault
 1635 which are not rebutted by information in the insurer's file from
 1636 which the insurer in good faith determines that the insured was
 1637 substantially at fault.

1638 c. In addition to the other provisions of this
 1639 subparagraph, an insurer may not fail to renew a policy if the
 1640 insured has had only one accident in which he or she was at
 1641 fault within the current 3-year period. However, an insurer may
 1642 nonrenew a policy for reasons other than accidents in accordance
 1643 with s. 627.728. This subparagraph does not prohibit nonrenewal
 1644 of a policy under which the insured has had three or more
 1645 accidents, regardless of fault, during the most recent 3-year
 1646 period.

1647 4. Imposing or requesting an additional premium for, or
 1648 refusing to renew, a policy for motor vehicle insurance solely
 1649 because the insured committed a noncriminal traffic infraction
 1650 as described in s. 318.14 unless the infraction is:

1651 a. A second infraction committed within an 18-month period,
 1652 or a third or subsequent infraction committed within a 36-month
 1653 period.

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1654 b. A violation of s. 316.183, when such violation is a
 1655 result of exceeding the lawful speed limit by more than 15 miles
 1656 per hour.

1657 5. Upon the request of the insured, the insurer and
 1658 licensed agent shall supply to the insured the complete proof of
 1659 fault or other criteria which justifies the additional charge or
 1660 cancellation.

1661 6. No insurer shall impose or request an additional premium
 1662 for motor vehicle insurance, cancel or refuse to issue a policy,
 1663 or refuse to renew a policy because the insured or the applicant
 1664 is a handicapped or physically disabled person, so long as such
 1665 handicap or physical disability does not substantially impair
 1666 such person's mechanically assisted driving ability.

1667 7. No insurer may cancel or otherwise terminate any
 1668 insurance contract or coverage, or require execution of a
 1669 consent to rate endorsement, during the stated policy term for
 1670 the purpose of offering to issue, or issuing, a similar or
 1671 identical contract or coverage to the same insured with the same
 1672 exposure at a higher premium rate or continuing an existing
 1673 contract or coverage with the same exposure at an increased
 1674 premium.

1675 8. No insurer may issue a nonrenewal notice on any
 1676 insurance contract or coverage, or require execution of a
 1677 consent to rate endorsement, for the purpose of offering to
 1678 issue, or issuing, a similar or identical contract or coverage
 1679 to the same insured at a higher premium rate or continuing an
 1680 existing contract or coverage at an increased premium without
 1681 meeting any applicable notice requirements.

1682 9. No insurer shall, with respect to premiums charged for

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1683 motor vehicle insurance, unfairly discriminate solely on the
 1684 basis of age, sex, marital status, or scholastic achievement.

1685 10. Imposing or requesting an additional premium for motor
 1686 vehicle comprehensive or uninsured motorist coverage solely
 1687 because the insured was involved in a motor vehicle accident or
 1688 was convicted of a moving traffic violation.

1689 11. No insurer shall cancel or issue a nonrenewal notice on
 1690 any insurance policy or contract without complying with any
 1691 applicable cancellation or nonrenewal provision required under
 1692 the Florida Insurance Code.

1693 12. No insurer shall impose or request an additional
 1694 premium, cancel a policy, or issue a nonrenewal notice on any
 1695 insurance policy or contract because of any traffic infraction
 1696 when adjudication has been withheld and no points have been
 1697 assessed pursuant to s. 318.14(9) and (10). However, this
 1698 subparagraph does not apply to traffic infractions involving
 1699 accidents in which the insurer has incurred a loss due to the
 1700 fault of the insured.

1701 Section 34. Paragraph (a) of subsection (1) of section
 1702 626.989, Florida Statutes, is amended to read:

1703 626.989 Investigation by department or Division of
 1704 Investigative and Forensic Services; compliance; immunity;
 1705 confidential information; reports to division; division
 1706 investigator's power of arrest.—

1707 (1) For the purposes of this section:

1708 (a) A person commits a "fraudulent insurance act" if the
 1709 person:

1710 1. Knowingly and with intent to defraud presents, causes to
 1711 be presented, or prepares with knowledge or belief that it will

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1712 be presented, to or by an insurer, self-insurer, self-insurance
 1713 fund, servicing corporation, purported insurer, broker, or any
 1714 agent thereof, any written statement as part of, or in support
 1715 of, an application for the issuance of, or the rating of, any
 1716 insurance policy, or a claim for payment or other benefit
 1717 pursuant to any insurance policy, which the person knows to
 1718 contain materially false information concerning any fact
 1719 material thereto or if the person conceals, for the purpose of
 1720 misleading another, information concerning any fact material
 1721 thereto.

1722 2. Knowingly submits:

1723 a. A false, misleading, or fraudulent application or other
 1724 document when applying for licensure as a health care clinic,
 1725 seeking an exemption from licensure as a health care clinic, or
 1726 demonstrating compliance with part X of chapter 400 with an
 1727 intent to use the license, exemption from licensure, or
 1728 demonstration of compliance to provide services or seek
 1729 reimbursement under a motor vehicle liability insurance policy's
 1730 medical payments coverage ~~the Florida Motor Vehicle No-Fault~~
 1731 ~~Law.~~

1732 b. A claim for payment or other benefit under medical
 1733 payments coverage ~~pursuant to a personal injury protection~~
 1734 ~~insurance policy under the Florida Motor Vehicle No-Fault Law~~ if
 1735 the person knows that the payee knowingly submitted a false,
 1736 misleading, or fraudulent application or other document when
 1737 applying for licensure as a health care clinic, seeking an
 1738 exemption from licensure as a health care clinic, or
 1739 demonstrating compliance with part X of chapter 400.

1740 Section 35. Subsection (1) of section 627.06501, Florida

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Statutes, is amended to read:

627.06501 Insurance discounts for certain persons completing driver improvement course.—

(1) Any rate, rating schedule, or rating manual for the liability, ~~medical payments personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office may provide for an appropriate reduction in premium charges as to such coverages ~~if when~~ the principal operator on the covered vehicle has successfully completed a driver improvement course approved and certified by the Department of Highway Safety and Motor Vehicles which is effective in reducing crash or violation rates, or both, as determined pursuant to s. 318.1451(5). Any discount, not to exceed 10 percent, used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 36. Subsection (15) is added to section 627.0651, Florida Statutes, to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(15) Initial rate filings for motor vehicle liability policies which are submitted to the office on or after January 1, 2021, must reflect the financial responsibility requirements in s. 324.022, as amended, and may be approved only through the file and use process under s. 627.0651(1)(a).

Section 37. Subsection (1) of section 627.0652, Florida Statutes, is amended to read:

627.0652 Insurance discounts for certain persons completing safety course.—

(1) Any rates, rating schedules, or rating manuals for the

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liability, ~~medical payments personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office ~~must shall~~ provide for an appropriate reduction in premium charges as to such coverages ~~if when~~ the principal operator on the covered vehicle is an insured 55 years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles. Any discount used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 38. Subsections (1), (3), and (6) of section 627.0653, Florida Statutes, are amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, ~~medical payments personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office ~~must shall~~ provide a premium discount if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes.

(3) Any rates, rating schedules, or rating manuals for ~~personal injury protection coverage and~~ medical payments coverage, ~~if offered~~, of a motor vehicle insurance policy filed with the office ~~must shall~~ provide a premium discount if the insured vehicle is equipped with one or more air bags ~~that which~~ are factory installed.

(6) The Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for the liability, ~~medical payments personal injury protection~~, and collision coverages of a motor vehicle insurance

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policy filed with the office if the insured vehicle is equipped with an automated driving system or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards.

Section 39. Section 627.4132, Florida Statutes, is amended to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for bodily injury and property damage liability, ~~personal injury protection, or other coverage~~, the policy must ~~shall~~ provide that the insured or named insured is protected only to the extent of the coverage she or he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles are ~~is~~ involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles may ~~shall~~ not be added to or stacked upon that coverage. This section does not apply:

(1) To uninsured motorist coverage that ~~which~~ is separately governed by s. 627.727.

(2) To reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 40. Section 627.7263, Florida Statutes, is amended to read:

627.7263 Rental and leasing driver's insurance to be primary; exception.—

(1) The valid and collectible liability insurance and ~~medical payments coverage or personal injury protection~~

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~~insurance providing coverage~~ for the lessor of a motor vehicle for rent or lease is primary unless otherwise stated in at least 10-point type on the face of the rental or lease agreement. Such insurance is primary for the limits of liability ~~and personal injury protection~~ coverage as required by s. 324.021(7) and the medical payments coverage limit specified under s. 627.7265 ~~ss. 324.021(7) and 627.736~~.

(2) If the lessee's coverage is to be primary, the rental or lease agreement must contain the following language, in at least 10-point type:

"The valid and collectible liability insurance and medical payments coverage ~~personal injury protection~~ insurance of an ~~any~~ authorized rental or leasing driver is primary for the limits of liability ~~and personal injury protection~~ coverage required under section 324.021(7), Florida Statutes, and the medical payments coverage limit specified under section 627.7265 ~~by ss. 324.021(7) and 627.736~~, Florida Statutes."

Section 41. Section 627.7265, Florida Statutes, is created to read:

627.7265 Motor vehicle insurance; medical payments coverage.—

(1) Medical payments coverage must protect the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle

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1857 at a limit of at least \$5,000 for medical expense incurred due
 1858 to bodily injury, sickness, or disease arising out of the
 1859 ownership, maintenance, or use of a motor vehicle. Medical
 1860 payments coverage must pay for reasonable expenses for necessary
 1861 medical, diagnostic, and rehabilitative services that are
 1862 lawfully provided, supervised, ordered, or prescribed by a
 1863 physician licensed under chapter 458 or chapter 459, by a
 1864 dentist licensed under chapter 466, or by a chiropractic
 1865 physician licensed under chapter 460 or that are provided in a
 1866 hospital or in a facility that owns, or is wholly owned by, a
 1867 hospital. The coverage must provide an additional death benefit
 1868 of at least \$5,000.

1869 (a) Before issuing a motor vehicle liability insurance
 1870 policy that is furnished as proof of financial responsibility
 1871 under s. 324.031, the insurer must offer medical payments
 1872 coverage at limits of \$5,000 and \$10,000. The insurer may also
 1873 offer medical payments coverage at any limit greater than
 1874 \$5,000.

1875 (b) The medical payments coverage must be offered with an
 1876 option with no deductible. The insurer may also offer medical
 1877 payments coverage with a deductible not to exceed \$500.

1878 (c) Each motor vehicle liability insurance policy that is
 1879 furnished as proof of financial responsibility under s. 324.031
 1880 is deemed to have:

1881 1. Medical payments coverage to a limit of \$10,000, unless
 1882 the insurer obtains the policyholder's written refusal of
 1883 medical payments coverage or written selection of medical
 1884 payments coverage at a limit other than \$10,000. The rejection
 1885 or selection of coverage at a limit other than \$10,000 must be

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1886 made on a form approved by the office.

1887 2. No medical payments coverage deductible, unless the
 1888 insurer obtains the policyholder's written selection of a
 1889 deductible of up to \$500. The selection of a deductible must be
 1890 made on a form approved by the office.

1891 (d)1. The forms in subparagraphs (c)1. and 2. must fully
 1892 advise the applicant of the nature of the coverage being
 1893 rejected or the policy limit or deductible being selected. If
 1894 the form is signed by a named insured, it is conclusively
 1895 presumed that there was an informed, knowing rejection of the
 1896 coverage or election of the policy limit or deductible selected.

1897 2. Unless the policyholder requests in writing the coverage
 1898 specified in this section, it need not be provided in or
 1899 supplemental to any other policy that renews, insures, extends,
 1900 changes, supersedes, or replaces an existing policy if the
 1901 policyholder has rejected the coverage specified in this section
 1902 or has selected an alternative coverage limit or deductible. At
 1903 least annually, the insurer shall provide the policyholder with
 1904 a notice of the availability of such coverage in a form approved
 1905 by the office. The notice must be part of, and attached to, the
 1906 notice of premium and must provide for a means to allow the
 1907 insured to request medical payments coverage at the limits and
 1908 deductibles required to be offered under this section. The
 1909 notice must be given in a manner approved by the office. Receipt
 1910 of this notice does not constitute an affirmative waiver of the
 1911 insured's right to medical payments coverage if the insured has
 1912 not signed a selection or rejection form.

1913 (e) This section may not be construed to limit any other
 1914 coverage made available by an insurer.

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1915 (2) Upon receiving notice of an accident that is
 1916 potentially covered by medical payments coverage benefits, the
 1917 insurer must reserve \$5,000 of medical payments coverage
 1918 benefits for payment to physicians licensed under chapter 458 or
 1919 chapter 459 or dentists licensed under chapter 466 who provide
 1920 emergency services and care, as defined in s. 395.002, or who
 1921 provide hospital inpatient care. The amount required to be held
 1922 in reserve may be used only to pay claims from such physicians
 1923 or dentists until 30 days after the date the insurer receives
 1924 notice of the accident. After the 30-day period, any amount of
 1925 the reserve for which the insurer has not received notice of
 1926 such claims may be used by the insurer to pay other claims. This
 1927 subsection does not require an insurer to establish a claim
 1928 reserve for insurance accounting purposes.

1929 (3) An insurer providing medical payments coverage benefits
 1930 may not have a:

1931 (a) Lien on any recovery in tort by judgment, settlement,
 1932 or otherwise for medical payments coverage benefits, whether
 1933 suit has been filed or settlement has been reached without suit;
 1934 or

1935 (b) Cause of action against a person to whom or for whom
 1936 medical payments coverage benefits were paid, except when
 1937 medical payments coverage benefits are paid by reason of fraud
 1938 the person commits.

1939 (4) An insurer providing medical payments coverage may
 1940 include provisions in its policy allowing for subrogation for
 1941 medical payments benefits paid if the expenses giving rise to
 1942 the payments were caused by the wrongful act or omission of
 1943 another who is not also an insured under the policy paying the

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1944 medical payments benefits. However, this subrogation right is
 1945 inferior to the rights of the injured insured and is available
 1946 only after all the insured's damages are recovered and the
 1947 insured is made whole. An insured who obtains a recovery from a
 1948 third party of the full amount of the damages sustained and
 1949 delivers a release or satisfaction that impairs a medical
 1950 payments insurer's subrogation right is liable to the insurer
 1951 for repayment of medical payments benefits less any expenses of
 1952 acquiring the recovery, including a prorated share of attorney
 1953 fees and costs, and shall hold that net recovery in trust to be
 1954 delivered to the medical payments insurer. The insurer may not
 1955 include any provision in its policy allowing for subrogation for
 1956 any death benefit paid.

1957 Section 42. Subsections (1) and (7) of section 627.727,
 1958 Florida Statutes, are amended to read:

1959 627.727 Motor vehicle insurance; uninsured and underinsured
 1960 vehicle coverage; insolvent insurer protection.—

1961 (1) A ~~No~~ motor vehicle liability insurance policy that
 1962 which provides bodily injury liability coverage may not ~~shall~~ be
 1963 delivered or issued for delivery in this state with respect to
 1964 any specifically insured or identified motor vehicle registered
 1965 or principally garaged in this state, unless uninsured motor
 1966 vehicle coverage is provided therein or supplemental thereto for
 1967 the protection of persons insured thereunder who are legally
 1968 entitled to recover damages from owners or operators of
 1969 uninsured motor vehicles because of bodily injury, sickness, or
 1970 disease, including death, resulting therefrom. However, the
 1971 coverage required under this section is not applicable ~~if when,~~
 1972 or to the extent that, an insured named in the policy makes a

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1973 written rejection of the coverage on behalf of all insureds
 1974 under the policy. ~~If when~~ a motor vehicle is leased for a period
 1975 of 1 year or longer and the lessor of such vehicle, by the terms
 1976 of the lease contract, provides liability coverage on the leased
 1977 vehicle, the lessee of such vehicle ~~has shall have~~ the sole
 1978 privilege to reject uninsured motorist coverage or to select
 1979 lower limits than the bodily injury liability limits, regardless
 1980 of whether the lessor is qualified as a self-insurer pursuant to
 1981 s. 324.171. Unless an insured, or a lessee having the privilege
 1982 of rejecting uninsured motorist coverage, requests such coverage
 1983 or requests higher uninsured motorist limits in writing, the
 1984 coverage or such higher uninsured motorist limits need not be
 1985 provided in or supplemental to any other policy ~~that which~~
 1986 renews, extends, changes, supersedes, or replaces an existing
 1987 policy with the same bodily injury liability limits when an
 1988 insured or lessee had rejected the coverage. When an insured or
 1989 lessee has initially selected limits of uninsured motorist
 1990 coverage lower than her or his bodily injury liability limits,
 1991 higher limits of uninsured motorist coverage need not be
 1992 provided in or supplemental to any other policy ~~that which~~
 1993 renews, extends, changes, supersedes, or replaces an existing
 1994 policy with the same bodily injury liability limits unless an
 1995 insured requests higher uninsured motorist coverage in writing.
 1996 The rejection or selection of lower limits ~~must shall~~ be made on
 1997 a form approved by the office. The form ~~must shall~~ fully advise
 1998 the applicant of the nature of the coverage and ~~must shall~~ state
 1999 that the coverage is equal to bodily injury liability limits
 2000 unless lower limits are requested or the coverage is rejected.
 2001 The heading of the form ~~must shall~~ be in 12-point bold type and

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2002 ~~must shall~~ state: "You are electing not to purchase certain
 2003 valuable coverage ~~that which~~ protects you and your family or you
 2004 are purchasing uninsured motorist limits less than your bodily
 2005 injury liability limits when you sign this form. Please read
 2006 carefully." If this form is signed by a named insured, it will
 2007 be conclusively presumed that there was an informed, knowing
 2008 rejection of coverage or election of lower limits on behalf of
 2009 all insureds. The insurer shall notify the named insured at
 2010 least annually of her or his options as to the coverage required
 2011 by this section. Such notice ~~must shall~~ be part of, and attached
 2012 to, the notice of premium, ~~must shall~~ provide for a means to
 2013 allow the insured to request such coverage, and ~~must shall~~ be
 2014 given in a manner approved by the office. Receipt of this notice
 2015 does not constitute an affirmative waiver of the insured's right
 2016 to uninsured motorist coverage ~~if where~~ the insured has not
 2017 signed a selection or rejection form. The coverage described
 2018 under this section ~~must shall~~ be over and above, but ~~may shall~~
 2019 not duplicate, the benefits available to an insured under any
 2020 workers' compensation law, ~~personal injury protection benefits,~~
 2021 disability benefits law, or similar law; under any automobile
 2022 medical ~~payments expense~~ coverage; under any motor vehicle
 2023 liability insurance coverage; or from the owner or operator of
 2024 the uninsured motor vehicle or any other person or organization
 2025 jointly or severally liable together with such owner or operator
 2026 for the accident, ~~+~~ and such coverage ~~must shall~~ cover the
 2027 difference, if any, between the sum of such benefits and the
 2028 damages sustained, up to the maximum amount of such coverage
 2029 provided under this section. The amount of coverage available
 2030 under this section ~~may shall~~ not be reduced by a setoff against

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any coverage, including liability insurance. Such coverage does
~~shall~~ not inure directly or indirectly to the benefit of any
 workers' compensation or disability benefits carrier or any
 person or organization qualifying as a self-insurer under any
 workers' compensation or disability benefits law or similar law.

(7) The legal liability of an uninsured motorist coverage
 insurer includes ~~does not include~~ damages in tort for pain,
 suffering, disability or physical impairment, disfigurement,
 mental anguish, and inconvenience, and the loss of capacity for
the enjoyment of life experienced in the past and to be
experienced in the future unless the injury or disease is
~~described in one or more of paragraphs (a) (d) of s. 627.737(2).~~

Section 43. Subsection (1) and paragraphs (a) and (b) of
 subsection (2) of section 627.7275, Florida Statutes, are
 amended to read:

627.7275 Motor vehicle liability.—

(1) A motor vehicle insurance policy ~~providing personal~~
~~injury protection as set forth in s. 627.736~~ may not be
 delivered or issued for delivery in this state for a with
~~respect to any~~ specifically insured or identified motor vehicle
 registered or principally garaged in this state must provide
bodily injury liability coverage and unless the policy also
~~provides coverage for~~ property damage liability coverage as
 required under ~~by~~ s. 324.022.

(2) (a) Insurers writing motor vehicle insurance in this
 state shall make available, subject to the insurers' usual
 underwriting restrictions:

1. Coverage under policies as described in subsection (1)
 to an applicant for private passenger motor vehicle insurance

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coverage who is seeking the coverage in order to reinstate the
 applicant's driving privileges in this state if the driving
 privileges were revoked or suspended pursuant to s. 316.646 or
 s. 324.0221 due to the failure of the applicant to maintain
 required security.

2. Coverage under policies as described in subsection (1),
 which includes bodily injury ~~also provides~~ liability coverage
and property damage liability coverage, for bodily injury,
~~death, and property damage arising out of the ownership,~~
~~maintenance, or use of the motor vehicle~~ in an amount not less
 than the minimum limits required under ~~described in~~ s.
 324.021(7) or s. 324.023 and which conforms to the requirements
 of s. 324.151, to an applicant for private passenger motor
 vehicle insurance coverage who is seeking the coverage in order
 to reinstate the applicant's driving privileges in this state
 after such privileges were revoked or suspended under s. 316.193
 or s. 322.26(2) for driving under the influence.

(b) The policies described in paragraph (a) must ~~shall~~ be
 issued for at least 6 months and, as to the minimum coverages
 required under this section, may not be canceled by the insured
 for any reason or by the insurer after 60 days, during which
 period the insurer is completing the underwriting of the policy.
 After the insurer has completed underwriting the policy, the
 insurer shall notify the Department of Highway Safety and Motor
 Vehicles that the policy is in full force and effect and is not
 cancelable for the remainder of the policy period. A premium
must ~~shall~~ be collected and the coverage is in effect for the
 60-day period during which the insurer is completing the
 underwriting of the policy, whether or not the person's driver

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license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the bodily injury liability and property damage liability coverages ~~for bodily injury, property damage, and personal injury protection~~ may not be reduced below the minimum limits required under s. 324.021 or s. 324.023 during the policy period.

Section 44. Effective upon this act becoming a law, section 627.7278, Florida Statutes, is created to read:

627.7278 Applicability and construction; notice to policyholders.-

(1) As used in this section, the term "minimum security requirements" means security that enables a person to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts required by s. 324.021(7).

(2) Effective January 1, 2021:

(a) Motor vehicle insurance policies issued or renewed on or after that date may not include personal injury protection.

(b) All persons subject to s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 must maintain at least minimum security requirements.

(c) Any new or renewal motor vehicle insurance policy delivered or issued for delivery in this state must provide coverage that complies with minimum security requirements.

(d) An existing motor vehicle insurance policy issued before that date which provides personal injury protection and property damage liability coverage that meets the requirements of s. 324.022 on December 31, 2020, but which does not meet

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minimum security requirements on or after January 1, 2021, is deemed to meet the security requirements of s. 324.022 until such policy is renewed, nonrenewed, or canceled on or after January 1, 2021. Sections 627.730-627.7405, 400.9905, 400.991, 456.057, 456.072, 627.7263, 627.727, 627.748, 627.9541(1)(i), and 817.234, Florida Statutes 2019, remain in full force and effect for motor vehicle accidents covered under a policy issued under the Florida Motor Vehicle No-Fault Law before January 1, 2021, until the policy is renewed, nonrenewed, or canceled.

(3) Each insurer shall allow each insured who has a new or renewal policy providing personal injury protection which becomes effective before January 1, 2021, and whose policy does not meet minimum security requirements on or after January 1, 2021, to change coverages so as to eliminate personal injury protection and obtain coverage providing minimum security requirements, which shall be effective on or after January 1, 2021. The insurer is not required to provide coverage complying with minimum security requirements in such policies if the insured does not pay the required premium, if any, by January 1, 2021, or such later date as the insurer may allow. The insurer must also offer each insured medical payments coverage pursuant to s. 627.7265. Any reduction in the premium must be refunded by the insurer. The insurer may not impose on the insured an additional fee or charge that applies solely to a change in coverage; however, the insurer may charge an additional required premium that is actuarially indicated.

(4) By September 1, 2020, each motor vehicle insurer shall provide notice of this section to each motor vehicle policyholder who is subject to this section. The notice is

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2147 subject to approval by the office and must clearly inform the
 2148 policyholder that:

2149 (a) The Florida Motor Vehicle No-Fault Law is repealed
 2150 effective January 1, 2021, and that on or after that date, the
 2151 insured is no longer required to maintain personal injury
 2152 protection insurance coverage, that personal injury protection
 2153 coverage is no longer available for purchase in this state, and
 2154 that all new or renewal policies issued on or after that date
 2155 will not contain that coverage.

2156 (b) Effective January 1, 2021, a person subject to the
 2157 financial responsibility requirements of s. 324.022 must
 2158 maintain minimum security requirements that enable the person to
 2159 respond to damages for liability on account of accidents arising
 2160 out of the use of a motor vehicle in the following amounts:

2161 1. Twenty-five thousand dollars for bodily injury to, or
 2162 the death of, one person in any one crash and, subject to such
 2163 limits for one person, in the amount of \$50,000 for bodily
 2164 injury to, or the death of, two or more persons in any one
 2165 crash; and

2166 2. Ten thousand dollars for damage to, or destruction of,
 2167 the property of others in any one crash.

2168 (c) Bodily injury liability coverage protects the insured,
 2169 up to the coverage limits, against loss if the insured is
 2170 legally responsible for the death of or bodily injury to others
 2171 in a motor vehicle accident.

2172 (d) Effective January 1, 2021, each policyholder of motor
 2173 vehicle liability insurance purchased as proof of financial
 2174 responsibility must be offered medical payments coverage
 2175 benefits that comply with s. 627.7265. The insurer must offer

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2176 medical payments coverage at limits of \$5,000 and \$10,000
 2177 without a deductible. The insurer may also offer medical
 2178 payments coverage at other limits greater than \$5,000, and may
 2179 offer coverage with a deductible of up to \$500. Medical payments
 2180 coverage pays covered medical expenses, up to the limits of such
 2181 coverage, for injuries sustained in a motor vehicle crash by the
 2182 named insured, resident relatives, persons operating the insured
 2183 motor vehicle, passengers in the insured motor vehicle, and
 2184 persons who are struck by the insured motor vehicle and suffer
 2185 bodily injury while not an occupant of a self-propelled motor
 2186 vehicle as provided in s. 627.7265. Medical payments coverage
 2187 pays for reasonable expenses for necessary medical, diagnostic,
 2188 and rehabilitative services that are lawfully provided,
 2189 supervised, ordered, or prescribed by a physician licensed under
 2190 chapter 458 or chapter 459, by a dentist licensed under chapter
 2191 466, or by a chiropractic physician licensed under chapter 460
 2192 or that are provided in a hospital or in a facility that owns,
 2193 or is wholly owned by, a hospital. Medical payments coverage
 2194 also provides a death benefit of at least \$5,000.

2195 (e) The policyholder may obtain uninsured and underinsured
 2196 motorist coverage, which provides benefits, up to the limits of
 2197 such coverage, to a policyholder or other insured entitled to
 2198 recover damages for bodily injury, sickness, disease, or death
 2199 resulting from a motor vehicle accident with an uninsured or
 2200 underinsured owner or operator of a motor vehicle.

2201 (f) If the policyholder's new or renewal motor vehicle
 2202 insurance policy is effective before January 1, 2021, and
 2203 contains personal injury protection and property damage
 2204 liability coverage as required by state law before January 1,

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2021, but does not meet minimum security requirements on or after January 1, 2021, the policy is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled on or after January 1, 2021.

(g) A policyholder whose new or renewal policy becomes effective before January 1, 2021, but does not meet minimum security requirements on or after January 1, 2021, may change coverages under the policy so as to eliminate personal injury protection and to obtain coverage providing minimum security requirements, including bodily injury liability coverage, which are effective on or after January 1, 2021.

(h) If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

Section 45. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

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

(a) "Policy" means the bodily injury and property damage liability, ~~personal injury protection~~, medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals who are residents ~~resident~~ of the same household; and

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or

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insuring any other four-wheel motor vehicle having a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile insurance assigned risk plan or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

The term "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 46. Subsection (1), paragraph (a) of subsection (5), and subsections (6) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

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

(a) "Policy" means a motor vehicle insurance policy that provides bodily injury liability ~~personal injury protection~~ coverage and ~~property damage liability coverage, or both~~.

(b) "Binder" means a binder that provides motor vehicle bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage.

(5) (a) A licensed general lines agent may charge a per-policy fee of up to not to exceed ~~of up to not to exceed~~ \$10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only bodily injury liability coverage ~~personal injury protection coverage as provided by s. 627.736~~ and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or

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issued in conjunction with or collateral to the policy. The fee is not ~~considered~~ part of the premium.

(6) If a motor vehicle owner's driver license, license plate, and registration have previously been suspended pursuant to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy only as provided in s. 627.7275.

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to at least 1 month's premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action that results ~~resulting~~ in the insured paying ~~having paid~~ from the insured's own funds an amount less than the 1 month's premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent.

(a) This subsection does not apply:

1. If an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. ~~This subsection does not apply~~

2. To an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. ~~This subsection does not apply~~

3. If all policy payments are paid pursuant to a payroll deduction plan, an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit

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card agreement with the insurer.

(b) This subsection and subsection (4) do not apply if:

1. All policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, bodily injury liability coverage ~~and personal injury protection pursuant to ss. 627.730-627.7405~~, motor vehicle property damage liability coverage pursuant to s. 627.7275; ~~or and bodily injury liability in at least the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if~~

2. An insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 47. Section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability insurance coverage. ~~Beginning January 1, 2021~~, commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state must ~~shall~~ be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(1) Sixty ~~Fifty~~ thousand dollars per occurrence for a

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commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.

(2) One hundred ~~twenty~~ thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.

(3) Three hundred thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.

A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 48. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual from the following coverages while the identified individual is operating a motor vehicle, provided that the identified individual is specifically excluded by name on the declarations page or by endorsement, and the policyholder consents in writing to the exclusion:

(a) Property damage liability coverage.

(b) Bodily injury liability coverage.

(c) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has

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purchased such coverage.

(d) Any coverage the policyholder is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified excluded individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 49. Paragraphs (b), (c), and (g) of subsection (7) and paragraphs (a) and (b) of subsection (8) of section 627.748, Florida Statutes, are amended to read:

627.748 Transportation network companies.—

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and

b. ~~Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730–627.7405;~~
and

e. Uninsured and underinsured vehicle coverage as required

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2379 by s. 627.727.

2380 2. The coverage requirements of this paragraph may be
 2381 satisfied by any of the following:

- 2382 a. Automobile insurance maintained by the TNC driver;
- 2383 b. Automobile insurance maintained by the TNC; or
- 2384 c. A combination of sub-subparagraphs a. and b.
- 2385 (c) The following automobile insurance requirements apply

2386 while a TNC driver is engaged in a prearranged ride:

- 2387 1. Automobile insurance that provides:

- 2388 a. A primary automobile liability coverage of at least \$1
- 2389 million for death, bodily injury, and property damage; and
- 2390 b. ~~Personal injury protection benefits that meet the~~
- 2391 ~~minimum coverage amounts required of a limousine under ss.~~
- 2392 ~~627.730-627.7405; and~~

- 2393 e. Uninsured and underinsured vehicle coverage as required
- 2394 by s. 627.727.

2395 2. The coverage requirements of this paragraph may be
 2396 satisfied by any of the following:

- 2397 a. Automobile insurance maintained by the TNC driver;
- 2398 b. Automobile insurance maintained by the TNC; or
- 2399 c. A combination of sub-subparagraphs a. and b.

2400 (g) Insurance satisfying the requirements under this
 2401 subsection is deemed to satisfy the financial responsibility
 2402 requirement for a motor vehicle under chapter 324 ~~and the~~
 2403 ~~security required under s. 627.733~~ for any period when the TNC
 2404 driver is logged onto the digital network or engaged in a
 2405 prearranged ride.

2406 (8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE;
 2407 EXCLUSIONS.—

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2408 (a) Before a TNC driver is allowed to accept a request for
 2409 a prearranged ride on the digital network, the TNC must disclose
 2410 in writing to the TNC driver:

2411 1. The insurance coverage, including the types of coverage
 2412 and the limits for each coverage, which the TNC provides while
 2413 the TNC driver uses a TNC vehicle in connection with the TNC's
 2414 digital network.

2415 2. That the TNC driver's own automobile insurance policy
 2416 might not provide any coverage while the TNC driver is logged on
 2417 to the digital network or is engaged in a prearranged ride,
 2418 depending on the terms of the TNC driver's own automobile
 2419 insurance policy.

2420 3. That the provision of rides for compensation which are
 2421 not prearranged rides subjects the driver to the coverage
 2422 requirements imposed under s. 324.032(1) and (2) and that
 2423 failure to meet such coverage requirements subjects the TNC
 2424 driver to penalties provided in s. 324.221, up to and including
 2425 a misdemeanor of the second degree.

2426 (b)1. An insurer that provides an automobile liability
 2427 insurance policy under this part may exclude any and all
 2428 coverage afforded under the policy issued to an owner or
 2429 operator of a TNC vehicle while driving that vehicle for any
 2430 loss or injury that occurs while a TNC driver is logged on to a
 2431 digital network or while a TNC driver provides a prearranged
 2432 ride. Exclusions imposed under this subsection are limited to
 2433 coverage while a TNC driver is logged on to a digital network or
 2434 while a TNC driver provides a prearranged ride. This right to
 2435 exclude all coverage may apply to any coverage included in an
 2436 automobile insurance policy, including, but not limited to:

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2437 a. Liability coverage for bodily injury and property
 2438 damage;
 2439 b. Uninsured and underinsured motorist coverage;
 2440 c. Medical payments coverage;
 2441 d. Comprehensive physical damage coverage; and
 2442 e. Collision physical damage coverage; ~~and~~
 2443 ~~f. Personal injury protection.~~
 2444 2. The exclusions described in subparagraph 1. apply
 2445 notwithstanding any requirement under chapter 324. These
 2446 exclusions do not affect or diminish coverage otherwise
 2447 available for permissive drivers or resident relatives under the
 2448 personal automobile insurance policy of the TNC driver or owner
 2449 of the TNC vehicle who are not occupying the TNC vehicle at the
 2450 time of loss. This section does not require that a personal
 2451 automobile insurance policy provide coverage while the TNC
 2452 driver is logged on to a digital network, while the TNC driver
 2453 is engaged in a prearranged ride, or while the TNC driver
 2454 otherwise uses a vehicle to transport riders for compensation.
 2455 3. This section must not be construed to require an insurer
 2456 to use any particular policy language or reference to this
 2457 section in order to exclude any and all coverage for any loss or
 2458 injury that occurs while a TNC driver is logged on to a digital
 2459 network or while a TNC driver provides a prearranged ride.
 2460 4. This section does not preclude an insurer from providing
 2461 primary or excess coverage for the TNC driver's vehicle by
 2462 contract or endorsement.
 2463 Section 50. Paragraph (a) of subsection (2) of section
 2464 627.749, Florida Statutes, is amended to read:
 2465 627.749 Autonomous vehicles; insurance requirements.—

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

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2466 (2) INSURANCE REQUIREMENTS.—
 2467 (a) A fully autonomous vehicle with the automated driving
 2468 system engaged while logged on to an on-demand autonomous
 2469 vehicle network or engaged in a prearranged ride must be covered
 2470 by a policy of automobile insurance which provides:
 2471 1. Primary liability coverage of at least \$1 million for
 2472 death, bodily injury, and property damage.
 2473 2. ~~Personal injury protection benefits that meet the~~
 2474 ~~minimum coverage amounts required under ss. 627.730-627.7405.~~
 2475 3. Uninsured and underinsured vehicle coverage as required
 2476 by s. 627.727.
 2477 Section 51. Section 627.8405, Florida Statutes, is amended
 2478 to read:
 2479 627.8405 Prohibited acts; financing companies.—A ~~No~~ premium
 2480 finance company ~~shall~~, in a premium finance agreement or other
 2481 agreement, may not finance the cost of or otherwise provide for
 2482 the collection or remittance of dues, assessments, fees, or
 2483 other periodic payments of money for the cost of:
 2484 (1) A membership in an automobile club. The term
 2485 "automobile club" means a legal entity that ~~which~~, in
 2486 consideration of dues, assessments, or periodic payments of
 2487 money, promises its members or subscribers to assist them in
 2488 matters relating to the ownership, operation, use, or
 2489 maintenance of a motor vehicle; however, the term ~~this~~
 2490 ~~definition of "automobile club"~~ does not include persons,
 2491 associations, or corporations ~~which are~~ organized and operated
 2492 solely for the purpose of conducting, sponsoring, or sanctioning
 2493 motor vehicle races, exhibitions, or contests upon racetracks,
 2494 or upon racecourses established and marked as such for the

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2495 duration of such particular events. The term words "motor
 2496 vehicle" used herein has ~~have~~ the same meaning as defined in
 2497 chapter 320.

2498 (2) An accidental death and dismemberment policy sold in
 2499 combination with a policy providing only bodily injury liability
 2500 coverage ~~personal injury protection~~ and property damage
 2501 liability coverage ~~only policy~~.

2502 (3) Any product not regulated under ~~the provisions of~~ this
 2503 insurance code.

2504
 2505 This section also applies to premium financing by any insurance
 2506 agent or insurance company under part XVI. The commission shall
 2507 adopt rules to assure disclosure, at the time of sale, of
 2508 coverages financed ~~with personal injury protection~~ and shall
 2509 prescribe the form of such disclosure.

2510 Section 52. Subsection (1) of section 627.915, Florida
 2511 Statutes, is amended to read:

2512 627.915 Insurer experience reporting.—

2513 (1) Each insurer transacting private passenger automobile
 2514 insurance in this state shall report certain information
 2515 annually to the office. The information will be due on or before
 2516 July 1 of each year. The information must ~~shall~~ be divided into
 2517 the following categories: bodily injury liability; property
 2518 damage liability; uninsured motorist; ~~personal injury protection~~
 2519 ~~benefits~~, medical payments; and comprehensive and collision. The
 2520 information given must ~~shall~~ be on direct insurance writings in
 2521 the state alone and ~~shall~~ represent total limits data. The
 2522 information set forth in paragraphs (a)-(f) is applicable to
 2523 voluntary private passenger and Joint Underwriting Association

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2524 private passenger writings and must ~~shall~~ be reported for each
 2525 of the latest 3 calendar-accident years, with an evaluation date
 2526 of March 31 of the current year. The information set forth in
 2527 paragraphs (g)-(j) is applicable to voluntary private passenger
 2528 writings and must ~~shall~~ be reported on a calendar-accident year
 2529 basis ultimately seven times at seven different stages of
 2530 development.

2531 (a) Premiums earned for the latest 3 calendar-accident
 2532 years.

2533 (b) Loss development factors and the historic development
 2534 of those factors.

2535 (c) Policyholder dividends incurred.

2536 (d) Expenses for other acquisition and general expense.

2537 (e) Expenses for agents' commissions and taxes, licenses,
 2538 and fees.

2539 (f) Profit and contingency factors as utilized in the
 2540 insurer's automobile rate filings for the applicable years.

2541 (g) Losses paid.

2542 (h) Losses unpaid.

2543 (i) Loss adjustment expenses paid.

2544 (j) Loss adjustment expenses unpaid.

2545 Section 53. Subsections (2) and (3) of section 628.909,
 2546 Florida Statutes, are amended to read:

2547 628.909 Applicability of other laws.—

2548 (2) The following provisions of the Florida Insurance Code
 2549 apply to captive insurance companies that ~~who~~ are not industrial
 2550 insured captive insurance companies to the extent that such
 2551 provisions are not inconsistent with this part:

2552 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,

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624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405, when no-fault coverage is provided.~~

~~(e)~~ Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company is incorporated in this state.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405 when no-fault coverage is provided.~~

~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 54. Subsections (2), (6), and (7) of section 705.184, Florida Statutes, are amended to read:

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the~~

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~~provisions of s. 627.736,~~ and any person who has filed a lien on the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. The notice must ~~shall~~ state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2) (a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee may ~~shall~~ be charged if the motor

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vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are not successful, the requirement of notice by mail shall be considered met. Serving of the notice does not dispense with recording the claim of lien.

(7)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which states ~~shall state~~:

1. The name and address of the airport.
2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle.
3. The costs incurred from reasonable towing, storage, and parking fees, if any.
4. A description of the motor vehicle sufficient for identification.

(b) The claim of lien must ~~shall~~ be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien is ~~shall be~~ sufficient if it is in substantially the following form:

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CLAIM OF LIEN

State of
 County of
 Before me, the undersigned notary public, personally appeared, who was duly sworn and says that he/she is the of, whose address is.....; and that the following described motor vehicle:
 ... (Description of motor vehicle) ...
 owned by, whose address is, has accrued \$..... in fees for a reasonable tow, for storage, and for parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~ and all persons of record claiming a lien against the motor vehicle on, ...(year) ..., by.....
 ... (Signature) ...
 Sworn to (or affirmed) and subscribed before me this day of, ...(year) ..., by ... (name of person making statement) ...
 ... (Signature of Notary Public) (Print, Type, or Stamp
 Commissioned name of Notary Public) ...
 Personally Known....OR Produced....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien must ~~shall~~ be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all

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persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736~~, or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien must ~~shall~~ be so served before recordation.

(e) The claim of lien must ~~shall~~ be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien attaches ~~shall attach~~ at the time of recordation and takes ~~shall take~~ priority as of that time.

Section 55. Subsection (4) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4) (a) A person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

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(b) Whenever a law enforcement agency authorizes the removal of a vehicle or vessel or whenever a towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor ~~notwithstanding s. 627.736~~.

(c) The notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all other persons claiming a lien thereon within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than

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2727 30 days before the sale of the vehicle or vessel. The notice
2728 must state:

2729 1. If the claim of lien is for a vehicle, the last 8 digits
2730 of the vehicle identification number of the vehicle subject to
2731 the lien, or, if the claim of lien is for a vessel, the hull
2732 identification number of the vessel subject to the lien, clearly
2733 printed in the delivery address box and on the outside of the
2734 envelope sent to the registered owner and all other persons
2735 claiming an interest therein or lien thereon.

2736 2. The name, physical address, and telephone number of the
2737 lienor, and the entity name, as registered with the Division of
2738 Corporations, of the business where the towing and storage
2739 occurred, which must also appear on the outside of the envelope
2740 sent to the registered owner and all other persons claiming an
2741 interest in or lien on the vehicle or vessel.

2742 3. The fact of possession of the vehicle or vessel.

2743 4. The name of the person or entity that authorized the
2744 lienor to take possession of the vehicle or vessel.

2745 5. That a lien as provided in subsection (2) is claimed.

2746 6. That charges have accrued and include an itemized
2747 statement of the amount thereof.

2748 7. That the lien is subject to enforcement under law and
2749 that the owner or lienholder, if any, has the right to a hearing
2750 as set forth in subsection (5).

2751 8. That any vehicle or vessel that remains unclaimed, or
2752 for which the charges for recovery, towing, or storage services
2753 remain unpaid, may be sold free of all prior liens 35 days after
2754 the vehicle or vessel is stored by the lienor if the vehicle or
2755 vessel is more than 3 years of age or 50 days after the vehicle

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2756 or vessel is stored by the lienor if the vehicle or vessel is 3
2757 years of age or less.

2758 9. The address at which the vehicle or vessel is physically
2759 located.

2760 (d) The notice of lien may not be sent to the registered
2761 owner, the insurance company insuring the vehicle or vessel, and
2762 all other persons claiming a lien thereon less than 30 days
2763 before the sale of the vehicle or vessel.

2764 (e) If attempts to locate the name and address of the owner
2765 or lienholder prove unsuccessful, the towing-storage operator
2766 shall, after 7 business days, excluding Saturday and Sunday,
2767 after the initial tow or storage, notify the public agency of
2768 jurisdiction where the vehicle or vessel is stored in writing by
2769 certified mail or acknowledged hand delivery that the towing-
2770 storage company has been unable to locate the name and address
2771 of the owner or lienholder and a physical search of the vehicle
2772 or vessel has disclosed no ownership information and a good
2773 faith effort has been made, including records checks of the
2774 Department of Highway Safety and Motor Vehicles database and the
2775 National Motor Vehicle Title Information System or an equivalent
2776 commercially available system. For purposes of this paragraph
2777 and subsection (9), the term "good faith effort" means that the
2778 following checks have been performed by the company to establish
2779 the prior state of registration and for title:

2780 1. A check of the department's database for the owner and
2781 any lienholder.

2782 2. A check of the electronic National Motor Vehicle Title
2783 Information System or an equivalent commercially available
2784 system to determine the state of registration when there is not

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2785 a current registration record for the vehicle or vessel on file
2786 with the department.

2787 3. A check of the vehicle or vessel for any type of tag,
2788 tag record, temporary tag, or regular tag.

2789 4. A check of the law enforcement report for a tag number
2790 or other information identifying the vehicle or vessel, if the
2791 vehicle or vessel was towed at the request of a law enforcement
2792 officer.

2793 5. A check of the trip sheet or tow ticket of the tow truck
2794 operator to determine whether a tag was on the vehicle or vessel
2795 at the beginning of the tow, if a private tow.

2796 6. If there is no address of the owner on the impound
2797 report, a check of the law enforcement report to determine
2798 whether an out-of-state address is indicated from driver license
2799 information.

2800 7. A check of the vehicle or vessel for an inspection
2801 sticker or other stickers and decals that may indicate a state
2802 of possible registration.

2803 8. A check of the interior of the vehicle or vessel for any
2804 papers that may be in the glove box, trunk, or other areas for a
2805 state of registration.

2806 9. A check of the vehicle for a vehicle identification
2807 number.

2808 10. A check of the vessel for a vessel registration number.

2809 11. A check of the vessel hull for a hull identification
2810 number which should be carved, burned, stamped, embossed, or
2811 otherwise permanently affixed to the outboard side of the
2812 transom or, if there is no transom, to the outmost seaboard side
2813 at the end of the hull that bears the rudder or other steering

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2814 mechanism.

2815 Section 56. Paragraph (a) of subsection (1), paragraph (c)
2816 of subsection (7), paragraphs (a), (b), and (c) of subsection
2817 (8), and subsections (9) and (10) of section 817.234, Florida
2818 Statutes, are amended to read:

2819 817.234 False and fraudulent insurance claims.—

2820 (1) (a) A person commits insurance fraud punishable as
2821 provided in subsection (11) if that person, with the intent to
2822 injure, defraud, or deceive any insurer:

2823 1. Presents or causes to be presented any written or oral
2824 statement as part of, or in support of, a claim for payment or
2825 other benefit pursuant to an insurance policy or a health
2826 maintenance organization subscriber or provider contract,
2827 knowing that such statement contains ~~any~~ false, incomplete, or
2828 misleading information concerning any fact or thing material to
2829 such claim;

2830 2. Prepares or makes any written or oral statement that is
2831 intended to be presented to an ~~any~~ insurer in connection with,
2832 or in support of, any claim for payment or other benefit
2833 pursuant to an insurance policy or a health maintenance
2834 organization subscriber or provider contract, knowing that such
2835 statement contains ~~any~~ false, incomplete, or misleading
2836 information concerning any fact or thing material to such claim;

2837 3.a. Knowingly presents, causes to be presented, or
2838 prepares or makes with knowledge or belief that it will be
2839 presented to an ~~any~~ insurer, purported insurer, servicing
2840 corporation, insurance broker, or insurance agent, or any
2841 employee or agent thereof, ~~any~~ false, incomplete, or misleading
2842 information or a written or oral statement as part of, or in

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support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

b. Knowingly conceals information concerning any fact material to such application; or

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under medical payments coverage in a motor vehicle ~~a personal injury protection~~ insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

(7)

~~(e) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(8) (a) It is unlawful for any person intending to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort

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claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection~~ ~~benefits required by s. 627.736~~. Any person who violates the ~~provisions of~~ this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection~~ ~~benefits required by s. 627.736~~, within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection~~ ~~benefits required by s. 627.736~~. Any person who violates this paragraph commits a

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felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits as required by s. 627.736~~. Any person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(10) A licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a motor vehicle ~~personal injury protection~~ insurance policy loses his or her license to practice for 5 years and may not receive reimbursement under medical payments coverage in a motor vehicle insurance policy ~~for personal injury protection benefits~~ for 10 years.

Section 57. For the 2020-2021 fiscal year, the sum of \$83,651 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing this act.

Section 58. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2021.

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 380

INTRODUCER: Banking and Insurance Committee and Senator Baxley

SUBJECT: Bank Property of Deceased Account Holders

DATE: February 13, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Payment of Decedent Funds at Financial Institutions

CS/SB 380 allows a financial institution to pay the family member of a decedent, without any court proceeding, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts if the total amount of such funds does not exceed \$1,000. The financial institution may make such payment not earlier than 6 months after the date of the decedent's death.

In order for a financial institution to pay the funds to a family member, the family member seeking payment must provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit describing the family member's entitlement to the funds, the eligibility of the accounts, the lack of any will or other document providing for disposition, and the affiant's assumption of personal liability for claims by others rightfully entitled to the funds under the Florida Probate Code. The bill provides criminal penalties for making a false statement in the affidavit, classifying such action as theft.

The bill expressly provides that a person does not have a right or cause of action against a financial institution due to any action, or inaction, related to the affidavit or the payment of funds, but, creates personal liability for the family member who withdraws the funds in the face of creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code.

The bill allows a financial institution to release otherwise confidential information related to the existence of and amounts on deposit in any qualified account of a decedent, and to provide a copy of any affidavit delivered to the financial institution for the purpose of collecting such funds to a person authorized to receive such information.

Disposition Without Administration of Intestate Property in Small Estates

The bill creates a new mechanism for the disposition intestate property of certain small estates without administration or formal proceedings. Eligible small estates include the estate of a decedent who died intestate, i.e., without a will, and has been deceased for more than 1 year, of which no administration is pending in this state or has been previously granted, and which contains only personal property exempted from creditors and non-exempt personal property that is valued at less than \$10,000. The bill authorizes a court to authorize distribution of the decedent's assets by letter or other writing, upon receiving a sufficient affidavit from an heir at law of the decedent who is entitled to a share of the intestate estate.

Effective Date

The bill takes effect July 1, 2020.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term “financial institution” broadly; the term includes state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”¹

Not all financial institutions are depository institutions; some are not authorized to accept or hold deposits or certificates of deposits.² Funds held in either a deposit account³ or a certificate of

¹ Section 655.005(1)(i), F.S.

² For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. See ss. 663.062, 663.063, 663.409, and 663.531, F.S.

³ The term “deposit account” is not broadly defined within the financial institutions codes (ss. 655-667, F.S.), but is defined for the purposes of s. 655.55, F.S., governing the applicability of state law to deposits, as “any deposit or account in one or more names including, without limitation, any certificate of deposit, time deposit, credit balance, checking account, interest-bearing account, non-interest-bearing account, individual retirement account (IRA), money market account, NOW account, transaction account, savings account, passbook account, joint account, convenience account, escrow account, trust account, custodial account, fiduciary account, deposit in trust, or Totten trust account.”

deposit⁴ are commonly referred to as being “on deposit” with a financial institution.⁵ Banks and credit unions are depository institutions.

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The Florida Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.⁶ State financial institutions are subject to both state and federal regulation. The OFR does not regulate federally chartered financial institutions or financial institutions chartered by other states, however, such institutions may operate in Florida.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).⁷ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁸ The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.⁹ While all state banks are required to obtain deposit insurance,¹⁰ the Federal Deposit Insurance Corporation (FDIC) is the primary federal regulator of non-member state banks, although it is authorized to make special examination of any insured bank when necessary.¹¹

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).¹² Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.¹³

Transfer of Funds Incident to Death

Funds held by a financial institution may be transferred to a person who survives a decedent in different ways. If an account is in two or more names, it vests in the surviving person or persons if one of the account holders dies. An account holder may elect to designate a beneficiary or beneficiaries through a “pay-on-death designation.” Upon the death of the account holder, the amount on deposit in the account belong to the surviving beneficiaries.

Section 735.301, F.S., allows for a disposition of small estates without administration. This type of proceeding is used to request release of assets of the deceased to reimburse the person who

⁴ The term “certificate of deposit” is defined as “an instrument containing an acknowledgement by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.” Section 673.1041(10), F. S. This definition is applicable pursuant to s. 655.005(2), F.S., which provides that terms used but not defined in the financial institutions codes, but which are defined in ch. 668 through 680, F.S., shall have the meanings ascribed to them there.

⁵ Office of Financial Regulation, *Analysis of SB 380*, Nov. 21, 2019 (on file with Senate Banking and Insurance Committee).

⁶ Section 655.012(1)(a), F.S.

⁷ 12 U.S.C. s. 481.

⁸ 12 U.S.C. s. 208.3 and 222.

⁹ 12 U.S.C. s. 248.

¹⁰ Section 658.38, F.S.

¹¹ 12 U.S.C. s. 1811 et. seq.

¹² 12 U.S.C. s. 1751, et. seq.

¹³ Section 657.033, F.S.; 12 U.S.C. s. 1784.

paid the final expenses, such as funeral or medical bills, which arose during the last 60 days of the account holder's life.

Florida Probate Law

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent's will (often called beneficiaries) or to the decedent's heirs, if there is no will. The property transferred via the probate process is called the "estate." Assets subject to probate are those that were owned in the decedent's sole name at death or that were owned by the decedent and one or more co-owners but lacked a provision for automatic succession of ownership at death.¹⁴ In addition, the code provides a statutory mechanism to wind up the decedent's financial affairs and ensure that the decedent's creditors are paid.

If the decedent had a will, the property is transferred as directed by the will. If a person dies without a will, the person is considered to have died "intestate" and the person's property is transferred to heirs according to the laws of intestate succession. Section 732.102, F.S., provides that a surviving spouse takes the entire intestate estate if there is no surviving descendant of the decedent. If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendants, the surviving spouse takes the entire intestate estate.¹⁵ If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, the surviving spouse takes one-half of the intestate estate.¹⁶ If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, the surviving spouse takes one-half of the intestate estate.¹⁷ The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, transfers to the descendants of the decedent.¹⁸ If the decedent has no descendants, the decedent's parents take the intestate estate.¹⁹

In order for the decedent's estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court.²⁰ The personal representative, a person designated by the will or the circuit court to serve in that role, must provide a notice of administration to various persons, such as family members and beneficiaries, and other entities.²¹ Those persons must act to contest the will or take other actions within statutory time limits.²² The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.²³ Creditors must generally make claims against the estate within

¹⁴ The Florida Bar, Consumer Pamphlet: *Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Feb. 12, 2020).

¹⁵ See s. 732.102(2), F.S.

¹⁶ See s. 732.102(3), F.S.

¹⁷ See s. 732.102(4), F.S.

¹⁸ See s. 732.103(1), F.S.

¹⁹ See s. 732.103(2), F.S.

²⁰ See s. 733.202, F.S.

²¹ See s. 733.212, F.S.

²² See s. 733.212, F.S.

²³ See s. 733.2121, F.S.

3 months of notice.²⁴ In order for personal representatives to claim monies from bank accounts for the estate, the court must issue letters of administration granting the personal representative the authority to act on behalf of the estate. The letters give the personal representative the power to gather assets, pay creditors, and pay the heirs or beneficiaries. Even a simple probate estate can take 5 or 6 months to administer and close.²⁵

Summary Probate Administration

Summary administration is an alternative to the formal administration process and is available only if the decedent has been dead for more than 2 years or if the value of the estate subject to administration in Florida (less the value of property which is exempt from the claims of creditors²⁶) is less than \$75,000.²⁷ Summary administration is not available if a decedent's will specifically directs formal administration.²⁸

A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will.²⁹ However, any other beneficiary must be served with formal notice of the petition.³⁰

If the decedent passed away more than 2 years before the filing of the petition for summary administration, creditors' claims do not need to be addressed in the summary administration proceeding because Florida's non-claim statute effectively bars any creditors' claims that are not brought within 2 years of the decedent's death.³¹ If the decedent passed away less than 2 years before the filing of the petition for summary judgment, the petitioner is required to make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.³² As for those creditors who are not known or reasonably ascertainable, if proof of publication of a specified notice to creditors has been filed with the court, all claims and demands of such creditors are forever barred unless their claims are filed within 3 months after the first publication of the notice.³³

Those who receive a distribution of estate assets generally remain liable for claims against the decedent for 2 years after the date of death.³⁴ The following parties are entitled to receive reasonable attorney's fees and costs if they prevail in an action to enforce their claim:

- Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made.³⁵

²⁴ See s. 733.702, F.S.

²⁵ See <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited February 7, 2020).

²⁶ For example, homestead property that is protected from creditors' claims by Art. X, s. 4, Fla. Const.

²⁷ Section 735.201(1), F.S.

²⁸ *Id.*

²⁹ Section 735.203(1), F.S.

³⁰ *Id.*

³¹ Section 733.710, F.S.

³² Section 735.206(2), F.S.

³³ Section 735.206(3), F.S.

³⁴ Section 735.206(4)(d)-(f), F.S.

³⁵ Section 735.206(4)(d), F.S.

- Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution.³⁶

Disposition of Decedent Property Without Administration

Disposition of personal property without administration is yet another alternative to the formal administration process and available only if the decedent's probate estate consists solely of the following:³⁷

- Personal property classified as exempt under the provisions of s. 732.402, F.S., such as household furnishings up to a net value of \$20,000 and two vehicles;
- Personal property exempt from the claims of creditors under the Florida Constitution, such as personal property valued at \$1,000 or less;³⁸ and
- Non-exempt personal property valued at less than the sum of the amount of preferred funeral expenses and the amount of reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness.

Any interested party may file such an informal application by affidavit, letter, or otherwise with the court.³⁹ If the court is satisfied that the decedent's assets meet the criteria for this abbreviated process, the court may, by letter or other writing under the seal of the court, authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.⁴⁰ Any person, firm, or corporation paying, delivering, or transferring property under the court's authorization is forever discharged from liability thereon.⁴¹

Florida Unclaimed Property Law

Chapter 717, F.S., is Florida's law dealing with the disposition of unclaimed property. The most common types of unclaimed property are dormant bank accounts, unclaimed insurance proceeds, stocks, dividends, uncashed checks, deposits, credit balances and refunds. Unclaimed property assets are held by businesses for a set period of time, usually 5 years. Businesses (holders of unclaimed property) are required to try to locate the owner, but when their attempts fail, they must report the property and the owner's name, last known address and other information to the Department of Financial Services. The Department acts as custodian for the State of Florida, but never takes legal ownership of the property. The State uses various methods, including database searches, in an effort to notify owners of their property. Citizens have the right to claim their property, at no cost, any time, regardless of the amount.⁴²

III. Effect of Proposed Changes:

Section 1 of the bill amends paragraph (2)(b) of s. 655.059, F.S., to update a citation and to indicate that a financial institution is not prohibited from disclosing otherwise confidential books

³⁶ Section 735.206(4)(g), F.S.

³⁷ Section 735.301(1), F.S.

³⁸ Art. X, s. 4(a)(2), Fla. Const.

³⁹ Section 735.301(2), F.S.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited February 7, 2020).

and records related to the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303, F.S., and from providing a copy of any affidavit delivered to the financial institution for the purpose of collecting such funds to a person authorized to receive such information under s. 735.303, F.S.

Section 2 of the bill creates s. 735.303, F.S., to allow financial institutions to pay funds in certain depository accounts of decedents, which do not exceed \$1,000 in total, to the decedent's successor, without court proceedings, upon receiving a copy of the death certificate of the decedent and an affidavit from the successor demonstrating their entitlement to the funds.

Subsection (1) provides definitions of the terms "family member" and "qualified account." "Family member" is defined as the surviving spouse of a decedent, the adult child of a decedent if the decedent left no surviving spouse, an adult descendant of the decedent if the decedent left no surviving spouse nor a surviving adult child, or, a parent of the decedent if the decedent left no surviving spouse, no surviving adult child, nor a surviving adult descendant. A "qualified account" is defined as a depository account or certificate of deposit in the sole name of the decedent without a pay-on-death or any other survivor designation.

Subsection (2) authorizes a financial institution in this state to pay a family member of a decedent the funds the decedent had on deposit in all qualified accounts if the total amount of such accounts at the financial institution does not exceed \$1,000, and at least 6 months have passed since the decedent's death. No prior court proceeding, order, or judgment ordering such payment is necessary.

Subsection (3) requires a family member seeking payment of qualified accounts to provide the financial institution with a certified copy of the decedent's death certificate, and a sworn affidavit in order to obtain payment from a financial institution. The sworn affidavit must contain the following:

- A statement attesting that the family member is the surviving spouse, adult child, adult descendant, or parent of the decedent;
- A statement to demonstrate that the family member is the appropriate person to receive the funds, e.g. an adult child of the decedent must attest there is no surviving spouse or a parent of the decedent must attest there is no surviving spouse, no surviving adult children, and no surviving adult descendants;
- The date of death of the decedent and the address of the last residence of the decedent;
- A statement attesting that the total amount of all qualified accounts held by the decedent with all financial institutions known to the affiant does not exceed \$1,000;
- A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent and that no probate or summary administration procedure has been commenced with respect to the estate of the decedent;
- A statement acknowledging that the affiant has no knowledge of the existence of a will or other document or agreement relating to the distribution of the decedent's estate;
- A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid;

- A statement acknowledging that the affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent that the amount paid exceeds the amount properly attributable to the affiant's share; and
- A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

Subsection (4) provides a template affidavit that fulfills the requirements of subsection (3).

Subsections (5) and (6) assign liability. The bill provides that the financial institution is not required to determine whether the contents of the sworn affidavit are truthful, and that the payment of funds by the financial institution to the affiant family member constitutes a full release and discharge of the financial institution's obligation for the amount paid. A person does not have a right or cause of action against a financial institution due to any action, or inaction, related to the affidavit or the payment of funds, but, the family member who withdraws the funds is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code to the extent the amount paid exceeds their rightful share.

Subsection (7) requires a financial institution to maintain a copy or an image of the affidavit in accordance with its customary retention policies after releasing the funds and authorizes the financial institution to provide a copy of the affidavit to the surviving spouse or decedent, but not the parent, of the decedent.

Subsection (8) provides that it is theft, punishable under s. 812.014, F.S., to make a false statement in a sworn affidavit given to a financial institution in order to receive a decedent's funds pursuant to this section. Generally, theft of property valued at \$750 or more but less than \$5,000 is a third degree felony, while theft of property valued at \$100 or more but less than \$750 is a first degree misdemeanor.

Section 3 of the bill creates s. 735.304, F.S., to allow the disposition intestate property of small estates without administration or formal proceedings.

Subsection (1) describes the types of estates eligible for this type of disposition. If the decedent has been deceased for more than 1 year, and no administration of the estate is pending in this state or has been previously granted, then no administration will be required or formal proceedings instituted on estates of a decedent who died intestate, i.e., without a will, which contain only the following types of property:

- Personal property exempt under the provisions of s. 732.402, F.S., governing property exempted from claims against an estate;
- Personal property exempt from the claims of creditors under the State Constitution; and
- Nonexempt personal property valued at \$10,000 or less, plus the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

Subsection (2) allows heirs at law of the decedent who are entitled to a share of the intestate estate to request distribution of the assets of the decedent by affidavit, through informal application. The affidavit must be signed and verified by the surviving spouse (if any) and any heirs at law, and must be served in the manner of formal notice upon:

- all heirs at law who have not joined in the affidavit;
- all known or reasonably ascertainable creditors of the decedent; and
- the Agency for Health Care Administration, if the decedent was over the age of 55 at the time of death.

Prior to such an application, an heir at law must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors. Proposed distribution must make provision for payment of any creditors uncovered by the affiant's diligent search, or the creditors must consent to the proposed distribution.

Subsection (3) authorizes a court, upon presentation of a sufficient affidavit, to, by letter or other writing under seal of the court, authorize the payment, transfer, disposition, delivery, or assignment of an eligible estate to those persons entitled. Such payment, transfer, disposition, delivery, or assignment will result in the following:

- Discharge of liability for any person paying, transferring, delivering, or assigning the property under the court's authorization;
- Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned take the property free of claims of creditors of the decedent and all rights of the surviving spouse, other heirs at law, and all other beneficiaries at law of the decedent;
- Nonexempt personal property of the decedent remains subject to claims against the decedent until barred by the Florida Probate Code;
- Recipients of personal property that is not exempt from claims of creditors remain personally liable for a pro rata share of all lawful claims against the decedent's estate, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient;
- Except as otherwise provided in s. 733.710, F.S., once 2 years have passed since the death of the decedent, neither the estate nor those to whom it may be distributed will be liable for any claim against the decedent, unless proceedings to enforce a claim have already begun.
- Any lawfully entitled heir, devisee, or reasonably ascertainable creditor of the decedent who was not included in the distribution retains the ability to enforce their rights in appropriate proceedings against the affiant(s) and those who received distributions, and, if successful, will be awarded costs including reasonable attorney fees in chancery actions.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate issues of federal preemption as it applies to “financial institution[s],” a term which, as defined by current Florida law, includes federally chartered financial institutions that the State of Florida does not have regulatory authority over.

The Supremacy Clause of the United States Constitution requires courts to follow federal law, not state law, if Congress, in enacting the federal statute, intended to exercise its constitutionally delegated authority to set aside, i.e., preempt, the laws of a state.⁴³

The analysis of preemption principles as they apply to state banking laws is complex; banking has been subject to dual [federal-state] regulatory control since the passage of the first National Bank Act in 1863.⁴⁴ Generally, federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or the general purposes of the National Bank Act (NBA), or prevent or impair a bank’s exercise of its authority, be it enumerated or incidental.⁴⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁴³ *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), citing U.S. Const., Art. VI, cl. 2; *California Fed. Sav. & Loan Assn. v. Guerra*, 479 U.S. 272 (1987).

⁴⁴ *Bank of America v. City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002), quoting *National State Bank v. Long*, 630 F.2d 981, 985 (3d Cir. 1980).

⁴⁵ *Watters v. Wachovia*, 550 U.S. 1 (2007), citing 12 U.S.C. s. 21 *et. seq.*

VII. Related Issues:

The bill defines a “family member,” in part, as a spouse, child, or parent of the decedent. As those terms are not defined, strict construction of this definition may preclude an adopted child, or adoptive parent from accessing the funds in a decedent’s account. Incorporating the definitions of those terms by reference to the probate code may alleviate this concern.

VIII. Statutes Affected:

This bill substantially amends section 655.059 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 735.303 and 735.304

IX. Additional Information:

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

CS by Banking and Insurance on February 11, 2020:

The CS contains substantial revisions to this affidavit process, including a decrease in the maximum value of eligible accounts from \$10,000 to \$1,000, a decrease in the amount of time that must pass before the institution can make a payment from 2 years to 6 months and the elimination of a requirement for family members to consent to the financial institution’s payment of the funds. The CS also creates a process for the disposition intestate property of small estates without administration or formal proceedings within the probate code.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

655.059 Access to books and records; confidentiality;
penalty for disclosure.—

(2)

(b) The books and records pertaining to trust accounts and



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the deposit accounts and loans of depositors, borrowers, members, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and may not be released except upon express authorization of the account holder as to her or his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information. Information may also be released, without the authorization of a member or depositor but in a manner prescribed by the board of directors, to verify or corroborate the existence or amount of a customer's or member's account when such information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. In addition, a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

1. A financial institution from disclosing financial information as referenced in this subsection as authorized ~~by Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C. s. 6802 (2010) U.S.C.A. s. 6802, as amended.~~



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2. The Florida office of the international banking corporation or international trust entity from sharing books and records under this subsection with the home-country supervisor in accordance with subsection (1).

3. A financial institution from disclosing the existence of and amounts on deposit in any qualified account of a decedent pursuant to s. 735.303 and from providing a copy of any affidavit delivered to the financial institution pursuant thereto, to a person authorized to receive such information under s. 735.303.

Section 2. Section 735.303, Florida Statutes, is created to read:

735.303 Payment to successor without court proceedings.—

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

(a) "Family member" means:

1. The surviving spouse of the decedent;

2. An adult child of the decedent if the decedent left no surviving spouse;

3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or

4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Qualified account" means a depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding,



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order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution does not exceed an aggregate total of \$1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the family member must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of \$1,000.



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(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(g) A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER SECTION 735.303, FLORIDA STATUTES, TO OBTAIN
BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of
decedent) ...
State of
County of



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Before the undersigned authority personally appeared ...(name of affiant)..., of ...(residential address of affiant)..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

.... A surviving adult child of the decedent, and the decedent left no surviving spouse.

.... A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

.... A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was ...(date of death)..., and the address of the decedent's last residence was ...(address of last residence)....

(c) The affiant is entitled to payment of the funds in the decedent's depository accounts and certificates of deposit held by the financial institution ...(name of financial institution).... The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of \$1,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate and no probate proceeding or summary administration procedure has been commenced with respect to the estate.



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(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount paid.

(g) The affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By ...(signature of Affiant)...

Sworn to and subscribed before me this day of by ...(name of Affiant)..., who is personally known to me or produced as identification, and did take an oath.

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...

My commission expires: ...(date of expiration of commission)...

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant



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constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.

(6) The family member who withdraws the funds under this section is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code to the extent the amount paid exceeds the amount properly attributable to the family member's share.

(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.

(8) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.

Section 3. Section 735.304, Florida Statutes, is created to read:

735.304 Disposition without administration of intestate property in small estates.—

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the



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claims of creditors under the State Constitution, and nonexempt
personal property the value of which does not exceed the sum of
\$10,000 and the amount of preferred funeral expenses and
reasonable and necessary medical and hospital expenses of the
last 60 days of the last illness, provided the decedent has been
deceased for more than 1 year and no administration of the
decedent's estate is pending in this state or has been
previously granted.

(2) Any heir at law of the decedent entitled to a share of
the intestate estate pursuant to s. 732.102 or s. 732.103 may by
affidavit request distribution of assets of the decedent through
informal application under this section. The affidavit must be
signed and verified by the surviving spouse, if any, and any
heirs at law, except that joinder in the affidavit is not
required of an heir who will receive a full intestate share
under the proposed distribution of the personal property. Before
the filing of the affidavit, the affiant must make a diligent
search and reasonable inquiry for any known or reasonably
ascertainable creditors, and the proposed distribution must make
provision for payment of those creditors to the extent that
assets are available or the creditors must consent to the
proposed distribution. The affidavit must be served in the
manner of formal notice upon all heirs at law who have not
joined in the affidavit; upon all known or reasonably
ascertainable creditors of the decedent; and, if the decedent at
the time of death was over the age of 55 years of age, upon the
Agency for Health Care Administration.

(3) If the court is satisfied that subsection (1) is
applicable and the affidavit filed by the heir at law meets the



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requirements of subsection (2), the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

(a) Any individual, corporation, or other person paying, transferring, delivering, or assigning personal property under the authorization shall be forever discharged from liability thereon.

(b) Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

(c) Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned shall continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code. Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

(d) Recipients of the decedent's personal property under this section shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive



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of the property exempt from claims of creditors under the State
Constitution and Florida Statutes.

(e) Except as otherwise provided in s. 733.710, after 2
years from the death of the decedent, neither the decedent's
estate nor those to whom it may be distributed shall be liable
for any claim against the decedent, unless within that time
proceedings have been taken for the enforcement of the claim.

(f) Any heir or devisee of the decedent who was lawfully
entitled to share in the estate but who was not included in the
distribution under this section may enforce all rights in
appropriate proceedings against those who signed the affidavit
or received distribution of personal property and, if
successful, shall be awarded costs including reasonable attorney
fees as in chancery actions.

Section 4. This act shall take effect July 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 the disposition of personal
property; amending s. 655.059, F.S.; specifying that a
financial institution is not prohibited from
disclosing specified information and providing copies
of specified affidavits to certain persons relating to
deceased account holders; creating s. 735.303, F.S.;
providing definitions; authorizing a financial
institution to pay funds on deposit in certain



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accounts to a specified family member of a decedent without any court proceeding, order, or judgment under certain circumstances; requiring the family member to provide the financial institution a certified copy of the decedent's death certificate and a specified affidavit in order to receive the funds; providing an affidavit form that the family member may use; providing that the financial institution has no duty to make certain determinations; specifying that a person does not have a right or cause of action against a financial institution for certain actions or for failing to take certain actions; providing liability for the family member who withdraws funds; requiring a financial institution to maintain a copy or image of the affidavit for a specified time; authorizing the financial institution to provide copies of the affidavit to certain persons; providing a criminal penalty; creating s. 735.304, F.S.; providing that estates of certain decedents are not subject to probate administration if certain conditions are met; providing that specified persons may request distribution of a decedent's assets by affidavit filed with a court under certain circumstances; providing requirements for content of the affidavit and service of the affidavit on specified persons; requiring certain actions relating to the decedent's creditors; authorizing the court to approve the affidavit and payment of personal property under certain circumstances; providing that bona fide



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purchasers of personal property take the property free
of certain claims and rights; providing for liability
against certain personal property for a specified
time; providing for liability of recipients of the
decedent's personal property under certain
circumstances; providing a limitation on liability of
the decedent's estate and recipients of the estate
under certain circumstances; providing for the award
of costs and reasonable attorney fees under certain
circumstances; providing an effective date.

By Senator Baxley

12-00606-20

2020380__

1 A bill to be entitled
 2 An act relating to bank property of deceased account
 3 holders; amending s. 655.059, F.S.; specifying that a
 4 financial institution is not prohibited from
 5 disclosing specified information to certain persons
 6 relating to deceased account holders; creating s.
 7 655.795, F.S.; defining terms; authorizing a financial
 8 institution to pay to the authorized family member of
 9 a decedent depositor, without any court proceeding,
 10 order, or judgment authorizing the payment and not
 11 earlier than a specified time, the funds in the
 12 decedent's qualified accounts if the sum does not
 13 exceed a specified amount; requiring the authorized
 14 family member to provide the financial institution
 15 with a certified copy of the decedent's death
 16 certificate and a specified affidavit in order to
 17 receive the funds; providing an affidavit form the
 18 authorized family member may use; providing that the
 19 financial institution does not have a duty to make
 20 certain determinations; specifying that a person does
 21 not have a right or cause of action against a
 22 financial institution for certain actions or for
 23 failing to take certain actions; providing that an
 24 authorized family member who withdraws funds is
 25 personally liable to certain persons if the amount
 26 paid exceeds his or her share; requiring a financial
 27 institution to maintain a copy or image of the
 28 affidavit for a specified time period; authorizing the
 29 financial institution to provide copies of the

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30 affidavit to certain persons; authorizing a financial
 31 institution to release certain information on bank
 32 accounts under certain circumstances; providing a
 33 criminal penalty; providing an effective date.
 34
 35 Be It Enacted by the Legislature of the State of Florida:
 36
 37 Section 1. Paragraph (b) of subsection (2) of section
 38 655.059, Florida Statutes, is amended to read:
 39 655.059 Access to books and records; confidentiality;
 40 penalty for disclosure.—
 41 (2)
 42 (b) The books and records pertaining to trust accounts and
 43 the deposit accounts and loans of depositors, borrowers,
 44 members, and stockholders of any financial institution shall be
 45 kept confidential by the financial institution and its
 46 directors, officers, and employees and may not be released
 47 except upon express authorization of the account holder as to
 48 her or his own accounts, loans, or voting rights. However,
 49 information relating to any loan made by a financial institution
 50 may be released without the borrower's authorization in a manner
 51 prescribed by the board of directors for the purpose of meeting
 52 the needs of commerce and for fair and accurate credit
 53 information. Information may also be released, without the
 54 authorization of a member or depositor but in a manner
 55 prescribed by the board of directors, to verify or corroborate
 56 the existence or amount of a customer's or member's account when
 57 such information is reasonably provided to meet the needs of
 58 commerce and to ensure accurate credit information. In addition,

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a financial institution, affiliate, and its subsidiaries, and any holding company of the financial institution or subsidiary of such holding company, may furnish to one another information relating to their customers or members, subject to the requirement that each corporation receiving information that is confidential maintain the confidentiality of such information and not provide or disclose such information to any unaffiliated person or entity. Notwithstanding this paragraph, this subsection does not prohibit:

1. A financial institution from disclosing financial information as referenced in this subsection as authorized by Pub. L. No. 106-102 (1999), as set forth in 15 U.S.C.A. s. 6802, as amended.

2. The Florida office of the international banking corporation or international trust entity from sharing books and records under this subsection with the home-country supervisor in accordance with subsection (1).

3. A financial institution from disclosing, pursuant to s. 655.795, the existence of and amounts on deposit in any qualified accounts of a decedent, and providing a copy of any affidavit delivered to the financial institution pursuant thereto, to persons authorized to receive such information under s. 655.795.

Section 2. Section 655.795, Florida Statutes, is created to read:

655.795 Payment to successor without court proceedings.-

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

(a) "Authorized family member" means:

1. The surviving spouse of the decedent;

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2. If the decedent did not leave a surviving spouse, an adult child of the decedent;

3. If the decedent did not leave a surviving spouse or a surviving adult child, an adult descendant of the decedent; or

4. If the decedent did not leave a surviving spouse, an adult child, or an adult descendant, the parent of the decedent.

(b) "Family members of the decedent" means:

1. The surviving spouse of the decedent;

2. If there is no surviving spouse or if any of the children of the decedent are not also children of the surviving spouse, the living children of the decedent and the living descendants of any deceased child of the decedent; or

3. If there is no surviving spouse or living descendants of the decedent, the living parents of the decedent.

(c) "Qualified account" means a depository account or certificate of deposit held in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the authorized family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution, if the total amount of the combined funds in the qualified accounts at that financial institution does not exceed \$10,000. The financial institution may not make such payment earlier than 2 years after the date of the decedent's death.

(3) In order to receive the funds, the authorized family member must provide the financial institution with a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

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(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse or adult children.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, adult children, or adult descendants.

(b) The date of death and the address of the last residence of the decedent.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent with any financial institution known to the affiant does not exceed \$10,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and stating that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement identifying the name of each of the family members of the decedent and attesting that the notarized written consent of each other family member of the decedent is attached. The natural parent or guardian of any person who is a minor may give consent on behalf of such person.

(f) A statement acknowledging that the affiant does not have knowledge of the existence of any last will and testament

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or other document or agreement relating to the distribution of the estate of the decedent.

(g) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(h) A statement acknowledging that the affiant understands that he or she is personally liable to the persons rightfully entitled to the funds under the Florida Probate Code, to the extent that the amount paid exceeds the amount properly attributable to the affiant's share.

(i) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The authorized family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN
BANK PROPERTY OF DECEASED ACCOUNT HOLDER: ... (Name of
decedent)...

State of

County of

Before the undersigned authority personally appeared ... (name of affiant) ..., of ... (residential address of affiant) ..., who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

.... The surviving spouse of the decedent.

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175 A surviving adult child of the decedent, and the
 176 decedent left no surviving spouse.
 177 A surviving adult descendent of the decedent, and the
 178 decedent left no surviving spouse and no surviving adult
 179 children.
 180 A surviving parent of the decedent, and the decedent
 181 left no surviving spouse, no surviving adult children, and no
 182 surviving adult descendant.
 183 (b) As shown in the certified death certificate, the date
 184 of death of the decedent was ...(date of death)... and the
 185 address of the decedent's last residence was ...(address of last
 186 residence)....
 187 (c) The affiant is entitled to payment of the funds in the
 188 decedent's depository accounts and certificates of deposit held
 189 by the financial institution ...(name of financial
 190 institution).... The total of qualified accounts held by the
 191 decedent in all financial institutions known to the affiant does
 192 not exceed an aggregate total of \$10,000. The affiant requests
 193 full payment from the financial institution.
 194 (d) A personal representative has not been appointed to
 195 administer the decedent's estate and no probate proceeding or
 196 summary administration procedure has been commenced with respect
 197 to the estate.
 198 (e) The affiant has been provided with and has read s.
 199 655.795, Florida Statutes, and (initial one of the following
 200 responses):
 201 There are no family members of the decedent other than
 202 affiant.
 203 The family members of the decedent are ...(identify by

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204 name).... Notarized letters from all of the family members of
 205 the decedent other than the affiant consenting to the affiant's
 206 funds withdrawal are attached.
 207 (f) The affiant does not have knowledge of any last will
 208 and testament or other document or agreement relating to the
 209 distribution of the decedent's estate.
 210 (g) The payment of the funds constitutes a full release and
 211 discharge of the financial institution for the amount paid.
 212 (h) The affiant understands that he or she is personally
 213 liable to the persons rightfully entitled to the funds under the
 214 Florida Probate Code, to the extent that the amount paid exceeds
 215 the amount properly attributable to the affiant's share.
 216 (i) The affiant understands that making a false statement
 217 in this affidavit may be punishable as a criminal offense.
 218
 219 By ...(signature of affiant)...
 220
 221 Sworn to and subscribed before me this day of
 222 by ...(name of affiant)...., who is personally
 223 known to me or produced as identification, and
 224 did take an oath.
 225
 226 ...(Signature of Notary Public - State of Florida)...
 227 ...(Print, Type, or Stamp Commissioned Name of Notary
 228 Public)...
 229 My commission expires: ...(date of expiration of
 230 commission)...
 231 (5) The financial institution is not required to determine
 232 whether the contents of the sworn affidavit are truthful. The

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233 payment of the funds by the financial institution to the affiant
 234 constitutes the financial institution's full release and
 235 discharge for the amount paid. A person does not have a right or
 236 cause of action against the financial institution for taking any
 237 action, or for failing to take any action, in connection with
 238 the affidavit or the payment of the funds.

239 (6) An authorized family member who withdraws funds
 240 pursuant to this section is personally liable to any persons
 241 rightfully entitled to the funds under the Florida Probate Code
 242 to the extent that the amount paid exceeds the amount properly
 243 attributable to the authorized family member's share.

244 (7) The financial institution shall maintain a copy or an
 245 image of the affidavit for a period of 7 years after releasing
 246 the funds. If a family member of the decedent requests a copy of
 247 the affidavit during such time, the financial institution may
 248 provide a copy of the affidavit to the requesting family member
 249 of the decedent.

250 (8) Upon presentation of a decedent's death certificate to
 251 a financial institution not less than 2 years after the date of
 252 death of the decedent, the financial institution may release the
 253 existence of and amounts contained in any qualified account of
 254 the decedent at the financial institution to either of the
 255 following persons:

256 (a) A surviving spouse who presents a copy of a marriage
 257 certificate evidencing the spouse's marriage to the decedent.

258 (b) An adult child of the decedent who presents a copy of a
 259 birth certificate evidencing that the decedent is the parent of
 260 the adult child.

261 (9) In addition to any other penalty provided by law, a

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262 person who knowingly makes a false statement in a sworn
 263 affidavit given to a financial institution to receive a
 264 decedent's funds under this section commits theft, punishable as
 265 provided in s. 812.014.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20

Meeting Date

380

Bill Number (if applicable)

190298

Amendment Barcode (if applicable)

Topic Bank Property of Deceased Account Holders

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Street

Phone 850-509-8020

Tallahassee

City

FL

State

32301

Zip

Email kpratt@floridabankers.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Bankers 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)

2/11/20

Meeting Date

388

Bill Number (if applicable)

Topic Bank Property of Deceased Account Holders

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Street

Phone 850-509-8020

Tallahassee

City

FL

State

32301

Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers 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)

2.11.20

Meeting Date

380

Bill Number (if applicable)

Topic small accounts

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 124 W. Jefferson St.

Phone 222-9075

Street

Tallahassee FL 32307

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Southeastern Credit Unions

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.

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 478

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.	Arnold	Knudson	BI	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 478 amends s. 212.0606, F.S., which subjects the lease or rental of a motor vehicle to a rental car surcharge. The bill defines a motor vehicle rental company and a peer-to-peer car-sharing program, in part, as an entity or a business platform and requires them to collect the rental car surcharge.

The bill creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car-sharing programs. This includes establishing definitions and requirements for: insurance coverage requirements, insurable interest, liability, exclusions from liability, contribution against indemnification, construction, notification of implications of a lien, recordkeeping, and consumer protections including disclosures, driver license verification and retention, responsibility for equipment, and automobile safety recalls.

II. Present Situation:

Motor Vehicle Rentals

Section 322.38, F.S., provides driver license-related requirements for renting a motor vehicle to another person. A person may not rent a motor vehicle to any other person unless the other person is duly licensed in Florida or, if a nonresident, is licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not

require that an operator be licensed. Prior to the rental, the rentee must inspect the driver license of the person to whom the vehicle is to be rented and verify that the driver license is unexpired.

Every person renting a motor vehicle to another is required to keep a record of the registration number of the motor vehicle, the name and address of the person to whom the vehicle is rented, the number of the license of the renter, and the place where the license was issued. The record must be open to inspection by any police officer, or officer or employee of the department.

If a rental car company rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the above obligations when the rental car company, at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services, or any time thereafter, requires the renter to verify that he or she is duly licensed and that the license is unexpired.

Minimum Insurance Requirements for Motor Vehicle Rentals

Section 324.021, F.S., provides minimum insurance requirements, including requirements applicable to rental vehicles. The lessor under an agreement to rent or lease a motor vehicle for a period of less than 1 year is deemed to be the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor is liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages is to be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.

Motor Vehicle Rental Surcharges

The lease or rental of tangible personal property, including vehicles, is taxable.¹ When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of 6 percent² of the gross proceeds derived from the lease or rental.³ A "lease or rental" is defined as the leasing or renting of tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of title.⁴ The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.⁵

¹ Section 212.05(1), F.S.

² Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. See s. 212.054, F.S.

³ Section 212.05(1)(c), F.S.

⁴ Section 212.02(10)(g), F.S.

⁵ Rule 12A-1.007(13)(a)1, F.A.C.

Rule 12A-16.002(7), F.A.C., provides in pertinent part that “any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement...and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction.” The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

Florida law imposes a surcharge⁶ of \$2.00 per day, or any part of a day, upon the lease or rental of a “motor vehicle licensed for hire”⁷ and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.⁸ The surcharge applies to the first 30 days of the term of any lease or rental.⁹ Pursuant to Rule 12A-16.002(1)(b), F.A.C., “[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement.” The term “person” includes “any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit....”¹⁰ The term “business” is defined to mean “any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect.”¹¹

The \$2.00 surcharge does not apply to rentals by a member of a car-sharing service when the motor vehicle is used for less than 24 hours.¹² Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a \$1.00 surcharge, per usage.¹³ The term “car-sharing service” means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, 7 days per week;
- Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;
- On an hourly basis or for a shorter increment of time;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.¹⁴

⁶ The rental car surcharge is subject to sales and use tax. See s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.

⁷ The term “for hire passenger motor vehicle” means any automobile designed to carry fewer than nine (9) passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term “for hire passenger motor vehicle” does not include any motorcycle, moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. See Rule 12A-16.002(2)(c), F.A.C.

⁸ Section 212.0606(1), F.S.

⁹ *Id.*

¹⁰ Section 212.02(12), F.S.

¹¹ Section 212.02(2), F.S.

¹² Rule 12A-16.002(3), F.A.C.

¹³ Section 212.0606(2), F.S.

¹⁴ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 212.0606, F.S., which subjects the lease or rental of a motor vehicle to a rental car surcharge of \$2 per day.

The bill defines:

“Motor vehicle rental company” to mean an entity that is in the business of providing motor vehicles to the public under a rental agreement for financial consideration.

“Peer-to-peer car-sharing program” to mean a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1), F.S.

These entities or business platforms are required to collect the rental car surcharge.

Section 2 creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car sharing programs.

Definitions

The bill provides the following definitions:

- “Peer-to-peer car sharing” means the authorized use of a motor vehicle by an individual other than the vehicle’s owner through a peer-to-peer car-sharing program. The term does not include ridesharing as defined in s. 341.031(9), F.S., a carpool as defined in s. 450.28(3), F.S., or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1), F.S.
- “Peer-to-peer car-sharing delivery period” means the period during which a shared vehicle is delivered to the location of the peer-to-peer car-sharing start time, if applicable, as documented by the governing peer-to-peer car sharing program agreement.
- “Peer-to-peer car-sharing period” means the period beginning either at the peer-to-peer car-sharing delivery period, or, if there is no peer-to-peer car-sharing delivery period, at the peer-to-peer car-sharing start time, and ending at the peer-to-peer car-sharing termination time.
- “Peer-to-peer car-sharing program” means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1), F.S.
- “Peer-to-peer car-sharing program agreement” means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program.
- “Peer-to-peer car-sharing start time” means the time when the shared vehicle is under the control of the shared vehicle driver, which occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the peer-to-peer car-sharing program agreement.
- “Peer-to-peer car-sharing termination time” means the earliest of the following:

- The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car sharing program agreement;
- The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car sharing program; or
- The time the shared vehicle owner takes possession and control of the shared vehicle.
- “Shared vehicle” means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. The term does not include a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., or a motor vehicle used for a carpool as defined in s. 450.28(3), F.S.
- “Shared vehicle driver” means an individual who is authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- “Shared vehicle owner” means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program.

Insurance Requirements, Liability

Insurance Coverage Requirements, Insurable Interest,

A peer-to-peer car-sharing program must have a motor vehicle insurance policy that provides the shared vehicle owner and the shared vehicle driver during each peer-to-peer car-sharing period all of the following:

- Property damage liability coverage in the amount of at least \$10,000 as required under s. 324.022, F.S.;
- Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits in the amount of at least \$10,000¹⁵ for medical and disability benefits and in the amount of at least \$5,000 for death benefits required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits as required under s. 627.727, F.S.

The peer-to-peer car-sharing program must also ensure that the motor vehicle insurance policy:

- Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; and
- Does not exclude the use of a shared vehicle by a shared vehicle driver.

These insurance requirements may be satisfied by a motor vehicle insurance policy maintained by:

¹⁵ Personal injury protection reimbursement medical benefits are limited to \$2,500 if specified medical providers determine the injured person did not have an emergency medical condition.

- A shared vehicle owner;
- A shared vehicle driver;
- A peer-to-peer car-sharing program; or
- A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

A motor vehicle insurance policy maintained by a shared vehicle owner, shared vehicle driver, peer-to-peer car-sharing program, or a combination of a shared vehicle owner, shared vehicle driver, and peer-to-peer car-sharing program, is primary during each peer-to-peer car-sharing period.

If insurance maintained by a shared vehicle owner or shared vehicle driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car-sharing program must provide the required coverage beginning with the first dollar of a claim and must defend such claim, with the exceptions discussed below. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program may not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the peer-to-peer car-sharing period. This interest does not create liability for a network for maintaining the required coverage.

A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;
- Liability of the shared vehicle owner;
- Liability of the shared vehicle driver;
- Damage or loss to the shared motor vehicle; or
- Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

When the required insurance is maintained by a peer-to-peer car-sharing program, the motor vehicle insurance policy may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. A peer-to-peer car-sharing program is not transacting in insurance when it maintains this insurance.

Liability

A peer-to-peer car-sharing program assumes liability, with stated exclusions, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer car-sharing period in

amounts stated in the peer-to-peer car-sharing program agreement. Such amounts may not be less than those set forth in:

- s. 324.021(7)(a) and (b), F.S.: Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- s. 324.022, F.S.: Property damage liability coverage in the amount of at least \$10,000;
- s. 627.727, F.S.: Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits; and
- s. 627.736, F.S.: Personal injury protection benefits in the amount of at least \$10,000 for medical and disability benefits and in the amount of at least \$5,000 for death benefits.

This assumption of liability does not apply if a shared vehicle owner:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the peer-to-peer car-sharing period in which the loss occurs; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

A peer-to-peer car-sharing program assumes primary liability for a claim when it is providing, in whole or in part, the minimal insurance discussed above and:

- A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and
- The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the required rental information.

The shared vehicle owner's insurer must indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

Exclusions

An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

This provision does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, hire, or for any business use.

Contribution Against Indemnification

A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program, if the claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the peer to-peer car-sharing period.

Construction

The bill does not limit:

- The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or
- The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Operational Requirements

Notification of Implications of a Lien

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Recordkeeping

A peer-to-peer car-sharing program must:

- Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.
- Retain these records for a period of not less than the applicable personal injury statute of limitations.
- Provide the information contained in the records upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

Consumer Protections

Disclosures

Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement;

- That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;
- That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;
- That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

Driver License Verification and Retention

A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

- Holds a driver license issued under ch. 322, F.S., which authorizes the driver to drive vehicles of the class of the shared vehicle;
- Is a nonresident who:
 - Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and
 - Is at least the same age as that required of a resident to drive; or
- Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

A peer-to-peer car-sharing program must keep a record of:

- The name and address of the shared vehicle driver;
- The driver license number of the shared vehicle driver and of any other person who will operate the shared vehicle; and
- The place of issuance of the driver license.

Responsibility for Equipment

A peer-to-peer car sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program must indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs outside of the peer-to-peer car-sharing period.

Automobile Safety Recalls

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

- Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and
- Notify the shared vehicle owner that if the shared vehicle owner:
- Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made;
- Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she must remove the shared vehicle's availability on the peer-to-peer car-sharing program as soon as practicable after receiving the notice of the safety recall and until the safety recall repair has been made; or
- Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall so that he or she may address the safety recall repair.

The bill takes effect October 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:

The bill does not appear to impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution, as leases or rented motor vehicles licensed for hire are currently subject to a rental car surcharge under s. 212.0606, F.S. The Florida Constitution defines the term “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”¹⁶ The Florida Constitution defines the term “raise” to mean “to increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis; to

¹⁶ Fla. Const. art. VII, s. 19(d)(1) (2019).

increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or to decrease or eliminate a state tax or fee exemption or credit.”¹⁷ The bill’s inclusion of motor vehicle rental companies and peer-to-peer car-sharing programs as subcategories of motor vehicle lease or rental arrangements currently subject to rental car surcharges, neither imposes a fee on an industry not currently subject to rental car surcharges under the section nor raises a fee on an industry currently subject to rental car surcharges under the section. Accordingly, the bill does not appear to trigger the requirement for a separate bill for the consideration of the rental surcharge provision subject to a 2/3 vote by each chamber of the Legislature.¹⁸

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference analyzed HB 377, which is similar to CS/SB 478, and determined that the bill would increase receipts to the General Revenue Fund and revenues to local governments by an indeterminate amount.¹⁹

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 section 212.0606 of the Florida Statutes.

This bill creates section 627.7483 of the Florida Statutes.

¹⁷ Fla. Const. art. VII, s. 19(d)(2) (2019).

¹⁸ See Fla. Const. art. VII, s. 19(a),(b) (2019).

¹⁹ http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page13-15.pdf

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 Innovation, Industry, and Technology on January 27, 2020:**

The committee substitute:

- Revises the provisions relating to the car rental surcharge;
- Provides that the car-sharing service shall collect the surcharge; and
- Revises and deletes several definitions including revising the definition of peer-to-peer car sharing program.

The committee substitute also revises the insurance coverage requirements. As filed, the bill required the program to insure third parties, vehicle owners, and drivers in the minimum amounts in s. 324.021(7), F.S., which are: in the amount of \$10,000 because of bodily injury to, or death of, one person in one crash; in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in one crash; and in the amount of \$10,000 because of injury to, or destruction of, property of others in any one crash. The committee substitute replaces these requirements with:

- Property damage liability coverage in the minimum coverage amounts in s. 324.022, F.S., which are:
 - At least \$10,000 in one accident; or
 - At least \$30,000 for combined property and bodily injury liability for one crash;
- Bodily injury liability coverage limits under s. 324.021(7)(a) and (b). F.S., which are:
 - In the amount of \$10,000 for bodily injury to, or death of, one person in any one crash; and
 - In the amount of \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736, F.S., which are a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits resulting from bodily injury, sickness, disease, or death; and
- Uninsured and underinsured vehicle coverage under s. 627.727, F.S., which is not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company as may be selected by the named insured.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

212.05 Sales, storage, use tax.—It is hereby declared to be
the legislative intent that every person is exercising a taxable
privilege who engages in the business of selling tangible
personal property at retail in this state, including the



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business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or a peer-to-peer car-sharing program, as those terms are defined in s. 212.0606(1), for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

c. If the motor vehicle is rented by a peer-to-peer car-sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax due in connection with the rental.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no



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tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;



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69 4. On an hourly basis or for a shorter increment of time;
70 5. Without a separate fee for refueling the motor vehicle;
71 6. Without a separate fee for minimum financial
72 responsibility liability insurance; and
73 7. Owned or controlled by the car-sharing service or its
74 affiliates.

75 (b) "Motor vehicle rental company" means an entity that is
76 in the business of providing, for financial consideration, motor
77 vehicles to the public under a rental agreement.

78 (c) "Peer-to-peer car-sharing program" has the same meaning
79 as in s. 627.7483(1).

80 (2) Except as provided in subsection (3) ~~(2)~~, a surcharge
81 of \$2 per day or any part of a day is imposed upon the lease or
82 rental by a motor vehicle rental company or a peer-to-peer car-
83 sharing program of a motor vehicle that is licensed for hire and
84 designed to carry fewer than nine passengers, regardless of
85 whether the motor vehicle is licensed in this state, for
86 financial consideration and without transfer of the title of the
87 motor vehicle. The surcharge is imposed regardless of whether
88 the lease or rental occurs in person or through digital means.
89 The surcharge applies to only the first 30 days of the term of a
90 lease or rental and must be collected by the motor vehicle
91 rental company or the peer-to-peer car-sharing program. The
92 surcharge is subject to all applicable taxes imposed by this
93 chapter.

94 (3) ~~(2)~~ A member of a car-sharing service who uses a motor
95 vehicle as described in subsection (2) ~~(1)~~ for less than 24
96 hours pursuant to an agreement with the car-sharing service
97 shall pay a surcharge of \$1 per usage. A member of a car-sharing



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service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of \$2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates.~~ The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(4) (a) (3) (a) Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and



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4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5) (a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest



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and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6)~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.-

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time



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established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing



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program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that, during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the



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minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a),



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beginning with the first dollar of a claim, and must defend such
claim, except under circumstances as set forth in subparagraph
(3) (a) 2.

b. Coverage under a motor vehicle insurance policy
maintained by the peer-to-peer car-sharing program must not be
dependent on another motor vehicle insurer first denying a
claim, and another motor vehicle insurance policy is not
required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or
regulation to the contrary, a peer-to-peer car-sharing program
has an insurable interest in a shared vehicle during the car-
sharing period. This sub-subparagraph does not create liability
for a peer-to-peer car-sharing program for maintaining the
coverage required under paragraph (a) and under this paragraph,
if applicable.

d. A peer-to-peer car-sharing program may own and maintain
as the named insured one or more policies of motor vehicle
insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing
program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to
satisfy the personal injury protection and uninsured and
underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained
by a peer-to-peer car-sharing program, may be provided by an
insurer authorized to do business in this state which is a



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member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) Liability.—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:



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a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) Vicarious liability.—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) Exclusions in motor vehicle insurance policies.—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.



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This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) Contribution against indemnification.—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a



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shared vehicle, including, but not limited to, the times used,
fees paid by the shared vehicle driver, and revenues received by
the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period
not less than the applicable personal injury statute of
limitations.

(c) Provide the information contained in the records in
paragraph (a) upon request to the shared vehicle owner, the
shared vehicle owner's insurer, or the shared vehicle driver's
insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program
agreement made in this state must disclose to the shared vehicle
owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to
seek indemnification from the shared vehicle owner or the shared
vehicle driver for economic loss resulting from a breach of the
terms and conditions of the peer-to-peer car-sharing program
agreement.

2. That a motor vehicle insurance policy issued to the
shared vehicle owner for the shared vehicle or to the shared
vehicle driver does not provide a defense or indemnification for
any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance
coverage on the shared vehicle owner and the shared vehicle
driver is in effect only during each car-sharing period and
that, for any use of the shared vehicle by the shared vehicle
driver after the car-sharing termination time, the shared
vehicle driver and the shared vehicle owner may not have



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insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the



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class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) Responsibility for equipment.—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) Motor vehicle safety recalls.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared



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vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect March 1, 2021.



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===== 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 motor vehicle rentals; amending s.
212.05, F.S.; specifying the applicable sales tax rate
on motor vehicle leases and rentals by motor vehicle
rental companies and peer-to-peer car-sharing
programs; requiring peer-to-peer car-sharing programs
to collect and remit the applicable sales tax;
amending s. 212.0606, F.S.; defining terms; specifying
the applicable rental car surcharge on motor vehicle
leases and rentals by motor vehicle rental companies
and peer-to-peer car-sharing programs; specifying
applicability of the surcharge; requiring motor
vehicle rental companies and peer-to-peer car-sharing
programs to collect the surcharge; requiring car-
sharing services to collect a certain surcharge;
making technical changes; creating s. 627.7483, F.S.;
defining terms; specifying insurance requirements for
shared vehicle owners and shared vehicle drivers under
peer-to-peer car-sharing programs; providing that a
peer-to-peer car-sharing program has an insurable
interest in a shared vehicle during certain periods;
authorizing peer-to-peer car-sharing programs to own
and maintain certain motor vehicle insurance policies;
requiring peer-to-peer car-sharing programs to assume
certain liability; providing exceptions; requiring a



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shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude coverages and a duty to defend or indemnify claims under a shared vehicle owner's policy; providing construction relating to exclusions; providing a right of contribution to a shared vehicle owner's insurer for certain claims; requiring a peer-to-peer car-sharing program to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping and record sharing, disclosure, and driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.



520364

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (493334)

Delete lines 242 - 248

and insert:

a. Primary motor vehicle liability coverage of at least \$1 million for death, bodily injury, and property damage.

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.

c. Uninsured and underinsured vehicle coverage as required



834662

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (493334) (with title amendment)

Delete lines 341 - 345
and insert:

(b) Vicarious liability.—A shared vehicle owner is limited in vicarious liability pursuant to s. 324.021(9)(b)3. This paragraph may not be construed to affect the liability of the shared vehicle owner for his or her own negligence.



834662

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

12 And the title is amended as follows:

13 Delete lines 535 - 537

14 and insert:

15 circumstances; specifying a limitation on vicarious
16 liability of a shared vehicle owner; providing
17 construction relating to liability; authorizing motor
18 vehicle



272308

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 216 - 222
and insert:

a. Primary motor vehicle liability coverage of at least \$1 million for death, bodily injury, and property damage.

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.

c. Uninsured and underinsured vehicle coverage as required

By the Committee on Innovation, Industry, and Technology; and
Senator Perry

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1 A bill to be entitled
2 An act relating to motor vehicle rentals; amending s.
3 212.0606, F.S.; defining the terms "motor vehicle
4 rental company" and "peer-to-peer car-sharing
5 program"; revising the applicability of the rental car
6 surcharge; imposing the surcharge on certain motor
7 vehicle leases or rentals by a peer-to-peer car-
8 sharing program; specifying who must collect the
9 surcharge; making technical changes; creating s.
10 627.7483, F.S.; defining terms; specifying motor
11 vehicle insurance requirements for shared vehicles on
12 a peer-to-peer car-sharing program; providing
13 construction relating to such insurance; requiring a
14 peer-to-peer car-sharing program to assume specified
15 liability of a shared vehicle owner; providing
16 exceptions; requiring a shared vehicle owner's insurer
17 to indemnify the peer-to-peer car-sharing program
18 under certain circumstances; authorizing a shared
19 vehicle owner's motor vehicle insurer to exclude
20 certain coverages and the duty to defend or indemnify
21 certain claims; authorizing such insurer to seek
22 contribution against the peer-to-peer car-sharing
23 program's insurer under certain circumstances;
24 requiring a peer-to-peer car-sharing program to notify
25 the shared vehicle owner of certain lien information;
26 specifying recordkeeping and record disclosure
27 requirements for peer-to-peer car-sharing programs;
28 specifying disclosure requirements for peer-to-peer
29 car-sharing program agreements; specifying shared

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

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30 vehicle driver license requirements; specifying
31 liability for damage to certain equipment in or on a
32 shared vehicle; specifying requirements for peer-to-
33 peer car-sharing programs relating to safety recalls
34 on shared vehicles; providing construction; providing
35 an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Section 212.0606, Florida Statutes, is amended
40 to read:

41 212.0606 Rental car surcharge.—

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

43 (a) "Car-sharing service" means a membership-based
44 organization or business, or division thereof, which requires
45 the payment of an application fee or a membership fee and
46 provides member access to motor vehicles;

47 1. Only at locations that are not staffed by car-sharing
48 service personnel employed solely for the purpose of interacting
49 with car-sharing service members;

50 2. Twenty-four hours per day, 7 days per week;

51 3. Only through automated means, including, but not limited
52 to, a smartphone application or an electronic membership card;

53 4. On an hourly basis or for a shorter increment of time;

54 5. Without a separate fee for refueling the motor vehicle;

55 6. Without a separate fee for minimum financial
56 responsibility liability insurance; and

57 7. Owned or controlled by the car-sharing service or its
58 affiliates.

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

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(b) "Motor vehicle rental company" means an entity that is in the business of providing motor vehicles to the public under a rental agreement for financial consideration.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsection (3) ~~(2)~~, a surcharge of \$2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company or a peer-to-peer car-sharing program of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company or the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24 hours pursuant to an agreement with the car-sharing service shall pay a surcharge of \$1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of \$2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an~~

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~~application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial~~

~~responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates.~~ The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(4) ~~(3)~~ (a) Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department

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shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5) (a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6) ~~(5)~~ The surcharge imposed by this section does not apply

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to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 2. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing.—

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

(a) "Peer-to-peer car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include ridesharing as defined in s. 341.031(9), a carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(b) "Peer-to-peer car-sharing delivery period" means the period during which a shared vehicle is delivered to the location of the peer-to-peer car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(c) "Peer-to-peer car-sharing period" means the period beginning either at the peer-to-peer car-sharing delivery period, or, if there is no peer-to-peer car-sharing delivery period, at the peer-to-peer car-sharing start time, and ending at the peer-to-peer car-sharing termination time.

(d) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1).

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(e) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program.

(f) "Peer-to-peer car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the peer-to-peer car-sharing program agreement.

(g) "Peer-to-peer car-sharing termination time" means the earliest of the following:

1. The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner takes possession and control of the shared vehicle.

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. The term does not include a motor vehicle used for ridesharing as defined in s. 341.031(9) or a motor vehicle used for a carpool as defined in s. 450.28(3).

(i) "Shared vehicle driver" means an individual who is

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authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program.

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure during each peer-to-peer car-sharing period that the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as specified in s. 324.021(7) (a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; and

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance requirements under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

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233 a. A shared vehicle owner;
 234 b. A shared vehicle driver;
 235 c. A peer-to-peer car-sharing program; or
 236 d. A combination of a shared vehicle owner, a shared
 237 vehicle driver, and a peer-to-peer car-sharing program.
 238 2. The insurance policy maintained in subparagraph 1. which
 239 satisfies the insurance requirements under paragraph (a) is
 240 primary during each peer-to-peer car-sharing period.
 241 3.a. If the insurance maintained by a shared vehicle owner
 242 or shared vehicle driver in accordance with subparagraph 1.
 243 lapses or does not provide the coverage required under paragraph
 244 (a), the insurance maintained by the peer-to-peer car-sharing
 245 program must provide the coverage required under paragraph (a)
 246 beginning with the first dollar of a claim and must defend such
 247 claim, except under circumstances as set forth in subparagraph
 248 (3)(a)2.
 249 b. Coverage under a motor vehicle insurance policy
 250 maintained by the peer-to-peer car-sharing program may not be
 251 dependent on another motor vehicle insurer first denying a
 252 claim, and another motor vehicle insurance policy is not
 253 required to first deny a claim.
 254 c. Notwithstanding any other law to the contrary, a peer-
 255 to-peer car-sharing program has an insurable interest in a
 256 shared vehicle during the peer-to-peer car-sharing period. This
 257 sub-subparagraph does not create liability for a network for
 258 maintaining the coverage required under paragraph (a) and under
 259 this paragraph, if applicable.
 260 d. A peer-to-peer car-sharing program may own and maintain
 261 as the named insured one or more policies of motor vehicle

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262 insurance which provide coverage for:
 263 (I) Liabilities assumed by the peer-to-peer car-sharing
 264 program under a peer-to-peer car-sharing program agreement;
 265 (II) Liability of the shared vehicle owner;
 266 (III) Liability of the shared vehicle driver;
 267 (IV) Damage or loss to the shared motor vehicle; or
 268 (V) Damage, loss, or injury to persons or property to
 269 satisfy the personal injury protection and uninsured and
 270 underinsured motorist coverage requirements of this section.
 271 e. Insurance required under paragraph (a), when maintained
 272 by a peer-to-peer car-sharing program, may be provided by an
 273 insurer authorized to do business in this state which is a
 274 member of the Florida Insurance Guaranty Association or by an
 275 eligible surplus lines insurer that has a superior, excellent,
 276 exceptional, or equivalent financial strength rating by a rating
 277 agency acceptable to the office. A peer-to-peer car-sharing
 278 program is not transacting in insurance when it maintains the
 279 insurance required under this section.
 280 (3) LIABILITIES AND INSURANCE EXCLUSIONS.-
 281 (a) Liability.-
 282 1. A peer-to-peer car-sharing program shall assume
 283 liability, except as provided in subparagraph 2., of a shared
 284 vehicle owner for bodily injury or property damage to third
 285 parties or uninsured and underinsured motorist or personal
 286 injury protection losses during the peer-to-peer car-sharing
 287 period in amounts stated in the peer-to-peer car-sharing program
 288 agreement. Such amounts may not be less than those set forth in
 289 ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736,
 290 respectively.

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291 2. The assumption of liability under subparagraph 1. does
 292 not apply if a shared vehicle owner:
 293 a. Makes an intentional or fraudulent material
 294 misrepresentation or omission to the peer-to-peer car-sharing
 295 program before the peer-to-peer car-sharing period in which the
 296 loss occurs; or
 297 b. Acts in concert with a shared vehicle driver who fails
 298 to return the shared vehicle pursuant to the terms of the peer-
 299 to-peer car-sharing program agreement.
 300 3. A peer-to-peer car-sharing program shall assume primary
 301 liability for a claim when it is providing, in whole or in part,
 302 the insurance required under paragraph (2) (a) and:
 303 a. A dispute exists as to who was in control of the shared
 304 motor vehicle at the time of the loss; and
 305 b. The peer-to-peer car-sharing program does not have
 306 available, did not retain, or fails to provide the information
 307 required under subsection (5).
 308
 309 The shared vehicle owner's insurer shall indemnify the peer-to-
 310 peer car-sharing program to the extent of the insurer's
 311 obligation, if any, under the applicable insurance policy if it
 312 is determined that the shared vehicle owner was in control of
 313 the shared motor vehicle at the time of the loss.
 314 (b) Exclusions in motor vehicle insurance policies.—An
 315 authorized insurer that writes motor vehicle liability insurance
 316 in this state may exclude any coverage and the duty to defend or
 317 indemnify for any claim afforded under a shared vehicle owner's
 318 motor vehicle insurance policy, including, but not limited to:
 319 1. Liability coverage for bodily injury and property

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320 damage;
 321 2. Personal injury protection coverage;
 322 3. Uninsured and underinsured motorist coverage;
 323 4. Medical payments coverage;
 324 5. Comprehensive physical damage coverage; and
 325 6. Collision physical damage coverage.
 326
 327 This paragraph does not invalidate or limit any exclusion
 328 contained in a motor vehicle insurance policy, including any
 329 insurance policy in use or approved for use which excludes
 330 coverage for motor vehicles made available for rent, sharing, or
 331 hire or for any business use.
 332 (c) Contribution against indemnification.—A shared vehicle
 333 owner's motor vehicle insurer that defends or indemnifies a
 334 claim against a shared vehicle which is excluded under the terms
 335 of its policy has the right to seek contribution against the
 336 motor vehicle insurer of the peer-to-peer car-sharing program if
 337 the claim is made against the shared vehicle owner or the shared
 338 vehicle driver for loss or injury that occurs during the peer-
 339 to-peer car-sharing period.
 340 (4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a
 341 motor vehicle owner registers as a shared vehicle owner on a
 342 peer-to-peer car-sharing program and before the shared vehicle
 343 owner may make a shared vehicle available for peer-to-peer car
 344 sharing on the peer-to-peer car-sharing program, the peer-to-
 345 peer car-sharing program must notify the shared vehicle owner
 346 that, if the shared vehicle has a lien against it, the use of
 347 the shared vehicle through a peer-to-peer car-sharing program,
 348 including the use without physical damage coverage, may violate

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the terms of the contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a period of not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records under paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) Disclosures.—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing

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period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) Driver license verification and data retention.—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a

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407 resident to drive; or

408 c. Is otherwise specifically authorized by the Department
 409 of Highway Safety and Motor Vehicles to drive vehicles of the
 410 class of the shared vehicle.

411 2. A peer-to-peer car-sharing program shall keep a record
 412 of:

413 a. The name and address of the shared vehicle driver;
 414 b. The driver license number of the shared vehicle driver
 415 and of any other person who will operate the shared vehicle; and
 416 c. The place of issuance of the driver license.

417 (c) Responsibility for equipment.—A peer-to-peer car-
 418 sharing program has sole responsibility for any equipment that
 419 is put in or on the shared vehicle to monitor or facilitate the
 420 peer-to-peer car-sharing transaction, including a GPS system.
 421 The peer-to-peer car-sharing program shall indemnify and hold
 422 harmless the shared vehicle owner for any damage to or theft of
 423 such equipment during the peer-to-peer car-sharing period which
 424 is not caused by the shared vehicle owner. The peer-to-peer car-
 425 sharing program may seek indemnity from the shared vehicle
 426 driver for any damage to or loss of such equipment which occurs
 427 outside of the peer-to-peer car-sharing period.

428 (d) Motor vehicle safety recalls.—At the time a motor
 429 vehicle owner registers as a shared vehicle owner on a peer-to-
 430 peer car-sharing program and before the shared vehicle owner may
 431 make a shared vehicle available for peer-to-peer car sharing on
 432 the peer-to-peer car-sharing program, the peer-to-peer car-
 433 sharing program must:

434 1. Verify that the shared vehicle does not have any safety
 435 recalls on the vehicle for which the repairs have not been made;

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436 and

437 2. Notify the shared vehicle owner that if the shared
 438 vehicle owner:

439 a. Has received an actual notice of a safety recall on the
 440 vehicle, he or she may not make a vehicle available as a shared
 441 vehicle on the peer-to-peer car-sharing program until the safety
 442 recall repair has been made.

443 b. Receives an actual notice of a safety recall on a shared
 444 vehicle while the shared vehicle is made available on the peer-
 445 to-peer car-sharing program, he or she must remove the shared
 446 vehicle's availability on the peer-to-peer car-sharing program
 447 as soon as practicable after receiving the notice of the safety
 448 recall and until the safety recall repair has been made.

449 c. Receives an actual notice of a safety recall while the
 450 shared vehicle is in the possession of a shared vehicle driver,
 451 he or she must notify the peer-to-peer car-sharing program about
 452 the safety recall as soon as practicably possible after
 453 receiving the notice of the safety recall so that he or she may
 454 address the safety recall repair.

455 (7) CONSTRUCTION.—This section does not limit:

456 (a) The liability of a peer-to-peer car-sharing program for
 457 any act or omission of the peer-to-peer car-sharing program
 458 which results in the bodily injury to a person as a result of
 459 the use of a shared vehicle through peer-to-peer car sharing; or

460 (b) The ability of a peer-to-peer car-sharing program to
 461 seek by contract indemnification from the shared vehicle owner
 462 or the shared vehicle driver for economic loss resulting from a
 463 breach of the terms and conditions of the peer-to-peer car-
 464 sharing program agreement.

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465

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



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #478**, relating to Motor Vehicle Rentals, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 792

INTRODUCER: Banking and Insurance Committee; Health Policy Committee; and Senators Albritton and Harrell

SUBJECT: Physical Therapy

DATE: February 11, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	Johnson	Knudson	BI	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 792 amends several provisions within the Physical Therapy Practice Act. The bill amends the definition of “physical therapy assessment” to alter the purpose of such assessments and the definition of “practice of physical therapy” to add modalities of treatment while removing provisions relating to a physical therapist’s performance of acupuncture, along with related restrictions and the Board of Medicine’s oversight of the criteria for such acupuncture. The bill adds definitions of “dry needling” and “myofascial trigger point.”

The bill excludes acupuncture from the practice of physical therapy. The bill requires the Board of Physical Therapy Practice (Board) to establish minimum standards of practice for physical therapy relating to dry needling with specific requirements to be included.

The bill has an effective date of July 1, 2020.

II. Present Situation:

The Practice of Physical Therapy in Florida

The Physical Therapy Practice Act is codified in ch. 486, F.S. Licensed physical therapists (PT) are regulated by the Board within the Department of Health (DOH).¹ A PT must practice physical therapy in accordance with the provisions of the practice act and Board rules.² Currently, 17,403 PTs hold active Florida licenses.³

The practice of physical therapy includes:

- The performance of physical therapy assessments;
- The treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease, or other condition of health, and rehabilitation as related thereto, by the use of:
 - The physical, chemical, and other properties of air;
 - Electricity;
 - Exercise;
 - Massage;
 - The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine⁴ when no penetration of the skin occurs;
 - Radiant energy, including ultraviolet, visible, and infrared rays;
 - Ultrasound;
 - Water; and
 - Apparatus and equipment as they relate to the application of the above;
- The performance of tests of neuromuscular functions to aid in the diagnosis or treatment of any human condition; or
- The performance of electromyography to aid in the diagnosis of any human condition only upon compliance with criteria set forth by the Board of Medicine.⁵

To be eligible for licensure as a PT, an applicant must:

- Be 18 years of age;
- Be of good moral character; and
- Satisfy the following educational requirements:
 - Have graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education at the time of her or his graduation and have passed, to the satisfaction of the Board, the American Registry Examination prior to 1971 or a national

¹ Section 486.023, F.S.

² Sections 486.031 and 486.102, F.S.

³ Number of active Florida licenses was calculated by adding “In State Active” practitioners and “Out of State Active” practitioners, and “Active Military” practitioners. See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2018-2019: Table 1 Summary of Licensed Practitioners*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/index.html> (last visited Jan. 16, 2020).

⁴ See s. 458.307, F.S., and <https://flboardofmedicine.gov/> (last visited Jan. 16, 2020)

⁵ Section 486.021(11), F.S.

- examination approved by the Board to determine her or his fitness for practice as a physical therapist;
- Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the Board, and have passed to the satisfaction of the Board an examination to determine her or his fitness for practice as a physical therapist; or
- Be entitled to licensure without examination.⁶

The Board of Physical Therapy Practice

The Board is composed of seven members appointed by the Governor and subject to confirmation by the Senate. Five Board members must be licensed PTs in good standing who are residents of this state and who have been engaged in the practice of physical therapy for at least 4 years immediately prior to their appointment. One licensed PT Board member may be a full-time faculty member teaching in a physical therapy curriculum in an educational institution in this state. The two remaining members must be residents of this state who have never been licensed health care practitioners.⁷

The Board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties, establish or modify minimum standards of practice, and adopt rules to implement the provisions of ch. 486, F.S. The Board may also review the standing and reputability of any school or college that offers courses in physical therapy and whether the courses of such school or college meet the standards established by the appropriate accrediting agency. In determining the standing and reputability of any such school and whether the school and courses meet the standards, the Board may investigate and make a personal inspection.⁸

Physical Therapy Scope of Practice

A PT's professional responsibilities include, but are not limited to:

- Interpretation of a practitioner's referral;⁹
- Provision of a patient's initial physical therapy assessment;
- Initial identification and documentation of precautions, special problems, contraindications;
- Development of a treatment plan for a patient including the long- and short-term goals;
- Implementation of or directing implementation of the treatment plan;
- Delegation of appropriate tasks; and
- Reassessment of the patient in reference to goals and, when necessary, modification of the treatment plan.¹⁰

⁶ Section 486.081, F.S.

⁷ Section 486.023, F.S.

⁸ Section 486.025, F.S.

⁹ Under s. 486.021(11)(a), F.S., a health care practitioner licensed under ch. 458, F.S., (medical practice), ch. 459, F.S., (osteopathic medicine), ch. 460, F.S., (chiropractic medicine), ch. 461, F.S., (podiatric medicine), or ch. 466, F.S., (dentistry) and engaged in active practice is eligible to serve as a physical therapy patient's practitioner of record. A practitioner of record or an advanced practice registered nurse may develop a patient's plan of physical therapy treatment and may refer a patient to a PT for such treatment.

¹⁰ Fla. Admin. Code R. 64B17-6.001(3), (2019).

A PT performs a physical therapy assessment for the purpose of making recommendations for treatment. The physical therapy assessment includes observational, verbal, and manual determinations of the function of the musculoskeletal or neuromuscular system relative to physical therapy. The assessment can include, but is not limited to, the following testing:

- Range of motion of a joint;
- Motor power;
- Postural attitudes;
- Biomechanical function;
- Locomotion; and
- Functional abilities.¹¹

Physical Therapy Treatment Plan and Referral for Treatment

A PT may implement a plan of treatment that he or she develops for a patient and may also implement a treatment plan provided for a patient by a practitioner of record or by an advance practice registered nurse.¹² However, a PT must refer a patient to, or consult with, the patient's practitioner of record if a patient's condition is found to be outside the scope of physical therapy.¹³

A PT may implement a treatment plan for a patient without a written order from a practitioner of record. However, if physical therapy treatment is required beyond 30 days for a condition not previously assessed by a patient's practitioner of record, the PT must obtain a review of the treatment plan by a practitioner of record, along with his or her signature on the plan. This requirement for review and signature does not apply if a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the PT is treating that condition.¹⁴

Dry Needling

What is dry needling?

Dry needling, sometimes referred to as trigger point dry needling, is a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points, muscular, and connective tissues for the management of neuromusculoskeletal pain and movement impairments. According to the American Physical Therapy Association, dry needling may be used to treat dysfunctions in skeletal muscle, fascia, and connective tissue, and to diminish persistent peripheral nociceptive input and reduce or restore impairments of body structure and function leading to improved activity and participation.¹⁵

¹¹ Section 486.021(10), F.S.

¹² Section 486.021(11)(a), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ American Physical Therapy Association, *Description of Dry Needling in Clinical Practice: An Educational Resource Paper*, (February 2013) available at <http://www.apta.org/StateIssues/DryNeedling/ClinicalPracticeResourcePaper/> (last visited Jan. 16, 2020).

Recent research has shown that the most common adverse event of dry needling is minor bleeding.¹⁶

Is Dry Needling Within the Scope of Practice of Physical Therapy?

The issue of whether the performance of dry needling should fall within the professional and legal scope of physical therapist practice continues to be a question posed to state regulatory boards, legislatures, and governmental agencies.¹⁷ The laws of 34 states and the District of Columbia permit PTs to perform dry needling.¹⁸ Seven states – California, Florida, Hawaii, New Jersey, New York, Oregon and Washington – prohibit PTs from performing dry needling.¹⁹

III. Effect of Proposed Changes:

Section 1 amends the definition of “physical therapy assessment” in s. 486.021(10), F.S., to provide that an assessment is for the purpose of “physical therapy treatment” instead of for the purpose of “making recommendations for treatment.” The definition is further amended to provide that an assessment relates to the function of the “movement system” instead of the “musculoskeletal or neuromuscular system” and includes motor control and posture as components of the former.

The bill also amends the definition of the “practice of physical therapy” in s. 486.021(11), F.S., to expand the scope of practice by providing that the practice of physical therapy may include alleviating impairments, functional movement limitations, and disabilities by designing, implementing, and modifying treatment interventions through:

- Therapeutic exercise;
- Functional movement training in self-management and in-home, community, or work integration or reintegration;
- Manual therapy;
- Massage;
- Airway clearance techniques;
- Maintaining and restoring integumentary integrity and wound care;
- Physical agents or modalities;
- Mechanical and electrotherapeutic modalities; and
- Patient-related instruction.

The bill does not define any of the terms and concepts listed above.

¹⁶ Brady, S., McEvoy, J., Dommerholt, J., Doody, C.: *Adverse events following trigger point dry needling: a prospective survey of chartered physiotherapists* (August 22, 2014), available at <https://www.ncbi.nlm.nih.gov/pubmed/25125935>.

¹⁷ American Physical Therapy Association, *Dry Needling in Physical Therapy*, (last updated November 7, 2019), available at <http://www.apta.org/StateIssues/DryNeedling/> (last visited Jan. 16, 2020).

¹⁸ American Physical Therapy Association, *State Laws and Regulations Governing Dry Needling Performed by Physical Therapists in the US*, available at http://www.apta.org/uploadedFiles/APTAorg/Advocacy/State/Issues/Dry_Needling/APTADryNeedlingLawsByState.pdf (last visited Jan. 16, 2020). The States that permit dry needling include: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wyoming.

¹⁹ *Id.*

The bill also amends the definition of the “practice of physical therapy” to remove provisions that currently allow for physical therapy treatment by the use of:

- The physical, chemical, and other properties of air;
- Electricity;
- Exercise;
- Massage;
- The performance of acupuncture only upon compliance with criteria set forth by the Board of Medicine when no penetration of the skin occurs;
- Radiant energy, including ultraviolet, visible, and infrared rays;
- Ultrasound; and
- Water.

In several instances, the two lists above (one adding elements and the other removing elements) merely substitute a modality with a similar modality, e.g. when the use of “electricity” is replaced by “electrotherapeutic modalities.” Other elements being added are new to the definition altogether, such as airway clearance techniques and maintaining and restoring integumentary integrity and wound care.

One element in the list of modalities being removed under the bill is accompanied by substantive limitations on how that element may be employed and under what criteria. The bill removes acupuncture as a treatment that PTs may perform, and, in so doing, it also removes the restriction that such acupuncture may be performed only upon compliance with criteria set forth by the Board of Medicine and may not involve penetration of the skin. The bill goes on to specify that the practice of physical therapy does not authorize a PT to practice acupuncture.

The bill defines “dry needling” as a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

The bill further defines “myofascial trigger point” as an irritable section of tissue often associated with palpable taut bands of muscle fibers.

Section 2 amends s. 486.025, F.S., to authorize the Board to establish minimum standards for physical therapy, including, without limitation, standards of practice for the performance of dry needling by PTs, to include, at a minimum:

- Completion of 2 years of practice as a PT;
- Completion of 50 hours of face-to-face continuing education from an accredited entity on the topic of dry needling, which must include a determination by the PT instructor that the PT demonstrates the requisite psychomotor skills to safely perform dry needling;
- Continuing education requirements in all of the following areas:
 - Dry needling theory;
 - Selection and safe handling of needles, other apparatus, and equipment used in dry needling, including the proper handling of biohazardous waste;
 - Indications and contraindications for dry needling;
 - Psychomotor skills needed to perform dry needling;

- Post intervention care, including:
 - Adverse responses;
 - Adverse event recordkeeping; and
 - Reporting obligations.
- Completion of 25 patient sessions of dry needling performed:
 - Under the indirect supervision of a PT actively licensed to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least 1 year; or
 - As a PT licensed in another state or in the United States Armed Forces.
- A requirement that dry needling may not be performed without patient consent, and patient consent must be part of the patient's documented care plan; and
- A requirement that dry needling may not be delegated to any person other than a PT who is authorized to engage in dry needling under Florida law.

The bill expands the scope of practice for physical therapy, since dry needling is not currently a treatment that PTs may perform. The bill gives no oversight to the Board of Medicine for physical therapists who perform dry needling the way current law provides for a PT's performance of acupuncture, which may be performed by a PT under current law only when no penetration of the skin occurs.

The bill further provides that the performance of dry needling in the practice of physical therapy under ch. 486, F.S., may not be construed to limit the scope of practice of any other licensed health care practitioners.

Section 3 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The expansion of the scope of practice for physical therapists could provide new avenues through which their services might be more in demand.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not address the following:

- What constitutes the “psychomotor skills” that a PT must demonstrate to a PT instructor to safely perform dry needling;
- The definition of “indirect supervision” as used in the mandatory, minimum requirement that a PT complete 25 patient sessions of dry needling under the indirect supervision of a PT licensed in any state who has actively practiced dry needling for at least 1 year;
- The method or procedure the DOH is to follow to designate, certify or license, and track, a PT who has, or has not, met the minimum standards set by the Board to perform dry needling, to protect the public from PT’s who may be performing dry needling without meeting the minimum standards;
- Whether or not any of the 50 required face-to-face continuing education hours, from a college or university accredited by an accrediting agency approved by the United States Department of Education, may be counted toward the 24 hours of continuing education required for biennial license renewal under current law; and
- Whether or not, once a PT has initially demonstrated that he or she has satisfied the minimum required standards set by the Board to perform dry needling, any re-evaluation or further continuing education credits are require to maintain his or her status as a PT competent to perform dry needling.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 486.021 and 486.025.

IX. Additional Information:

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

CS/CS by Banking and Insurance on February 11, 2020:

The CS limits PT rehabilitation for a disability, injury, disease, or other health condition by alleviating impairments, to:

- Movement limitations, rather than functional, and modifying treatment interventions through therapeutic exercise;
- Functional movement training in self-management, rather than all functional training in self-care; and
- Removes the term “therapeutic” as a modifier for massage.

CS by Health Policy on January 21, 2020:

The CS:

- Defines “dry needling” and “myofascial trigger point”;
- Requires the Board to make rules to establish minimal standards of practice for providing dry needling and specifies certain items that those standards must include at a minimum; and
- Specifically excludes acupuncture from the practice of physical therapy.

- B. **Amendments:**

None.



175922

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 33 - 36
and insert:
movement limitations, and disabilities by designing,
implementing, and modifying treatment interventions through
therapeutic exercise; functional movement training in self-
management and in-home, community, or work integration or
reintegration; manual therapy;

By the Committee on Health Policy; and Senators Albritton and Harrell

588-02403-20

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A bill to be entitled

An act relating to physical therapy practice; amending s. 486.021, F.S.; revising and defining terms; amending s. 486.025, F.S.; revising the powers and duties of the Board of Physical Therapy Practice; requiring the board to establish minimum standards of practice for the performance of dry needling by physical therapists; providing construction; providing an effective date.

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

Section 1. Subsections (10) and (11) of section 486.021, Florida Statutes, are amended, and subsections (12) and (13) are added to that section, to read:

486.021 Definitions.—In this chapter, unless the context otherwise requires, the term:

(10) "Physical therapy assessment" means observational, verbal, or manual determinations of the function of the movement ~~musculoskeletal or neuromuscular~~ system relative to physical therapy, including, but not limited to, range of motion of a joint, motor power, motor control, posture ~~postural attitudes~~, biomechanical function, locomotion, or functional abilities, for the purpose of physical therapy ~~making recommendations for~~ treatment.

(11) "Practice of physical therapy" means the performance of physical therapy assessments and the treatment of any disability, injury, disease, or other health condition of human beings, or the prevention of such disability, injury, disease,

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or other health condition ~~of health~~, and the rehabilitation of ~~such disability, injury, disease, or other health condition as~~ ~~related thereto~~ by alleviating impairments, functional limitations, and disabilities by designing, implementing, and modifying treatment interventions through therapeutic exercise; functional training in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; airway clearance techniques; maintaining and restoring the integumentary system and wound care; physical agent or modality; mechanical or electrotherapeutic modality; patient-related instruction the use of the physical, chemical, and other properties of air; electricity; exercise; massage; the performance of acupuncture only upon compliance with the criteria set forth by the Board of Medicine, when no penetration of the skin occurs; the use of radiant energy, including ultraviolet, visible, and infrared rays; ultrasound; water; the use of apparatus and equipment in the application of such treatment, prevention, or rehabilitation ~~the foregoing or related thereto~~; the performance of tests of neuromuscular functions as an aid to the diagnosis or treatment of any human condition; or the performance of electromyography as an aid to the diagnosis of any human condition only upon compliance with the criteria set forth by the Board of Medicine.

(a) A physical therapist may implement a plan of treatment developed by the physical therapist for a patient or provided for a patient by a practitioner of record or by an advanced practice registered nurse licensed under s. 464.012. The physical therapist shall refer the patient to or consult with a practitioner of record if the patient's condition is found to be

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outside the scope of physical therapy. If physical therapy treatment for a patient is required beyond 30 days for a condition not previously assessed by a practitioner of record, the physical therapist shall have a practitioner of record review and sign the plan. The requirement that a physical therapist have a practitioner of record review and sign a plan of treatment does not apply when a patient has been physically examined by a physician licensed in another state, the patient has been diagnosed by the physician as having a condition for which physical therapy is required, and the physical therapist is treating the condition. For purposes of this paragraph, a health care practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, or chapter 466 and engaged in active practice is eligible to serve as a practitioner of record.

(b) The use of roentgen rays and radium for diagnostic and therapeutic purposes and the use of electricity for surgical purposes, including cauterization, are not "physical therapy" for purposes of this chapter.

(c) The practice of physical therapy does not authorize a physical therapy practitioner to practice chiropractic medicine as defined in chapter 460, including specific spinal manipulation, or acupuncture as defined in chapter 457. For the performance of specific chiropractic spinal manipulation, a physical therapist shall refer the patient to a health care practitioner licensed under chapter 460.

(d) This subsection does not authorize a physical therapist to implement a plan of treatment for a patient currently being treated in a facility licensed pursuant to chapter 395.

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(12) "Dry needling" means a skilled technique based on western medical concepts using apparatus or equipment of filiform needles to stimulate a myofascial trigger point for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disabilities.

(13) "Myofascial trigger point" means an irritable section of the tissue often associated with palpable taut bands of muscle fibers.

Section 2. Section 486.025, Florida Statutes, is amended to read:

486.025 Powers and duties of the Board of Physical Therapy Practice.—

(1) The board may administer oaths, summon witnesses, take testimony in all matters relating to its duties under this chapter, establish or modify minimum standards of practice of physical therapy as defined in s. 486.021, including, without limitation, standards of practice for the performance of dry needling by physical therapists, and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The board may also review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred to in s. 486.031(3)(a). In determining the standing and reputability of any such school and whether the school and courses meet such standards, the board may investigate and personally inspect the school and courses ~~make personal inspection of the same.~~

(2) The board shall establish minimum standards of practice

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for the performance of dry needling by physical therapists, to include, at a minimum, all of the following:

(a) Completion of 2 years of licensed practice as a physical therapist.

(b) Completion of 50 hours of face-to-face continuing education from an entity accredited in accordance with s. 486.109 on the topic of dry needling which must include a determination by the physical therapist instructor that the physical therapist demonstrates the requisite psychomotor skills to safely perform dry needling. The continuing education must include instruction on all of the following areas:

1. Theory of dry needling.

2. Selection and safe handling of needles and other apparatus and equipment used in dry needling, including instruction on the proper handling of biohazardous waste.

3. Indications and contraindications for dry needling.

4. Psychomotor skills needed to perform dry needling.

5. Postintervention care, including adverse responses, adverse event recordkeeping, and any reporting obligations.

(c) 1. Completion of 25 patient sessions of dry needling performed under the indirect supervision of a physical therapist who holds an active license to practice physical therapy in any state or the District of Columbia and who has actively practiced dry needling for at least 1 year; or

2. Completion of 25 patient sessions of dry needling performed as a physical therapist licensed in another state or in the United States Armed Forces.

(d) A requirement that dry needling may not be performed without patient consent and must be a part of a patient's

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documented plan of care.

(e) A requirement that dry needling may not be delegated to any person other than a physical therapist who is authorized to engage in dry needling under this chapter.

(3) The performance of dry needling in the practice of physical therapy may not be construed to limit the scope of practice of other licensed health care practitioners not governed by this chapter.

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



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #792**, relating to Physical Therapy, be placed on the:

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

A handwritten signature in blue ink, which appears to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20
Meeting Date

792
Bill Number (if applicable)

175922
Amendment Barcode (if applicable)

Topic Physical Therapy

Name Anita Berry

Job Title Lobbyist

Address 101 East College Ave, Apt 502
Street

Tallahassee FL 32301
City State Zip

Phone 301 524 0172

Email anita@johnstewart.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Massage Therapy Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20

Meeting Date

792

Bill Number (if applicable)

175922

Amendment Barcode (if applicable)

Topic Physical Therapy

Name Antia Berry

Job Title Lobbyist

Address 101 East College Ave, St. 502

Street

Tallahassee

City

FL

State

32301

Zip

Phone 301 524 0172

Email antia@johnstonstewart.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Occupational Therapy 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)

2-11-2020

Meeting Date

792

Bill Number (if applicable)

Topic Physical Therapy Practice Act

Amendment Barcode (if applicable)

Name BURT REED

Job Title Physical Therapist

Address 1720 SE 16th Avenue Suite 302

Phone 304-834-0770

Street

Ocala

City

FL

State

34471

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Physical Therapy 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)

2/11/2020

Meeting Date

SB 792

Bill Number (if applicable)

Topic SB 792

Amendment Barcode (if applicable)

Name Min Tian (MIN TIAN)

Job Title Acupuncturist

Address 362 office plaza drive

Street

Phone 850-894-8999

Tallahassee FL 32301

City

State

Zip

Email drmintian@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FAA (Florida Acupuncture 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)

2/11/20

Meeting Date

SB 792

Bill Number (if applicable)

Topic SB 792

Amendment Barcode (if applicable)

Name DAVID BIRREY

Job Title V.Pres FSDMA Florida State Opioid MEDICAL ASSOC

Address 441 SE Kings Bay Drive

Phone

Street

Crystal River, FL

State

34429

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida State Opioid MEDICAL ASSOC

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 924

INTRODUCER: Senator Brandes

SUBJECT: Civil Actions Against Insurers

DATE: January 27, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2. _____	_____	<u>JU</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 924 amends the civil remedies statute of the Insurance Code specific to third-party bad faith causes of action. The bill provides the insured or claimant has the burden of proving the insurer acted in bad faith through reckless disregard for the insured's rights and that this reckless disregard caused damaged to the insured or claimant. The bill codifies legal precedent that the conduct of the insurer or claimant is relevant to the trier of fact. The bill creates an affirmative defense where the conduct of the insured or claimant causes an excess judgment. The bill requires the insurer to advise the insured of settlement opportunities, probable outcome of litigation, and possibility of an excess judgment with steps to avoid such judgment. The bill precludes a third-party bad faith determination against the insurer if the insurer was ready and willing to settle for policy limits within 45 days of receiving the notice of loss. Finally, the bill precludes liability beyond policy limits in an interpleader case of two or more third-party claimants to a single claim if the insurer brings the interpleader action within 90 days of receiving notice of the competing claims.

The bill takes effect July 1, 2020.

II. Present Situation:

Common Law and Statutory Bad Faith

Bad faith law was designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with their insurer in the resolution of claims. Bad faith jurisprudence holds insurers accountable for failing to fulfill their obligations.¹ There are two distinct but very similar types of bad faith causes of action that may be initiated against an insurer: first-party and third-party.

¹ *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).

Florida courts have recognized common law third-party bad faith causes of action since 1938.² A third-party bad faith cause of action 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.³ Third-party bad faith causes of actions arose in response to the argument that there was a practice in the insurance industry of rejecting without sufficient investigation or consideration claims presented by third parties against an insured, thereby exposing the insured individual to judgments exceeding the coverage limits of the policy while the insurer remained protected by a policy limit.⁴ With no actionable remedy, insureds in this state and elsewhere were left personally responsible for the excess judgment amount.⁵ Florida courts recognized common law third-party bad faith causes of action in part because the insurers had the power and authority to litigate or settle any claim, and thus owed the insured a corresponding duty of good faith and fair dealing in handling these third-party claims.⁶

In contrast to common law third-party bad faith causes of action, Florida courts do not recognize a common law first-party bad faith cause of action by the insured against its own insurer.⁷ If an insurer acts in bad faith in settling a claim filed by its insured, the only common law remedy available to the insured is a breach of contract action against its own insurer with recoverable damages limited to those contemplated by the parties to the policy.⁸

The 1982 Legislature's enactment of s. 624.155, F.S., created a statutory first-party bad faith cause of action,⁹ codified Florida Supreme Court precedent authorizing a common-law third-party bad faith cause of action,¹⁰ and eliminated the distinction between statutory first- and third-party bad faith causes of action.¹¹

Section 624.155, F.S., provides that any party may bring a bad faith 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.¹²

² *Auto Mut. Indem. Co. v. Shaw*, 184, So. 852 (Fla. 1938).

³ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

⁴ *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005).

⁵ *Id.*

⁶ *Id.*

⁷ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

⁸ *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1281 (Fla. 2000).

⁹ Chapter 82-243, s. 9, L.O.F.

¹⁰ *Macola v. Government Employees Ins. Co.*, 953 So.2d 451, 456 (Fla. 2006). *See also State Farm Fire & Cas. Co. v. Zebrowski*, 706 So.2d 275, 277 (Fla. 1997).

¹¹ *Id.*

¹² Section 624.155(1)(b)(1)-(3), F.S.

Civil Remedy Notice

As a condition precedent to bringing a bad faith action under s. 624.155, F.S., the insured must have provided the insurer and the Department of Financial Services at least 60 days written notice of the alleged violation.¹³ The notice must specify the following information:

- The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated;
- The facts and circumstance giving rise to the violation;
- The name of any individual involved in the violation;
- A reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a 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 claimant pursuant to written request; and
- A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized under s. 624.155, F.S.¹⁴

The 60-day window contemplated under s. 624.155, F.S., provides insurers with a final opportunity to comply with their claim-handling obligations when a good-faith decision by the insurer would indicate that contractual benefits are owed.¹⁵ If the insurer in turn fails to respond to a civil remedy notice within the 60-day window, there is presumption of bad faith sufficient to shift the burden to the insurer to show why it did not respond.¹⁶

In *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, the Florida Supreme Court addressed the question of whether an insurer that paid all contractual damages within the 60-day window, but none of the extra-contractual damages, satisfied the requirement for payment of damages under s. 624.155(3)(c), F.S., thereby precluding the claimant's bad faith action. The Florida Supreme Court answered in the affirmative, explaining:

Section 624.155 does not impose on an insurer the obligation to pay whatever the insured demands. The 60-day window is designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation. Surely an insurer need not immediately pay 100percent of the damages claimed to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action. If the insurer may avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial, the insurer would have no reason to pay.¹⁷

¹³ Section 624.155(3), F.S.

¹⁴ Section 624.155(3)(b)(1)-(5), F.S.

¹⁵ See *Talat Enterprises, Inc.*, 753 So.2d at 1284.

¹⁶ *Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214, 1220, (Fla. 2016); *Imhof v. Nationwide Mut. Ins. Co.*, 643 So.2d 617, 619 (Fla 1994).

¹⁷ See *Talat Enterprises, Inc.*, 753 So.2d at 1282. (quoting *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 952 F.Supp. 773, 778 (M.D.Fla.1996)).

Legal Standard of Proof

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.¹⁸ In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under a “totality of the circumstances” standard.¹⁹ In *Harvey v. Geico General Insurance Company*, 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.”²⁰ The claimant bringing the bad faith action has the burden of proving the insurer acted in bad faith by a preponderance of the evidence.²¹

Offer of Settlement

Under Florida law, an 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.²² In considering whether the insurer has given fair consideration to a settlement offer that is not unreasonable under the facts, Florida courts look to whether there was a realistic opportunity for settlement.²³

Duty to Advise Insured of Settlement Opportunities

Florida courts have interpreted the duty of good faith insurers owe to insureds in handling their claims to include the duty to advise the insured of settlement opportunities. In *Harvey v. Geico General Insurance Company*, the Florida Supreme Court reaffirmed its 1980 decision in *Boston Old Colony Ins. v. Gutierrez* recognizing the insurer’s duty to advise the insured of settlement opportunities:

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.²⁴

Conduct of the Claimant in the Settlement Context

Florida courts place the focus in a bad faith case on the conduct of the insurer.²⁵ However, Florida courts do not completely ignore the conduct of the claimant. In *Barry v. GEICO General*

¹⁸ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

¹⁹ *Berges v. Infinity Insurance Company*, 896 So.2d 665, 680 (Fla. 2005).

²⁰ See *Harvey*, 259 So.3d at 7.

²¹ *Cadle v. GEICO General Insurance Company*, 838 F.3d 1113, 1119 (11th Cir. 2016).

²² *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

²³ *Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

²⁴ See *Harvey*, 259 So.3d at 6-7 (quoting *Boston Old Colony Insurance Company*, 386 So.2d at 785).

²⁵ *Id.*

Ins. Co., the 4th District Court of Appeals of Florida addressed the question of whether the trial court abused its discretion in shifting the focus to the motives of the claimant in a bad faith case where the claimant refused the insurer's settlement offer. The appeals court denied the trial court abused its discretion, explaining:

Although Barry is correct that the focus of an insurance bad faith case is not on the motive of the claimant but of the insurer in fulfilling its duty to its insured, that does not mean that all inquiries into prior conduct and motives are irrelevant and prejudicial. In a bad faith case, the insurer has the burden to show that there was no realistic possibility of settlement within the policy limits. This question is decided based upon the totality of the circumstances. The conduct of Capelli and her attorney would be relevant to the question of whether there was any realistic possibility of settlement. Despite Capelli's testimony at trial that she would have settled the case if GEICO had not made the mistake, her actions and those of her attorney suggested otherwise. The jury could have concluded that the failure of her attorney to notify GEICO of his representation coupled with her refusal to meet with Stone on the settlement, among other incidents, showed that she did not want to settle with GEICO for the policy limits. Thus, GEICO did not inject irrelevant information into the case, and therefore we reject Barry's argument as to the cumulative nature of the errors.²⁶

Interpleader Actions

Interpleader is an equitable remedy by which a court determines the rightful claimant of two or more claimants making the same claim against a third party.²⁷ Interpleader serves the purpose of allowing the defendant to avoid multiple litigations and multiple liability stemming from the same claim.²⁸ It is not intended to prevent multiple recoveries under the claim.²⁹ In the insurance context, insurers use interpleaders if claims are made by different parties.³⁰ For example, when a life insurer is presented with two or more competing life insurance claims, the insurer deposits the life insurance proceeds under the policy with the court until the court decides the rightful beneficiary.

Under common law, Florida courts recognize four requirements to maintain an interpleader action:

- The claims to the stake were dependent or had common origin;
- The same thing, debt, or stake was claimed by the defendants;
- The plaintiff had “no interest in the subject matter—that is, in strict interpleader as distinguished from a suit in the nature of interpleader”; and
- The plaintiff was appearing that “no act on his part ... caused the embarrassment of conflicting claims and the peril of double vexation.”³¹

²⁶ *Id.*

²⁷ Barron's Dictionary of Insurance Terms, 267 (6th ed. 2013)

²⁸ *Paul v. Harold Davis, Inc.*, 20 So.2d 795, 796 (1945).

²⁹ *Id.*

³⁰ See *supra* at Note 30.

³¹ *Red Beryl, Inc. v. Sarasota Vault Depository, Inc.*, 176 So.3d 375, 383 (Fla. 2nd DCA 2015); *Riverside Bank of Jacksonville v. Fla. Dealers & Growers Bank*, 151 So.2d 834, 836 (Fla. 1st DCA 1963).

In contrast to common law, the Florida Rules of Civil Procedure provides that the only requirement to maintain an interpleader action is whether the stakeholder is or may be exposed to double or multiple liability for competing claims to a single fund.³²

Rule 1.240, as adopted by the Florida Supreme Court, provides in pertinent part:

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claim of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants.³³

Reckless Disregard Standard Under s. 624.155, F.S.

Section 624.155, F.S., prohibits the award of punitive damages under the section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are:

- Willful, wanton, and malicious;
- In reckless disregard for the rights of any insured; or
- In reckless disregard for the rights of a beneficiary under a life insurance contract.

Section 624.155, F.S., does not define “reckless disregard.” In the absence of a statutory definition supplied by the Legislature, the courts follow the common law definition.³⁴

In *Farmer v. Brennan*, the Supreme Court of the United States (SCOTUS) recognized the common law definition of “recklessness” in the civil liability sphere to mean conduct or actions that objectively entail “an unjustifiably high risk of harm that is either known or so obvious that it should be known.”³⁵

SCOTUS in *Safeco Ins. Co. of America v. Burr* similarly recognized and applied the common law of “reckless disregard,” citing to the Restatement (Second) of Torts at s. 500:

The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.³⁶

Florida courts, in turn, have distinguished between the “reckless disregard” and “willful, wanton, and malicious” standards under s. 624.155, F.S. For example, the Florida 4th District Court of Appeals in *Howell-Demarest v. State Farm Mut. Auto. Ins. Co.* noted that in the context of punitive damages under s. 624.155, F.S., the “reckless disregard” standard appears to be less stringent than the “willful, wanton, and malicious” standard that is necessary to support a

³² Fla. R. Civ. P. 1.240.

³³ *Id.*

³⁴ *Morrisette v. US*, 342 U.S. 246, 263 (1952).

³⁵ *Farmer v. Brennan*, 511 U.S. 825, 836 (1994).

³⁶ *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 69 (2007).

punitive damage award in general and equivalent to the criminal standard as applied to manslaughter.³⁷ However, the same court in *Home Ins. Co. v. Owens*, previously noted that the “culpable negligence” standard for manslaughter is defined as “reckless indifference to the rights of others,” observed:

As a consequence, any supposed variation between [the willful, wanton, and malicious standard] and the [reckless disregard standard] becomes somewhat amorphous and perhaps even circular.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 624.155, F.S., to provide an insured or claimant bringing either a statutory or common law third-party bad faith action has the burden to prove the insurer acted in bad faith. The claimant must prove the insurer acted in reckless disregard for the rights of the insured and that the insurer’s reckless disregard caused damaged to the insured or claimant.

The bill provides that the conduct of the insured or claimant is relevant for the trier of fact to consider when deciding a third-party bad faith claim. The bill creates an affirmative defense to a third-party bad faith claim where the conduct of the insured or claimant, in whole or in part, caused an excess judgment.

The bill requires the insurer to advise the insured of settlement opportunities, the probable outcome of litigation, the possibility of an excess judgment, the steps to avoid an excess judgment, and defend the insured against an action when the complaint alleged facts that fairly and potentially bring the action within policy coverage. The bill precludes the insurer from a determination of third-party bad faith if the insurer satisfied this paragraph’s requirements and stood ready and willing to settle for the policy limits within 45 days of receiving written notice of the loss.

The bill further provides the insurer is not liable beyond the policy limits if the insurer brings an interpleader action against two or more third-party claimants to a single claim within 90 days of receiving notice of the competing claims. The bill provides that competing third-party claims are entitled to a prorated share of the policy limits, determined by the trier of fact.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁷ *Howell-Demarest v. State Farm Mut. Auto. Ins. Co.*, 673 So.2d 526, 528-529 (Fla. 4th DCA 1996).

³⁸ *Home Ins. Co. v. Owens*, 573 So.2d 343, 346 (Fla. 4th DCA 1990).

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 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.



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LEGISLATIVE ACTION

Senate

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. .
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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 624.155, Florida
Statutes, is amended, and subsection (10) is added to that
section, to read:

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer
when such person is damaged:



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(a) By a violation of any of the following provisions by the insurer:

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;
3. Section 626.9705;
4. Section 626.9706;
5. Section 626.9707; or
6. Section 627.7283.

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under the totality of 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 paragraphs (a) and (b) ~~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.

(10) The provisions of this subsection apply to an action against a motor vehicle insurer for third-party bad faith under



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40 this chapter or at common law.

41 (a) It is a condition precedent to such action that the
42 insurer first receive written notice that the insurer has
43 violated its duty to act in good faith toward its insured. A
44 notice shall state with specificity the alleged violation and
45 the facts and circumstances giving rise to the violation. The
46 insurer's receipt of written notice does not preclude subsequent
47 written notices that an insurer violated its duty to act in good
48 faith toward its insured. The insurer shall save and document
49 any notice.

50 (b) In handling claims, an insurer stands as a fiduciary
51 for its insured. Accordingly, an insurer shall act in good faith
52 toward its insured throughout the entirety of the claim.

53 (c) A bad faith failure to settle means an insurer's
54 failure to settle a claim when, under the totality of the
55 circumstances, it could and should have done so had it acted
56 fairly, honestly, and with due regard for the interests of an
57 insured. The claimant has the burden to establish through the
58 greater weight of the evidence that specific conduct by the
59 insurer is the cause or substantial cause of the insurer's bad
60 faith failure to settle.

61 1. An insurer's negligent actions alone are insufficient to
62 establish the insurer's bad faith failure to settle, but an
63 insurer's negligent actions are relevant when considering the
64 totality of the circumstances.

65 2. The actions or inactions of the insured or claimant are
66 relevant in an action for a bad faith failure to settle. An
67 insurer may assert as a defense that the conduct of the insured
68 or claimant caused, in whole or in part, the failure to settle



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the claim.

(d) No action against a motor vehicle insurer for third-party bad faith shall lie if, within 45 days after the motor vehicle insurer receives notice pursuant to paragraph (a), the insurer cures the circumstances giving rise to the alleged breach of duty of good faith to the insured. A third party may proceed with a bad faith action against the insurer if the insurer fails to cure the violation within this period.

(e) Paragraph (d) does not create a duty that the insurer must offer policy limits or the amount of a demand that is less than policy limits within 45 days after it receives notice under paragraph (a). However, the absence of such offer may be considered as part of the totality of the circumstances in determining whether the insurer in bad faith failed to settle.

(f) 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 third party claimants, a motor vehicle 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 such insurer continues to comply with its good faith duties to its insured throughout the entirety of the claim, including the pendency of an interpleader action filed under the Florida Rules of Civil Procedure within 90 days after receiving notice of the competing claims in excess of the available policy limits. The competing third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact.



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Section 2. This act shall take effect July 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 civil actions against insurers;
amending s. 624.155, F.S.; providing applicability;
requiring that a civil remedy notice be provided to a
motor vehicle insurer before a third-party bad faith
action is brought against the insurer; specifying
requirements for the notice; providing construction
relating to the notice; requiring the insurer to save
and document any notice; providing construction
relating to an insurer's duty of good faith, a bad
faith failure to settle, the claimant's burden of
proof, negligent actions of an insurer, and actions or
inactions of the insured or claimant; providing that
such bad faith actions are barred if the insurer cures
certain circumstances within a certain timeframe;
providing that an insurer is not liable beyond policy
limits in certain third-party claims if it meets
certain conditions; providing that competing third-
party claimants are entitled to a prorated share of
policy limits as determined by the trier of fact;
providing an effective date.

By Senator Brandes

24-00450C-20

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1 A bill to be entitled
 2 An act relating to civil actions against insurers;
 3 amending s. 624.155, F.S.; providing that, in third-
 4 party bad faith actions against insurers, insureds and
 5 claimants have the burden to prove that an insurer
 6 acted in reckless disregard for insured rights which
 7 resulted in damage to the insured or the claimant;
 8 providing that insured or claimant actions or
 9 inactions are relevant in bad faith actions;
 10 specifying an affirmative defense; specifying an
 11 insurer's duties to insureds; providing that an
 12 insurer is not liable if certain conditions are met;
 13 providing that an insurer is not liable beyond
 14 available policy limits as to certain competing third-
 15 party claims if it files an interpleader action within
 16 a certain timeframe; providing construction; providing
 17 an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Subsection (1) of section 624.155, Florida
 22 Statutes, is amended, and subsections (10) and (11) are added to
 23 that section, to read:
 24 624.155 Civil remedy.—
 25 (1) Any person may bring a civil action against an insurer
 26 when such person is damaged:
 27 (a) By a violation of any of the following provisions by
 28 the insurer:
 29 1. Section 626.9541(1)(i), (o), or (x);

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

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30 2. Section 626.9551;
 31 3. Section 626.9705;
 32 4. Section 626.9706;
 33 5. Section 626.9707; or
 34 6. Section 627.7283.
 35 (b) By the commission of any of the following acts by the
 36 insurer:
 37 1. Not attempting in good faith to settle claims when,
 38 under all the circumstances, it could and should have done so,
 39 had it acted fairly and honestly toward its insured and with due
 40 regard for her or his interests;
 41 2. Making claims payments to insureds or beneficiaries not
 42 accompanied by a statement setting forth the coverage under
 43 which payments are being made; or
 44 3. Except as to liability coverages, failing to promptly
 45 settle claims, when the obligation to settle a claim has become
 46 reasonably clear, under one portion of the insurance policy
 47 coverage in order to influence settlements under other portions
 48 of the insurance policy coverage.
 49
 50 Notwithstanding paragraphs (a) and (b) the provisions of the
 51 above to the contrary, a person pursuing a remedy under this
 52 section need not prove that such act was committed or performed
 53 with such frequency as to indicate a general business practice.
 54 (10) Notwithstanding subsections (1)-(9), in an action for
 55 third-party bad faith under this chapter or at common law:
 56 (a) An insured or a claimant has the burden to prove that
 57 the insurer acted in bad faith. An insured or a claimant must
 58 prove that the insurer acted in reckless disregard for the

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

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rights of any insured and that the reckless disregard caused damage to the insured or claimant.

(b) The actions or inactions of the insured or claimant are relevant in an action for bad faith. It is an affirmative defense to a claim for bad faith that the insured's or claimant's own conduct, in whole or in part, caused an excess judgment.

(c) An insurer must advise an insured of settlement opportunities, advise an insured as to the probable outcome of the litigation, warn an insured of the possibility of an excess judgment, advise an insured of steps to avoid an excess judgment, and defend an insured against a legal action when the complaint alleges facts that fairly and potentially bring the suit within policy coverage. An insurer is not liable if the insurer fulfills such obligations and the trier of fact finds that, within 45 days after receipt of the written notice of loss, the insurer stood ready and willing to settle for policy limits.

(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

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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.

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



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 13, 2019

I respectfully request that **Senate Bill #924**, relating to **Civil Actions Against Insurers**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
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 1334

INTRODUCER: Senator Brandes

SUBJECT: Financial Services

DATE: February 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson	BI	Pre-meeting
2. _____	_____	IS	_____
3. _____	_____	RC	_____

I. Summary:

SB 1334 addresses various statutes governing financial services.

The bill makes the following changes related to the Florida Hurricane Catastrophe Fund:

- Directs the Florida Hurricane Catastrophe Fund (Cat Fund) to reimburse collateral protection (force-placed) insurance policy losses that cover the amount requested by the mortgage lender, which may be limited to the remaining indebtedness on the property.
- Directs the OIR to retain an independent consultant to audit the reimbursement premium formula of the Cat Fund.

The bill makes the following changes to the statutory civil remedy for insurer bad faith:

- Specifies that the 60 days' written civil remedy notice of the violation required under the statute must be delivered to the name and address designated by the insurer under s. 624.422(2), F.S.
- Revises the 60 day period for the insurer to cure an alleged bad faith violation by starting upon the insurer's receipt of notice, rather than starting upon the filing of the notice.
- Requires that the civil remedy notice specify the demand for damages available under the policy to be paid by the insurer for the claim, less amounts the insurer has paid on the claim and any applicable deductibles, and prohibits demands for vague remedial action regarding changes to claims-handling procedures or practices.
- Requires the applicable statute of limitations for statutory bad faith actions to be tolled for 60 days after the date appraisal is invoked in a residential property insurance claim.

The bill makes the following changes regarding surplus lines insurers and insurance:

- Allows the formation of a surplus insurer that is wholly owned by an insurer domiciled in Florida that has been authorized in Florida for at least the 3 preceding years as to the kind or kinds of insurance that would be placed with the surplus lines insurer. The bill applies to

such surplus lines insurers certain provisions of the Insurance Code related to insurer solvency, the fitness of management, and accounting requirements.

- Requires that alternative dispute resolution such as appraisal or arbitration must be conducted in Florida under any policy placed with an eligible surplus lines insurer that is wholly owned by a Florida-domiciled insurer.
- Repeals the requirement that each surplus lines agent must, within 45 days of the end of the calendar quarter, file an affidavit with the Florida Surplus Lines Service Office (FSLSO) attesting that the agent met reporting and diligent effort requirements.
- Provides that surplus lines agents must remit the surplus lines tax to the FSLSO at the same time as the agent pays the surplus lines service fee.
- Allows surplus lines agents to export flood coverage to eligible surplus lines insurers without meeting the diligent effort requirement.

The bill makes the following changes regarding the rates and forms that may be used by property insurers:

- Allows an insurer to offer a policy or endorsement providing that a non-hurricane claim on a roof older than 10 years will be adjusted on the basis of actual cash value, and not replacement cost.
- Prohibits the OIR from disapproving a rate for homeowners' insurance solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models found accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology.
- Provides insurers discretion regarding the utilization of positive and negative rate factors based on a statewide rating organization's building code rating factor plan that evaluates the manner in which building code enforcement in a particular jurisdiction addresses wind risk.
- Provides that when the OIR periods for reviewing specified rates and forms end on a weekend or holiday, period is extended until the conclusion of the next business day.

The bill makes the following changes regarding property insurance claims, their adjustment, and litigation related to such claims:

- Repeals the requirement that any person acting on behalf of an insurer must provide at least 48 hours' notice to the insured, claimant, public adjuster or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property.
- Bars any non-sinkhole property insurance claim, supplemental claim, or reopened claim for which notice is not provided to the insurer in accordance with the terms of the insurance policy within 3 years after the date of loss.
- Requires the named insured must serve a written notice of intent to initiate litigation to the insurer at least 10 business days before filing suit under a property insurance policy. The notice must specify the damages in dispute and the amount claimed and must include a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and proof that any work that has been performed was done so in accordance with accepted industry standards.
- Requires a named insured filing suit under a property insurance policy must sign any complaint seeking relief under the policy.

- Provides that the named insured has the burden to demonstrate that the insurer is not prejudiced by a failure to cooperate in the adjustment of a claim when such alleged failure is asserted as a defense by an insurer during litigation.
- Specifies that the notice of intent to initiate litigation that must be sent by an assignee of benefits to an insurer as a condition precedent to filing suit must be sent to the email address or name and address designated by the insurer in the policy forms.

The bill also makes the following changes:

- Requires that an electronic signature used to satisfy the signature requirement for a salvage certificate of title must be executed using a system providing a Level 2 background check.
- Prohibits OIR from disseminating aggregated information if it contains trade secret information that can be individually extrapolated.
- Clarifies that the maximum amount that a condominium unit owner's assessment insurance coverage may be assessed is the loss assessment coverage limit in effect 1 day before the date of the occurrence that gave rise to the loss.
- Reduces from 60 days to 30 days the period during which an insurer may not cancel a new policy or binder of private passenger motor vehicle insurance except for the disallowance of the initial premium payment.
- Provides that a licensed personal lines or general lines agent may solicit, negotiate, advertise, or sell motor vehicle service agreements, service warranties, or home warranties, and need not obtain licensure under the laws governing those respective products.

II. Present Situation:

The Florida Hurricane Catastrophe Fund (FHCF)

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

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.⁶ The FHCF is authorized by statute to sell \$17 billion of

¹ Section 215.555(1)(f), F.S.

² Ch. 93-409, Laws of Fla.

³ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), <https://www.nhc.noaa.gov/1992andrew.html>.

⁴ State Board of Administration of Florida, *About the SBA*, <https://www.sbafla.com/fsb/> (last visited March 27, 2019).

⁵ Section 215.555(2)(e), F.S.

⁶ See s. 215.555(4)(a), F.S.

mandatory layer coverage.⁷ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent⁸ of the reimbursed losses for loss adjustment expenses.⁹

FHCF Premiums and Ratemaking Formula

The FHCF must charge insurers the actuarially indicated premium¹⁰ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.¹¹ The actuarially indicated premium is an amount determined by the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.¹²

The State Board of Administration is required by law to select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund.¹³ The SBA selects an independent actuarial consultant through a competitive procurement process every 5 years, with the most recent contract entered into in 2018.¹⁴ Paragon Strategic Solutions, Inc., is the current independent actuarial consultant. The reimbursement premium formula is adopted by rule.¹⁵ Thus the process of adopting the reimbursement premium formula includes public notice and public meetings as required by the Florida Administrative Code.

In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. Historically, FHCF coverage is generally costs less than private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.¹⁶

When the moneys in the FHCF are or will be insufficient to cover losses, the law¹⁷ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.¹⁸ Emergency assessments may be levied up to 6 percent of premium for losses attributable to any one contract year, and up to 10 percent of premium for aggregate losses from multiple years. The FHCF's broad-based assessment

⁷ Section 215.555(4)(c)1., F.S.

⁸ Section 215.555(4)(b)1., F.S.

⁹ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

¹⁰ Section 215.555(5)(a), F.S.

¹¹ See, *Florida Commission on Hurricane Loss Methodology*, <https://www.sbafla.com/method/> (last visited March 29, 2019).

¹² Section 215.555(2)(a), F.S.

¹³ Section 215.555(5)(b), F.S.

¹⁴

¹⁵ Rule 19-8.028, F.A.C.

¹⁶ [State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, 2016 Annual Report, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943](https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20170606_FHCF_2016_AnnualReport_A.pdf?ver=2017-07-06-085215-943) (last visited March 29, 2019).

¹⁷ Section 215.555(6), F.S.

¹⁸ Section 215.555(6)(b), F.S.

authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.¹⁹

Reimbursement of Collateral Protection Insurance

Collateral protection insurance, sometimes referred to as “lender-placed” or “force-placed” insurance, is insurance that is placed by a lender, at the expense of the borrower, to protect the lender’s security interest in property pursuant to a loan such as a home mortgage. Collateral protection insurance is placed by the lender when it deems the homeowners’ insurance insufficient, usually because the borrower’s insurance policy is lapsed or cancelled. The FHCF covers policies of collateral protection insurance if the collateral protection insurance covers a personal residence and protects both the borrower’s and the lender’s financial interests in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowners policy.²⁰

Transfer of Title of a “Total Loss” Motor Vehicle or Mobile Home by an Insurer to the Department of Highway Safety and Motor Vehicles (DHSMV)

When an insurance company pays money as compensation for the total loss of a motor vehicle or mobile home, the insurer must obtain the certificate of title and forward it to the DHSMV for processing.²¹

Under s. 319.30, F.S., if an insurance company is unable to obtain a properly assigned certificate of title for the owner or lienholder, then the company may receive a salvage certificate of title or certificate of destruction from the DHSMV.²² However, the company may only receive this if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company has:

- Obtained the release of all liens on the motor vehicle or mobile home;
- Provided proof of payment of the total loss claim; and
- Provided an affidavit, on letterhead signed by the insurance company or its authorized agent, stating the attempts made to obtain the title from the owner or lienholder, and stating that all attempts are to no avail.²³

An electronic signature that is consistent with ch. 668, F.S., satisfies the signature requirements of s. 319.30, F.S., except that electronic signature on an odometer disclosure submitted by an insurer must be executed using a system that verifies identity through a background check equivalent to Level 2 for a certificate of destruction, and Level 3, for a salvage certificate of title. The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however,

¹⁹ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

²⁰ Section 215.555(2)(c), F.S.

²¹ Section 319.30(3)(b), F.S.

²² Section 319.30(3)(b)1., F.S.

²³ *Id.*

the final federal regulation was published after the 2019 session with an unexpected change. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.²⁴

Remedies for Insurer Bad Faith

Common Law and Statutory Bad Faith

Bad faith law was designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with their insurer in the resolution of claims. Bad faith jurisprudence holds insurers accountable for failing to fulfill their obligations.²⁵ There are two distinct but very similar types of bad faith causes of action that may be initiated against an insurer: first-party and third-party.

Florida courts have recognized common law third-party bad faith causes of action since 1938.²⁶ A third-party bad faith cause of action 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.²⁷ Third-party bad faith causes of actions arose in response to the argument that there was a practice in the insurance industry of rejecting without sufficient investigation or consideration claims presented by third parties against an insured, thereby exposing the insured individual to judgments exceeding the coverage limits of the policy while the insurer remained protected by a policy limit.²⁸ With no actionable remedy, insureds in this state and elsewhere were left personally responsible for the excess judgment amount.²⁹ Florida courts recognized common law third-party bad faith causes of action in part because the insurers had the power and authority to litigate or settle any claim, and thus owed the insured a corresponding duty of good faith and fair dealing in handling these third-party claims.³⁰

In contrast to common law third-party bad faith causes of action, Florida courts do not recognize a common law first-party bad faith cause of action by the insured against its own insurer.³¹ If an insurer acts in bad faith in settling a claim filed by its insured, the only common law remedy available to the insured is a breach of contract action against its own insurer with recoverable damages limited to those contemplated by the parties to the policy.³²

Civil Remedy for First-Party Bad Faith

The 1982 Legislature's enactment of s. 624.155, F.S., created a statutory first-party bad faith cause of action,³³ codified Florida Supreme Court precedent authorizing a common-law third-

²⁴ 84 Fed. Reg. 52664, at 52665 (Oct. 2, 2019).

²⁵ *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).

²⁶ *Auto Mut. Indem. Co. v. Shaw*, 184, So. 852 (Fla. 1938).

²⁷ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

²⁸ *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005).

²⁹ *Id.*

³⁰ *Id.*

³¹ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

³² *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1281 (Fla. 2000).

³³ Chapter 82-243, s. 9, L.O.F.

party bad faith cause of action,³⁴ and eliminated the distinction between statutory first- and third-party bad faith causes of action.³⁵

Section 624.155, F.S., provides that any party may bring a bad faith 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.³⁶

Civil Remedy Notice - Opportunity for Notice and Cure

Prior to bringing a bad faith action under s. 624.155, F.S., the person seeking to bring the action must give a civil remedy notice to the insurer and Department of Financial Services. The notice is a condition precedent to bringing the bad faith action and must be given 60 days prior to bringing the statutory bad faith action. The civil remedy notice is on a form provided by the DFS and must include the statutory provision the insurer allegedly violated, the facts and circumstances giving rise to the violation, the name of any individual involved in the violation, and must³⁷ reference any specific policy language relevant to the violation.

A bad faith action may not be brought under s. 624.155, F.S., if within 60 days after the civil remedy notice is filed, the damages are paid or the circumstances giving rise to the violation are corrected.³⁸

The applicable statute of limitations for an action under s. 624.155, F.S., is tolled for 65 days by the mailing of a civil remedy notice.

Collection and Dissemination of Information by the Office of Insurance Regulation and Department of Financial Services

One of the general powers possessed by both the Office of Insurance Regulation and the Department of Financial Services is that each may collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law.

One of the duties imposed upon the OIR is in s. 624.315, F.S., which requires the OIR with assistance from the DFS produce a written annual report and submit it to the Legislature and Governor. The report must include various types of information including abstracts of the

³⁴ *Macola v. Government Employees Ins. Co.*, 953 So.2d 451, 456 (Fla. 2006). See also *State Farm Fire & Cas. Co. v. Zebrowski*, 706 So.2d 275, 277 (Fla. 1997).

³⁵ *Id.*

³⁶ Section 624.155(1)(b)(1)-(3), F.S.

³⁷ Third party claimants not provided a copy of the policy are exempted from this requirement.

³⁸ Section 624.155(3)(c), F.S.

financial statements of all Florida-authorized insurers, a summary of all delinquency proceedings against such insurers, and other pertinent information and matters the OIR deems to be in the public interest. Similarly, s. 624.313, F.S., directs the OIR to annually create a statistical report that contains various required information including the financial condition of insurers, the market share of various insurers, the profitability of insurers, an analysis of the impact of the insurance industry on the state economy, information regarding complaints and market examinations, an analysis of lines of insurance that the OIR determines lack availability in this state, and other information the OIR determines is relevant.

In addition to having the power to publish and disseminate information, the OIR and DFS are subject to ch. 119, F.S., the Public Records Act, which requires every state agency that “has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”³⁹ The Public Records Act provides the framework for the application Art. I, Sect. 24 of the Florida Constitution, which provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state....”

The obligation that the OIR and DFS allow the inspection of all records and their power to publish and disseminate information may be limited when the Legislature enacts a public records exemption by a two-thirds vote of each house, or the information is confidential proprietary business information or a trade secret. Proprietary business information is information owned or controlled by an insurer that is intended to be private because the disclosure of the information would bring harm, and that has not been voluntarily disclosed to the public by the insurer.⁴⁰ Proprietary business information includes trade secret information that meets the definition in s. 688.002, F.S., if properly submitted to the OIR pursuant to s. 624.4213, F.S. Section 688.002, F.S., defines a trade secret as:

- “Information, including a formula, pattern, compilation, program, device method, technique, or process that:
- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Proprietary business information held by the OIR is confidential and exempt from public disclosure pursuant to the public records exemption in s. 624.4212, F.S. Such information may only be disclosed upon prior written consent of the insurer or pursuant to a court order. The OIR may disclose to the Actuarial Board for Counseling and Discipline for the purpose of professional disciplinary proceedings or to other governmental or law enforcement agencies that agree to maintain confidentiality. The OIR may also aggregate proprietary business information on an industrywide basis and disclose it to the public if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

³⁹ Section 119.07(1), F.S.

⁴⁰ See s. 624.4212(1), F.S.

Any person to submit documents or information to the OIR or DFS pursuant to the Insurance Code or agency rule may file a notice of trade secret with the agency that the submission contains a trade secret under s. 624.4213, F.S. Failure to do so is a waiver of the claim of trade secret protection. To file a notice of trade secret, each page or specific portion of a document claimed to be a trade secret must be clearly marked as “trade secret” and all such material must be separately submitted in a separate envelope clearly marked as trade secret. The submitting party must include a sworn affidavit that the information is trade secret information. If OIR or DFS receives a public records request for information marked a trade secret, it must promptly notify the person that certified the document as a trade secret has 30 days to file an action in circuit court seeking an order barring public disclosure. The agency may not release the information during the 30 day period or while the legal action is pending.

Public Adjusters

Public adjusters prepare, complete, and file insurance claims, and engage in settlement negotiations with insurers, on behalf of insureds or third-party claimants in return for compensation. Public adjusters are subject to licensure under the Insurance Adjusters Law in part VI, ch. 626, F.S. Section 626.854, F.S., contains a number of provisions that govern the practice of public adjusting and insurers’ interactions with public adjusters. An example of the latter is in subsection (13) of s. 626.854, F.S., which provides that a company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured, claimant, or the insured property, must provide at least 48 hours’ notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. If such notice is not provided, the insured or claimant may deny access to the insured property.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.⁴¹ There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code,⁴² which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.⁴³ Rather, surplus lines insurers are “unauthorized” insurers,⁴⁴ but may transact surplus lines insurance if they are made eligible by the OIR. To be made eligible to transact insurance, a surplus lines insurer must meet the following requirements related to regulatory oversight in other jurisdictions and solvency:

⁴¹ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

⁴² Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

⁴³ Section 624.09(1), F.S.

⁴⁴ Section 624.09(2), F.S.

- An authorized insurer in the state or county of its domicile as to the kind or kinds of insurance proposed to be placed with the surplus lines insurer.
 - The insurer must have been an authorized insurer for at least the 3 preceding years. The OIR may waive the 3-year requirement if the insurer provides a product or service not readily available to Florida consumers or has operated successfully for a period of at least 1 year and has capital and surplus of not less than \$25 million.
- The surplus lines insurer or an agent requesting to export a policy to the surplus lines insurer must provide the OIR with a duly authenticated copy of the surplus lines insurer's current annual financial statement, and also must provide any additional information regarding the insurer that the OIR requests.
- The surplus lines insurer must maintain a surplus as to policyholders of at least \$15 million.
 - Alien surplus lines insurers (insurers formed under laws other than those of Florida or any state, district, territory, or commonwealth of the United States) must also maintain in the United States a trust fund for the protection of policyholders deemed adequate by the OIR of at least \$5.4 million.
 - A surplus lines insurer which is a member of an insurance holding company that includes a member which is a Florida domestic insurer may elect to maintain surplus as to policyholders in an amount equal to the requirements of s. 624.408, F.S., and must be in compliance with ch. 625, F.S.
- The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.
- The officers and directors of the insurer must be competent and trustworthy, meeting the requirements of s. 624.404(3), F.S.

Policies issued by an impaired or insolvent surplus lines insurer are not covered by any of Florida's guaranty associations.

Placement of Insurance With an Eligible Surplus Lines Insurer

"To export" a policy means an insurance agent,⁴⁵ with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.⁴⁶ Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.⁴⁷ "Diligent effort" means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is one million dollars or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁴⁸ The law further specifies that:⁴⁹

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;

⁴⁵ Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.

⁴⁶ Section 626.914(3), F.S.

⁴⁷ Section 626.916(1)(a), F.S.

⁴⁸ Section 626.914(4), F.S.

⁴⁹ Section 626.916(1), F.S.

- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,⁵⁰ the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

All licensed surplus lines agents are members of the Florida Surplus Lines Service Office (FSLSO), a nonprofit association created by statute and directed by a board of governors.⁵¹ The FSLSO receives, records, and reviews all surplus lines insurance policies and documents, maintains records of such policies, produces monthly reports to the OIR, collects from surplus lines agents the surplus lines premium tax⁵² and surplus lines service fee,⁵³ and other specified duties.⁵⁴ Each surplus lines agent that transacts business during a calendar quarter must file an affidavit stating that all surplus lines insurance the agent transacted during that quarter has been submitted to the FSLSO.⁵⁵ The affidavit must also include the diligent efforts the agent made to place coverages with authorized insurers.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law⁵⁶ governing property, casualty, and surety insurance that covers subject of insurance resident, located, or to be performed in this state.⁵⁷ The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.⁵⁸ Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies that “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁵⁹

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The office makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

⁵⁰ Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

⁵¹ Section 626.921, F.S.

⁵² See Section 626.932, F.S.

⁵³ See Section 626.9325, F.S.

⁵⁴ Section 626.921(3), F.S.

⁵⁵ Section 626.931, F.S.

⁵⁶ Section 627.011, F.S.

⁵⁷ Section 627.021, F.S.

⁵⁸ Section 627.062(1), F.S.

⁵⁹ Section 627.041, F.S.

- Past and prospective loss experience.
- Past and prospective expenses.
- The degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer.
- The reasonableness of the judgment reflected in the rate filing.
- Dividends, savings, or unabsorbed premium deposits returned to policyholders.
- The adequacy of loss reserves.
- The cost of reinsurance.
- Trend factors, including trends in actual losses per insured unit for the insurer.
- Conflagration and catastrophe hazards.
- Projected hurricane losses.
- Projected flood losses, if the policy covers the risk of flood.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

Projected hurricane losses in a rate filing must be estimated using a model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology.⁶⁰ The commission consists of 12 members, with expertise in the elements, are used to develop computer models to estimate hurricane and flood loss. Members of the commission include State University System faculty experts in insurance finance, statistics, computer system design, meteorology, and structural engineering; three actuaries; the insurance consumer advocate; the director of the Cat Fund; the Executive Director of Citizens Property Insurance Corporation; and the Director of the Division of Emergency Management.⁶¹

Homeowner's Property Insurance Policies – Offer of Replacement Cost Coverage

Insurers are required under s. 627.7011, F.S., to offer homeowner's insurance policies providing that any loss will be adjusted on the basis of replacement costs to the dwelling. Such policyholders must also be provided an offer of replacement cost coverage that includes law and ordinances coverage of 25 percent or 50 percent of the dwelling limit.

Time limit for Filing Property Insurance Claims

Section 95.11(2), F.S., provides a 5-year statute of limitations on legal or equitable civil actions on contracts, examples of which include insurance policies. Though this technically does not bar the filing of a claim 5 years after the date of loss, it has the effect of barring a legal action to challenge a breach of the insurance contract. Florida law in s. 627.70132, F.S., requires each windstorm or hurricane claim, supplemental claim, or reopened claim under a property insurance policy to be given to the insurer within 3 years of the hurricane's landfall or the date the windstorm caused the covered damage. Section 627.706(5), F.S., requires that sinkhole claims must be made within 2 years after the policyholder knew or should have known of the sinkhole loss.

⁶⁰ Section 627.062(2)(b)11., F.S.

⁶¹ Section 627.0628(2)(b), F.S.

Notice of Claims and Litigations Under Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. This assignment is often called an “assignment of benefits” or “AOB.” Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the insurance benefits.⁶²

The Legislature in 2019 enacted s. 627.7152, F.S., which governs the execution of assignments, provides duties that assignees must meet when filing a claim under a property insurance policy, provides requirements pursuant to litigation brought by assignees under property insurance policies, and revises the standards for awarding attorney fees in such litigation.

Prior to litigation, under s. 627.7152(9), F.S., an assignee must provide the named insured and the assignor a written notice of intent to initiate litigation, delivered at least 10 business days before filing suit, but not before the insurer has made a determination of coverage. The notice must also include a detailed written invoice or estimate of services that includes itemized information and proof work was performed in accordance with accepted industry standards.

In a claim arising under an assignment agreement, the assignee has the burden under s. 627.7152(3)(b), F.S., to demonstrate that the insurer is not prejudiced by the assignee’s failure to cooperate with the insurer in the claim investigation.

Condominium Unit Owner Loss Assessment Coverage

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for: deductibles owed when a claim is made under a condominium association’s property insurance policy; damage that occurs to the condominium building or the common areas of a condominium property; or injuries that occur in the common areas of a condominium property.⁶³ Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of \$2000 for all assessments made as a result of the same direct loss to the condominium property.⁶⁴ The law further establishes that the maximum amount of any unit owner’s coverage that can be assessed for any loss is an amount equal to the unit owner’s loss assessment coverage limit in effect 1 day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.⁶⁵

Cancellation of Motor Vehicle Insurance For Non-Payment of Premium

Section 627.7295(7), F.S., provides that policies or binders of private passenger motor vehicle insurance may only be issued if the insurer or agent collects at least 1 month’s premium. Prior to

⁶² *Nationwide Mutual Insurance Company v. Pinnacle Medical, Inc.* 753 So.2d 55, 57 (Fla. 2000)(“The right of assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution”).

⁶³ The Balance, *Loss Assessment Explained for Condo Insurance*, <https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435> (last visited Jan. 8, 2020).

⁶⁴ S. 627.714(1), F.S.

⁶⁵ Section 627.714(2), F.S.

a 2019 legislative revision of this requirement, the insurer or agent had to collect at least 2 month's premium. The prohibition against cancelling a new policy for nonpayment of premium unless the initial payment was dishonored lasts for 60 days, however, corresponding to the previous requirement of prepayment of at least 2 month's premium.

Agent Licensing

General Lines Agent

A general lines agent⁶⁶ is one who sells the following lines of insurance: property,⁶⁷ casualty,⁶⁸ including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,⁶⁹ or a workers' compensation self-insurance fund;⁷⁰ surety;⁷¹ health;⁷² and marine.⁷³ The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance.⁷⁴ If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.⁷⁵

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.⁷⁶

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.⁷⁷ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.⁷⁸ Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.⁷⁹

Service Warranty Contracts

A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for

⁶⁶ Section 626.015(5), F.S.

⁶⁷ Section 624.604, F.S.

⁶⁸ Section 624.605, F.S.

⁶⁹ As defined in s. 624.462, F.S.

⁷⁰ Pursuant to s. 624.4621, F.S.

⁷¹ Section 626.606, F.S.

⁷² Section 624.603, F.S.

⁷³ Section 624.607, F.S.

⁷⁴ Section 626.827, F.S.

⁷⁵ Section 626.829, F.S.

⁷⁶ Section 626.015(17), F.S.

⁷⁷ Section 634.011(8), F.S.

⁷⁸ Section 634.031, F.S.

⁷⁹ Section 634.171, F.S.

repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.⁸⁰ No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.⁸¹

Home Warranty Contracts

A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.⁸² No person shall solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.⁸³

III. Effect of Proposed Changes:

Section 1 amends s. 215.555, F.S., governing the Florida Hurricane Catastrophe Fund.

Revising Cat Fund Reimbursement of Collateral Protection (Force-Placed) Insurance

Paragraph (2)(c) is amended to revise the requirements for Cat Fund reimbursement of collateral protection (“force-placed”) insurance. Currently the Cat Fund provides reimbursement for a loss under force-placed coverage if the coverage is in an amount at least equal to the coverage amount for the dwelling under the lapsed policy. The bill directs the Cat Fund to also make reimbursement available if the force-placed policy covers the amount requested by the mortgage lender, which may be limited to the remaining indebtedness on the property. Cat Fund reimbursement must also be available if the homeowner requested the coverage amount on the force-placed policy.

Requiring a Third-Party Audit of the Cat Fund Reimbursement Premium Formula

The reimbursement premium formula is developed by an independent consultant selected by the SBA. The reimbursement premium is the proper actuarially indicated premium paid by the insurer for the insurer’s reimbursement contract.

The bill creates a new paragraph (5)(f), which directs the OIR to retain an independent consultant to audit the reimbursement premium formula of the Cat Fund. The consultant retained by the

⁸⁰ Section 634.401(13), F.S.

⁸¹ Section 634.419, F.S. A “sales representative” is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. Section 634.401(12), F.S.

⁸² Section 634.301, F.S.

⁸³ Section 634.317, F.S. “Sales representative” is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. Section 634.301(12), F.S.

OIR may not be the consultant that developed the formula. The audit must evaluate whether the formula uses actuarially sound principles and whether insurers are paying an actuarially sound premium. The OIR must also recommend any factors which would enhance the actuarial sophistication of ratemaking for the fund. The audit will be first performed to evaluate the premium formula for the 2021 contract year and every 3 years thereafter. The audit report must be presented to the Financial Services Commission and the Legislature on or before March 1 of the year after the contract year audited (March 1, 2022, for the audit of the 2021 premium formula).

Revising the Signature Requirement for Obtaining a Salvage Certificate of Title or Certificate of Destruction

Section 2 amends s. 319.30, F.S., to require that an electronic signature used to satisfy the signature requirement for a salvage certificate of title must use a system providing a level 2 background check.

Revisions Regarding the Civil Remedy Notice for Insurer Bad Faith

Section 3 amends s. 624.155(3), F.S., which provides the notice requirements that are a condition precedent to bringing a bad faith action against an insurer under the statute.

The bill specifies that the 60 days' written civil remedy notice of the violation required under the statute must be delivered to the name and address designated by the insurer under s. 624.422(2), F.S. Under s. 624.422(2), F.S., each authorized insurer must designate a person to whom service of process may be forwarded when process is served against the CFO because each authorized insurer is deemed to have appointed the CFO as an attorney for the purpose of receiving service of legal process.

Under current law, no bad faith action may be brought if, within 60 days after the civil remedy notice is filed, the damages are paid or the circumstances giving rise to the violation are corrected. The bill revises the 60 day period for the insurer to cure the alleged violation by starting upon the insurer's receipt of notice, which the bill requires must be delivered to the name and address designated under s. 624.422(2), F.S.

The bill requires the civil remedy notice to specify the damages to be paid by the insurer for the claim that are available under the policy, less amounts the insurer has paid on the claim and any applicable deductibles. The bill prohibits demands for vague remedial action regarding changes to claims-handling procedures or practices.

The bill also requires the applicable statute of limitations for bad faith actions under the statute to be tolled for 60 days after the date appraisal is invoked in a residential property insurance claim. This conforms to the existing requirement in paragraph (3)(f) that prohibits the filing of a civil remedy notice within 60 days after appraisal is invoked by any party in a residential property insurance claim.

Limiting the Release of Aggregated Trade Secret Information

Sections 4 and 5 amend ss. 624.307 and 624.315, F.S., to specify that the OIR and DFS may only disseminate aggregated trade secret information pursuant to their general powers, within the OIR annual report, or pursuant to a request for information regarding certain insurer financial and insurance marketplace metrics that must be maintained by the OIR, if such trade secret information cannot be individually extrapolated. If the trade secret information can be individually extrapolated, it remains protected as provided under s. 624.4213, F.S., which provides that when the OIR requires the submission of trade secrets, it must notify an insurer of any request for such information and refuse to release the alleged trade secret information for at least 30 days or until the outcome of a legal action brought by the insurer barring public disclosure of the trade secrets.

Repeal of Requirement to Provide 48 Hour Notice to the Insured, Claimant, Public Adjuster, or Attorney Prior to Meeting the Insured or Claimant or Inspecting the Insured Property

Section 6 amends 626.854, F.S., to repeal the requirement that any person acting on behalf of an insurer must provide at least 48 hours' notice to the insured, claimant, public adjuster or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. Currently, the insured or claimant may waive the notice requirement or, if there is no waiver, may deny access to the property if notice was not provided.

Allowing Florida-Domiciled Insurers to Wholly Own a Surplus Lines Insurer

Section 8 amends s. 626.918, F.S., to allow a surplus insurer to be eligible to have policies placed with it if it is wholly owned by an insurer domiciled in Florida that has been authorized in Florida for at least the 3 preceding years as to the kind or kinds of insurance that would be placed with the surplus lines insurer. The bill also provides that an eligible surplus lines insurer wholly owned by a Florida-domiciled insurer must comply with the following solvency requirements under Florida law:

- Section 624.404, F.S., regarding compliance with the Florida Insurance Code and fitness of management, officers, or directors.
- Section 624.407, F.S., regarding surplus requirements for new insurers.
- Section 624.4073, F.S., generally prohibiting officers and directors of insolvent insurers from serving as an officer or director of an authorized insurer or having control over the selection of officers or directors.
- Section 624.408, F.S., regarding surplus requirements for existing insurers.
- Section 624.4085, F.S., regarding risk-based capital requirements for insurers.
- Section 624.40851, F.S., regarding the confidentiality of risk-based capital information.
- Section 624.4095, F.S., providing required premium to surplus ratios.
- Section 624.424, F.S., requiring each authorized insurer to file an annual financial statement with the OIR.
- Chapter 625, F.S., providing standards for accounting, investments, and deposits by insurers.

Section 7 amends s. 626.916(1), F.S., to require that alternative dispute resolution such as appraisal or arbitration must be conducted in Florida under any policy placed with an eligible surplus lines insurer that is wholly owned by a Florida-domiciled insurer.

Repeal of the Surplus Lines Agent Affidavit Requirement

Section 9 amends s. 626.931, F.S., to repeal the requirement that each surplus lines agent currently transacting business must, within 45 days of the end of the calendar quarter, file an affidavit with the Florida Surplus Lines Service Office. The affidavit must state that all surplus lines insurance transacted by the agent during the calendar quarter was submitted to the FSLSO and must include efforts made to place coverage with authorized insurers and the results of those efforts.

Section 10 amends s. 626.932(2), F.S., to provide that surplus lines agents must remit the surplus lines tax to the FSLSO at the same time as the agent pays the surplus lines service fee required by s. 626.9325, F.S. The change is necessitated by the repeal of the agent affidavit requirement, but will not change the time frame for remission of the surplus lines tax because the service fee is due 45 days after each calendar quarter, which is when agent affidavits are due.

Section 11 provides a conforming amendment to s. 626.935, F.S., to provide that failure to make and file surplus lines agent affidavits is no longer grounds for disciplinary action against a surplus lines agent's license and appointments.

Section 23 provides a conforming amendment to s. 629.401, F.S., regarding insurance exchanges created to underwrite surplus lines insurance.

Calculating Homeowners' Property Rates Using Modeling Indications that are the Weighted or Straight Average of Multiple Models

Section 12 amends s. 627.062(2)(j), F.S., to provide that the OIR may not disapprove a rate for homeowners' insurance solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models found accurate or reliable under s. 627.0628, F.S., by the Florida Commission on Hurricane Loss Projection Methodology.

Property Insurance Rating Factors Based on Building Code Enforcement

Section 13 amends s. 627.0629, F.S., to provide insurers discretion regarding the utilization of positive and negative rate factors based on a statewide rating organization's building code rating factor plan that evaluates the manner in which building code enforcement in a particular jurisdiction addresses wind risk. Currently, insurers must include positive and negative rate factors based on the aforementioned evaluation of how a jurisdiction's building code enforcement addresses wind risk.

Extension of OIR Periods for Review of Rates and Forms

Sections 12, 14, and 15 amend ss. 627.062(2)(a)1., F.S., 627.0651(1)(a), F.S., and s. 627.410(2), F.S., to provide that when the OIR periods for reviewing rates and forms under those sections

end on a weekend or holiday, the review period must be extended until the conclusion of the next business day.

Actual Cash Value Adjustment of Non-Hurricane Claims on Roofs Older than 10 Years

Section 16 amends s. 627.7011, F.S., to allow an insurer to offer a policy or endorsement providing that a non-hurricane claim on a roof older than 10 years will be adjusted on the basis of actual cash value, and not replacement cost.

Notice of Property Insurance Claims

Section 17 amends s. 627.70132, F.S., to bar any non-sinkhole property insurance claim, supplemental claim, or reopened claim for which notice is not provided to the insurer in accordance with the terms of the insurance policy within 3 years after the date of loss. This expands the existing requirement for property insurance losses caused by a windstorm or hurricane, which are barred if notice is not provided within 3 years of the hurricane's landfall or the windstorm caused the covered damage. Under the bill, sinkhole loss claims continue to be subject to the 2 year time limitation under s. 627.706(5), F.S.

Requirements Insureds Must Meet When Litigating Suits Arising Under a Property Insurance Policy

Section 18 creates s. 627.70152, F.S., which provides requirements insureds must meet when litigating suits under a property insurance policy.

The bill creates two conditions precedent that the named insured must meet prior to filing suit under a property insurance policy. The first condition precedent is that the named insured must serve a written notice of intent to initiate litigation to the insurer at least 10 business days before filing suit under the policy. The notice must specify the damages in dispute and the amount claimed. The notice may not be served before the insurer makes a determination of coverage under s. 627.70131, F.S., which generally provides that a property insurer must pay or deny a claim, or a portion of the claim, within 90 days of receiving notice of the claim. The notice must be served by electronic delivery or certified mail, return receipt requested to the name and address or email designed by the insurer in the policy.

The second condition precedent is that the named insured, concurrent with the aforementioned notice, must provide a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and proof that any work that has been performed was done so in accordance with accepted industry standards. The bill requires a named insured filing suit under a property insurance policy must sign any complaint seeking relief under the policy.

If during litigation an insurer asserts a defense that the named insured or the named insured's attorney or public adjuster failed to cooperate with the insurer in the claim investigation, including, but not limited to, by not allowing the insurer to inspect the property, the bill provides that the named insured has the burden to demonstrate that the insurer is not prejudiced by such failure to cooperate. Currently, the insurer has the burden to demonstrate both that a named

insured failed to cooperate with the adjustment of the claim and that such failure prejudiced the insurer.

Condominium Unit Owner's Loss Assessment Insurance Coverage

Section 19 amends s. 627.714(2), F.S., to clarify that the maximum amount that a condominium unit owner's assessment insurance coverage may be assessed is the loss assessment coverage limit in effect 1 day before the date of the occurrence that gave rise to the loss. Such coverage is applicable to any loss assessment regardless of the date of the assessment by the condominium association.

Placement of Private-Market Flood Insurance With Surplus Lines Insurance Carriers

Section 20 revives, reenacts, and amends s. 627.715(4), F.S., to allow surplus lines agents to export flood coverage to eligible surplus lines insurers without meeting the diligent effort requirement of s. 626.916(1)(a), F.S. The diligent effort requirement requires surplus lines agents to attempt to place coverage with at least three Florida-admitted insurance carriers prior to placing the coverage with an eligible surplus lines carrier.

The exemption from the diligent effort requirement lasts until July 1, 2025, or on the date the Insurance Commissioner determines that there is an adequate admitted market to provide private flood insurance.

Delivery of Notice to Initiate Litigation Under an Assignment of Benefits

Section 21 amends s. 627.7152, F.S., to specify that the notice of intent to initiate litigation that must be sent by an assignee of benefits to an insurer as a condition precedent to filing suit must be sent to the email address or name and address designated by the insurer in the policy forms.

Cancellation of Motor Vehicle Insurance For Non-Payment of Premium

Section 22 amends s. 627.7295(4), F.S., to reduce from 60 days to 30 days the period during which an insurer may not cancel a new policy or binder of private passenger motor vehicle insurance except for the disallowance of the initial premium payment. This corresponds to a revision to s. 627.7295(7) in ch. 2019-108, Laws of Florida, that allows private passenger motor vehicle insurance to be issued upon the collection of at least 1 month's premium. The current 60 day noncancellation period corresponds to the previous requirement that 2 month's premium had to be collected before issuing the policy.

Transaction of Motor Vehicle Service Agreements, Home Warranties, and Service Warranties by Licensed Personal Lines Agents and General Lines Agents

Section 24 amends s. 634.171, F.S., to provide that a licensed personal lines or general lines agent may solicit, negotiate, advertise, or sell motor vehicle service agreements and need not be licensed under the section. **Section 25** amends s. 634.317, F.S., to the same effect for home warranty contracts and **section 26** amends s. 634.419, F.S., to the same effect for service warranty contracts.

Effective Date

Section 27 provides that, except as otherwise expressly provided, the act is effective July 1, 2020.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Insurance regulation estimates that the requirement that the OIR retain an independent consultant to audit the Florida Hurricane Catastrophe Fund reimbursement premium formula once every 3 years, beginning with the 2021 contract year, will require the OIR to expend \$200,000 in recurring funds during those years when audits are required.⁸⁴

VI. Technical Deficiencies:

None.

⁸⁴ Office of Insurance Regulation, *2020 Agency Legislative Bill Analysis HB 359*, pg. 4 (Nov. 1, 2019).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.555, 319.30, 624.155, 624.307, 624.315, 626.854, 626.916, 626.918, 626.931, 626.932, 626.935, 627.062, 627.0629, 627.0651, 627.410, 627.7011, 627.70132, 627.714, 627.715, 627.7152, 627.7295, 629.401, 634.171, 634.317, and 634.419.

This bill creates section 627.70152 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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/12/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

215.555 Florida Hurricane Catastrophe Fund.—

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

(c) "Covered policy" means any insurance policy covering
residential property in this state, including, but not limited



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11 to, any homeowner, mobile home owner, farm owner, condominium
12 association, condominium unit owner, tenant, or apartment
13 building policy, or any other policy covering a residential
14 structure or its contents issued by any authorized insurer,
15 including a commercial self-insurance fund holding a certificate
16 of authority issued by the Office of Insurance Regulation under
17 s. 624.462, the Citizens Property Insurance Corporation, and any
18 joint underwriting association or similar entity created under
19 law. The term "covered policy" includes any collateral
20 protection insurance policy covering personal residences which
21 protects both the borrower's and the lender's financial
22 interests, in an amount at least equal to the coverage amount
23 for the dwelling in place under the lapsed homeowner's policy,
24 the most recent total market value of the dwelling as determined
25 by the county property appraiser, or the coverage amount the
26 homeowner requests from the insurer, if such collateral
27 protection insurance policy can be accurately reported as
28 required in subsection (5). Additionally, covered policies
29 include policies covering the peril of wind removed from the
30 Florida Residential Property and Casualty Joint Underwriting
31 Association or from the Citizens Property Insurance Corporation,
32 created under s. 627.351(6), or from the Florida Windstorm
33 Underwriting Association, created under s. 627.351(2), by an
34 authorized insurer under the terms and conditions of an executed
35 assumption agreement between the authorized insurer and such
36 association or Citizens Property Insurance Corporation. Each
37 assumption agreement between the association and such authorized
38 insurer or Citizens Property Insurance Corporation must be
39 approved by the Office of Insurance Regulation before the



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effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Effective upon this act becoming a law, paragraph (d) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(d) An electronic signature that is consistent with chapter 668 satisfies any signature required under this subsection, except that an electronic signature on an odometer disclosure submitted through an insurance company must be executed using an electronic signature, as defined in s. 668.003(4), which ~~that~~ uses a system providing an Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017,



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which ~~that~~ are equivalent to or greater than:

~~1. Level 2, for each level, for a certificate of
destruction or.~~

~~2. Level 3, for each level, for a salvage certificate of
title.~~

Section 3. Paragraph (a) of subsection (1) of section
440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of
compensation.—

(1) Compensation is not allowed for the first 7 days of the
disability, except for benefits provided under s. 440.13.
However, if the injury results in more than 21 days of
disability, compensation is allowed from the commencement of the
disability.

(a) All weekly compensation payments, except for the first
payment, must be paid by check or, if authorized by the
employee, paid on a prepaid card pursuant to paragraph (b), ~~or~~
deposited directly into the employee's account at a financial
institution as defined in s. 655.005, or transmitted to the
employee's account with a money transmitter licensed under part
II of chapter 560.

Section 4. Paragraph (a) of subsection (1) and paragraph
(a) of subsection (6) of section 440.20, Florida Statutes, are
amended to read:

440.20 Time for payment of compensation and medical bills;
penalties for late payment.—

(1)(a) Unless the carrier denies compensability or
entitlement to benefits, the carrier shall pay compensation
directly to the employee as required by ss. 440.14, 440.15, and



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440.16, in accordance with those sections. Upon receipt of the employee's authorization as provided for in s. 440.12(1)(a), the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution as defined in s. 655.005 or onto a prepaid card in accordance with s. 440.12(1) or transmits the employee's compensation to the employee's account with a money transmitter licensed under part II of chapter 560. Compensation by direct deposit, ~~or~~ through the use of a prepaid card, or through transmission is considered paid on the date the funds become available for withdrawal by the employee.

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a penalty of an amount equal to 20 percent of the unpaid installment, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that,



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owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The department may assess without a hearing the penalty against either the employer or the carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or the judge of compensation claims determines that the penalty should be paid by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution or by transmission to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 5. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be provided by the department to the e-mail address designated by the insurer under s. 624.422.

(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



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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 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 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.

(c) No action shall lie if, within 60 days after the insurer receives filing notice from the department in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) 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) The applicable statute of limitations for an action under this section shall be tolled for a period of:

1. Sixty 65 days after the insurer receives from the department ~~by the mailing of~~ the notice required by this subsection.

2. Sixty days after the date appraisal is invoked pursuant to paragraph (f) ~~or the mailing of a subsequent notice required by this subsection.~~



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(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

Section 6. Subsection (4) of section 624.307, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

624.307 General powers; duties.—

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law. Aggregate information may include information asserted as trade secret information unless the trade secret information can be individually extrapolated, in which case the trade secret information remains protected as provided under s. 624.4213.

(11) The Commissioner of Insurance Regulation may not lobby for compensation the Legislature, the Governor, the Executive Office of the Governor, members of the Cabinet, a department that is headed by a member of the Cabinet, or the office on issues of policy, appropriations, or procurement for a period of 6 years after vacation of public position.

Section 7. Subsection (4) is added to section 624.315, Florida Statutes, to read:

624.315 Department; annual report.—

(4) When aggregate information includes information asserted as trade secret information, the office may include the trade secret information in the report required under subsection (1) or may make the trade secret information available under subsection (2) unless the trade secret information can be individually extrapolated, in which case the trade secret



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information remains protected as provided under s. 624.4213.

Section 8. Subsection (2) of section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(2) Prior to its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer is to be forwarded. Each insurer shall also file with the department designation of the name, mailing address, and e-mail address of the person who shall receive presuit notices filed under s. 627.7152 and the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under 624.155. The department shall publish such names and addresses on its website. The insurer may change a ~~the~~ designation at any time by a new filing.

Section 9. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) *Travel insurance*.—License covering only policies and certificates of travel insurance which are subject to review by the office. Policies and certificates of travel insurance may provide coverage for travel insurance, as defined in s. 647.02 ~~risks incidental to travel, planned travel, or accommodations~~



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~~while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days. The license may be issued only to an individual or business entity that has filed with the department an application for a license in a form and manner prescribed by the department.~~

1. A limited lines travel insurance producer, as defined in s. 647.02, shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.

2. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed or registered, respectively. As used in this paragraph, the term "travel retailer" means a business entity that:

a. Makes, arranges, or offers planned travel.

b. May, under subparagraph 3., offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

3. A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if all of the following requirements are met:



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a. The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:

(I) A description of the material terms or the actual material terms of the insurance coverage.

(II) A description of the process for filing a claim.

(III) A description of the review or cancellation process for the travel insurance policy.

(IV) The identity and contact information of the insurer and limited lines travel insurance producer.

b. At the time of licensure, the limited lines travel insurance producer establishes and maintains a register on the department's website and appoints each travel retailer that offers travel insurance on behalf of the limited lines travel insurance producer. The limited lines travel insurance producer must maintain and update the register, which must include the travel retailer's federal tax identification number and the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations. The limited lines travel insurance producer shall submit the register to the department upon reasonable request. The limited lines travel insurance producer shall also certify that the travel retailer register complies with 18 U.S.C. s. 1033. The grounds for the suspension and revocation and the penalties applicable to resident insurance producers under this section apply to the limited lines travel insurance producers and travel retailers.

c. The limited lines travel insurance producer has designated one of its employees as the designated responsible producer. The designated responsible producer, who must be a



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licensed insurance producer, is responsible for compliance with the travel insurance laws and regulations applicable to the limited lines travel insurance producer and its registrants. The designated responsible producer and the president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations must comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

d. The limited lines travel insurance producer has paid all applicable licensing and appointment fees, as set forth in applicable general law.

e. The limited lines travel insurance producer requires each employee and each authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which is subject, at the discretion of the department, to review and approval. The training material must, at a minimum, contain adequate instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective purchasers.

As used in this paragraph, the term "offer and disseminate" means to provide general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

4. A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by



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the travel insurer. Such materials must include information that, at a minimum:

a. Provides the identity and contact information of the insurer and the limited lines travel insurance producer.

b. Explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

c. Explains that a travel retailer is authorized to provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

5. A travel retailer employee or authorized representative who is not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

c. Hold himself or herself or the travel retailer out as a licensed insurer, licensed producer, or insurance expert.

Notwithstanding any other law, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions in this section may receive related compensation



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upon registration by the limited lines travel insurance producer as described in paragraph (2) (b) .

6. As the insurer's designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this section.

7. Any person licensed as a general or personal lines agent may sell, solicit, and negotiate travel insurance.÷

~~1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. Such policy may not be for more than 48 hours or more than the duration of a specified one-way trip or round trip.~~

~~2. To an entity or individual that is:~~

~~a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;~~

~~b. An exchange company operating an exchange program approved under chapter 721;~~

~~c. A managing entity operating a timeshare plan approved under chapter 721;~~

~~d. A seller of travel as defined in chapter 559; or~~

~~e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.~~

~~3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.~~



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~~a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.~~

~~b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.~~

~~c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.~~

~~A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to~~



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~~any other officer or person who directs or controls the travel insurance operations of the entity.~~

Section 10. Subsection (13) of section 626.854, Florida Statutes, is amended to read:

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

(13) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to:

(a) The insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant.

(b) The insured or claimant before scheduling or an onsite inspection of the insured property. During the inspection, an attempt may not be made to conduct an unscheduled meeting with the insured or claimant. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

Section 11. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and Insurer reporting requirements.~~—

~~(1) Each surplus lines agent that has transacted business during a calendar quarter shall on or before the 45th day following the calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and~~



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~~furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during such calendar quarter.

(2)~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year.

(3)~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4)~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or shall be submitted on forms prescribed by the Florida Surplus Lines Service Office and shall show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and



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(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 12. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office at the same time as the fee payment required ~~provided for the filing of the quarterly affidavit,~~ under s. 626.9325 ~~s. 626.931~~. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt.

Section 13. Paragraph (d) of subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code, on any of the following grounds:

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

Section 14. Paragraphs (a) and (j) of subsection (2) of section 627.062, Florida Statutes, are amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and



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use rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return on the classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must be filed with the office under one of the following procedures:

1. If the filing is made at least 90 days before the proposed effective date and is not implemented during the office's review of the filing and any proceeding and judicial review, such filing is considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. If the 90-day period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), it must be extended until the conclusion of the next business day.

The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with subparagraph 1., such filing must be made as soon as practicable, but within 30 days after the effective date, and is considered a "use and file" filing. An insurer making a "use and



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file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings made or submitted after January 25, 2007, but before May 1, 2012, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered property coverages.

(j) With respect to residential property insurance rate filings:

1. The rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. The office may not disapprove a rate for homeowners' insurance solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models currently found to be accurate or reliable pursuant to s. 627.0628.

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

Section 15. Paragraph (b) of subsection (2) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating



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organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing shall include variations from standard rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

Section 16. Paragraph (a) of subsection (1) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office under one of the following procedures:

(a) If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a "file and use" filing. In such case, the office shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. If the 60-day period ends on a weekend or a holiday under s. 110.117(1) (a)-(i), it must be extended until the conclusion of



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the next business day. Notification to the insurer by the office of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue notice to the insurer of its preliminary findings within 60 days after the filing.

Section 17. Subsection (2) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(2) Every such filing must be made at least 30 days in advance of any such use or delivery. At the expiration of the 30 days, the form filed will be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office. The approval of such form by the office constitutes a waiver of any unexpired portion of such waiting period. The office may extend the period within which it may affirmatively approve or disapprove such form by up to 15 days by giving notice of such extension before expiration of the initial 30-day period. If the initial 30-day period or the 15-day extension period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), the review period must be extended until the conclusion of the next business day. At the expiration of such extended period, and in the absence of prior affirmative approval or disapproval, such form shall be deemed approved.

Section 18. Paragraph (f) is added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:



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(f) Prohibit an insurer from offering an HO-3 homeowner's insurance policy or endorsement providing that a loss to a roof older than 10 years which is caused by a covered peril other than a hurricane, tornado, fire, or lightning will be adjusted on the basis of actual cash value unless a total loss to the insured structure occurs. Such policy or endorsement may be offered only if the roof of the insured structure is older than 10 years. A policy or endorsement is deemed to provide replacement cost coverage unless before the issuance of the policy or endorsement, the insured makes a written selection, on a form adopted by commission rule, of such actual cash value coverage by signing the form. The form must fully advise the applicant of the nature of the coverage and the heading of the form must state in 12-point bold type: "You are electing to purchase actual cash value coverage on your roof. If your roof is damaged by a covered peril other than hurricane, tornado, fire, or lightning, or the insured structure is not a total loss, you will only receive the depreciated value of your roof and you may experience significant out-of-pocket costs to repair or replace your roof." The applicant may also make such selection through a recorded statement if, contemporaneously but before the selection of actual cash value coverage, the insurer verbally communicates the contents of the form.

Section 19. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—An initial claim not caused by the peril of windstorm or hurricane under an insurance policy that provides property insurance, as defined in s. 624.604, is barred unless



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initial notice of the claim was given to the insurer in
accordance with the terms of the policy within 3 years after the
date of loss. Notice of all supplemental claims or reopened
claims not caused by the peril of windstorm or hurricane must be
made within the later of 3 years after the date of loss or 12
months after the last payment by the insurer on the loss. A
claim, supplemental claim, or reopened claim under an insurance
policy that provides property insurance, as defined in s.
624.604, for loss or damage caused by the peril of windstorm or
hurricane is barred unless notice of the claim, supplemental
claim, or reopened claim was given to the insurer in accordance
with the terms of the policy within 3 years after the hurricane
first made landfall or the windstorm caused the covered damage.
This section does not apply to sinkhole loss claims, which are
subject to the time limitation under s. 627.706(5). For purposes
of this section, the term "supplemental claim" or "reopened
claim" means any additional claim for recovery from the insurer
for losses ~~from the same hurricane or windstorm which~~ the
insurer has previously adjusted pursuant to the initial claim.
This section does not affect any applicable limitation on civil
actions provided in s. 95.11 for claims, supplemental claims, or
reopened claims timely filed under this section.

Section 20. Subsection (2) of section 627.714, Florida
Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss
assessment coverage required.—

(2) The maximum amount of any unit owner's loss assessment
coverage that can be assessed for any loss shall be an amount
equal to that unit owner's loss assessment coverage limit in



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effect 1 day before the date of the occurrence that gave rise to the loss. Such coverage is applicable to any loss assessment regardless of the date of the assessment by the association. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.

Section 21. Notwithstanding the expiration of subsection (4) of section 627.715, Florida Statutes, which occurred on July 1, 2019, that subsection is revived, reenacted, and amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a). This subsection expires July 1, 2025 ~~2019~~, or on the date on which the Commissioner of Insurance Regulation determines in writing that there is an adequate admitted market to provide coverage for the peril of flood consistent with this section, whichever date occurs first. If there are fewer than



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three admitted insurers on the date this subsection expires, the number of declinations necessary to meet the diligent-effort requirement shall be no fewer than the number of authorized insurers providing flood coverage.

Section 22. Paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, is amended to read:

627.7152 Assignment agreements.—

(9) (a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served at least 10 business days before filing suit by electronic or certified mail, return receipt requested, to the name and address or e-mail address designated by the insurer in the policy documents and pursuant to s. 624.422 ~~or electronic delivery at least 10 business days before filing suit~~, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 23. Subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—



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(4) The insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 30 ~~60~~ days immediately following the effective date of the policy or binder for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.

Section 24. Present subsection (4) of section 627.914, Florida Statutes, is redesignated as subsection (5), a new subsection (4) is added to that section, and subsections (2) and (3) of that section are amended, to read:

627.914 Reports of information by workers' compensation insurers required.—

(2) (a) Each insurer and self-insurance fund authorized to write a policy of workers' compensation insurance shall report ~~transmit~~ the following information annually on both Florida experience and nationwide experience separately:

1. ~~(a)~~ Payrolls by classification.
2. ~~(b)~~ Manual premiums by classification.
3. ~~(c)~~ Standard premiums by classification.
4. ~~(d)~~ Losses by classification and injury type.
5. ~~(e)~~ Expenses.

An insurer or self-insurance fund that is placed in receivership pursuant to part I of chapter 631 must continue to report the information required under this paragraph. At the discretion of the receiver, the insurer or self-insurance fund may outsource the reporting of such information to a third-party reporting



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765 vendor. The office shall approve a modified reporting plan that
766 is limited in terms of data elements.

767 (b) A report of the ~~this~~ information required under
768 paragraph (a) shall be filed no later than July 1 of each year.
769 All reports shall be filed in accordance with standard reporting
770 procedures for insurers, which procedures have received approval
771 by the office, and shall contain data for the most recent policy
772 period available. A statistical or rating organization may be
773 used by insurers and self-insurance funds to report the data
774 required by this section. The statistical or rating organization
775 shall report each data element in the aggregate only for
776 insurers and self-insurance funds required to report under this
777 section who elect to have the organization report on their
778 behalf. Such insurers and self-insurance funds shall be named in
779 the report.

780 (3) Individual self-insurers as defined in s. 440.02 shall
781 report only Florida data as prescribed in subparagraphs
782 (2)(a)1.-5. paragraphs ~~(2)(a)-(e)~~ to the office.

783 (a) The office shall publish the dates and forms necessary
784 to enable individual self-insurers to comply with this section.

785 (b) A statistical or rating organization may be used by
786 individual self-insurers for the purposes of reporting the data
787 required by this section and calculating experience ratings.

788 (4) The office may use the information it receives under
789 this section in its adoption of rates and experience ratings
790 modifications.

791 Section 25. Subsection (3) of section 628.801, Florida
792 Statutes, is amended to read:

793 628.801 Insurance holding companies; registration;



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regulation.—

(3) Effective January 1, 2021 ~~2015~~, pursuant to chapter 624 relating to the examination of insurers, the office may examine any insurer registered under this section and its affiliates, including a managing general agent or holding company, to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

Section 26. Paragraph (a) of subsection (1) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(1) There may be created one or more insurance exchanges, with one or more offices each, subject to such rules as are adopted by the commission. For the purposes of this section, the term “exchange” applies to any such insurance exchange proposed or created under this section. The purposes of the exchange are:

(a) To provide a facility for the underwriting of:

1. Reinsurance of all kinds of insurance.

2. Direct insurance of all kinds on risks located entirely outside the United States.

3. Surplus lines insurance for risks located in this state eligible for export under s. 626.916 or s. 626.917 and placed through a licensed Florida surplus lines agent subject to compliance with ~~the provisions of~~ ss. 626.921, 626.922, 626.923, 626.924, 626.929, 626.9295, and 626.930, ~~and 626.931~~. With respect to compliance with s. 626.924, the required legend may refer to any coverage provided for by a security fund



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established under paragraph (3)(d).

4. Surplus lines insurance in any other state subject to the applicable surplus lines laws of such other state for risks located entirely outside of this state.

Section 27. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed; exceptions.—Salespersons for motor vehicle service agreement companies and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. No employee or salesperson of a motor vehicle service agreement company or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent may solicit, negotiate, advertise, or sell motor vehicle service agreements and is not required to be licensed under this section. A motor vehicle service agreement company is not



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required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 28. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required; exception.—No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent may solicit, negotiate, advertise, or sell home warranty contracts and is not required to be licensed under this section.

Section 29. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exception.—No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part shall not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent may solicit, negotiate, advertise, or sell service warranty contracts and is not required to be licensed under this section.



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Section 30. The Division of Law Revision is directed to create chapter 647, Florida Statutes, consisting of ss. 647.01-647.08, Florida Statutes, to be entitled "Travel Insurance."

Section 31. Section 647.01, Florida Statutes, is created to read:

647.01 Purpose and scope.—

(1) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) This chapter applies to:

(a) Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state.

(b) Policies and certificates that are delivered or issued for delivery in this state.

This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.

(3) All other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 32. Section 647.02, Florida Statutes, is created to read:

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

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one



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insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Department" means the Department of Financial Services.

(5) "Eligible group," solely for the purposes of travel insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship, including, but not limited to, any of the following:

(a) An entity engaged in the business of providing travel or travel services, including, but not limited to:

1. A tour operator, lodging provider, vacation property owner, hotel, resort, travel club, travel agency, property manager, and cultural exchange program.

2. An operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, a common carrier, airline, cruise line, railroad, steamship company, and public bus carrier.



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With regard to any particular travel or type of travel or
travelers, all members or customers of the group must have a
common exposure to risk attendant to such travel.

(b) A university, college, school, or other institution of
learning, covering students, teachers, employees, or volunteers.

(c) An employer covering any group of employees,
volunteers, contractors, board of directors, dependents, or
guests.

(d) A sports team or camp, or a sponsor thereof, covering
participants, members, campers, employees, officials,
supervisors, or volunteers.

(e) A religious, charitable, recreational, educational, or
civic organization, or a branch thereof, covering any group of
members, participants, or volunteers.

(f) A financial institution or financial institution
vendor, or a parent holding company, trustee, or agent of or
designated by one or more financial institutions or financial
institution vendors, including account holders, credit card
holders, debtors, guarantors, or purchasers.

(g) An incorporated or unincorporated association,
including a labor union, having a common interest and
constitution and bylaws, which is organized and maintained in
good faith for purposes other than obtaining insurance coverage
for its members or participants.

(h) A trust or the trustees of a fund that covers its
members, employees, or customers and is established, created, or
maintained for the benefit of its members, employees, or
customers, subject to:

1. The department's authorizing the use of a trust.



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2. The premium tax provisions in s. 647.03 applicable to incorporated or unincorporated associations that have a common interest and constitution and bylaws and that are organized and maintained in good faith for purposes other than obtaining insurance coverage for their members, employees, or customers.

(i) An entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers.

(j) A volunteer fire department, ambulance, rescue, police, court, first-aid, civil defense, or other such volunteer group.

(k) A preschool, daycare institution for children or adults, or senior citizen club.

(l) An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers as defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the motor vehicle or truck rental or leasing company is the policyholder under a policy to which this section applies.

(m) Any other group for which the department has made the following determinations:

1. The group members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship.

2. Issuance of the travel insurance policy is not contrary to the public interest.

(6) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and



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assistance details.

(7) "Group travel insurance" means travel insurance issued to an eligible group.

(8) "Limited lines travel insurance producer" means:

(a) A licensed or third-party administrator;

(b) A licensed insurance producer, including a limited lines producer; or

(c) A travel administrator.

(9) "Travel administrator" means a person who directly or indirectly underwrites policies for; collects charges, collateral, or premiums from; or adjusts or settles claims made by residents of this state in connection with travel insurance, except that a person is not considered a travel administrator if the person is:

(a) A person working for a travel administrator, to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(c) A travel retailer, as defined s. 626.321(1)(c)2., offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with s. 626.321(1)(c);

(d) A person adjusting or settling claims in the normal course of the person's practice or employment as an attorney at law, without collecting charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed



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insurer while acting as a travel administrator for the direct and assumed insurance business of the affiliated insurer.

(10) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and the provision of which does not result in the transfer or shifting of risk which would constitute the business of insurance. The term includes, but is not limited to, security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

(11) "Travel insurance" means insurance coverage for personal risks incidental to planned travel, including:

- (a) Interruption or cancellation of trip or event;
- (b) Loss of baggage or personal effects;
- (c) Damages to accommodations or rental vehicles;
- (d) Sickness, accident, disability, or death occurring during travel;
- (e) Emergency evacuation;
- (f) Repatriation of remains; or
- (g) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies



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related to travel, as determined by the office.

The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

(12) "Travel protection plan" means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 33. Section 647.03, Florida Statutes, is created to read:

647.03 Premium tax.—

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

(a) "Primary certificateholder" means an individual who purchases travel insurance under a group policy.

(b) "Primary policyholder" means an individual who purchases individual travel insurance.

(2) A travel insurer shall pay the premium tax, as required under s. 624.509, on travel insurance premiums paid by any of the following:

(a) A primary policyholder who is a resident of this state.

(b) A primary certificateholder who is a resident of this state.

(c) A blanket travel insurance policyholder:

1. Who is a resident in this state;

2. Who has his or her principal place of business in this state; or

3. Whose affiliate or subsidiary who has purchased blanket



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travel insurance for eligible blanket group members has his or her principal place of business in this state.

The premium tax under this subsection is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(3) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificateholder, or an affiliate or subsidiary thereof, as required under subsection (2).

(b) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 34. Section 647.04, Florida Statutes, is created to read:

647.04 Travel protection plans.—A travel protection plan may be offered for one price for the combined features that the travel protection plan offers in this state if the travel protection plan meets all of the following requirements:

(1) The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each.



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(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

(b) Include the travel insurance disclosures required in this chapter, the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 35. Section 647.05, Florida Statutes, is created to read:

647.05 Sales practices.—

(1)(a) All documents provided to a consumer before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the purchase. Information on the exclusions and the opportunity to learn more about these exclusions must be included in the coverage's fulfillment materials.

(c) The fulfillment materials and the information described in s. 626.321(1)(c)3.a. must be provided to a policyholder or certificateholder as soon as practicable after the purchase of a travel protection plan. Unless the insured has started a covered trip or filed a claim under the travel insurance coverage, the



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policyholder or certificateholder may cancel a policy or
certificate for a full refund of the travel protection plan
price from the date of purchase of a travel protection plan
until at least:

1. Fifteen days after the date of delivery of the travel
protection plan's fulfillment materials by postal mail; or

2. Ten days after the date of delivery of the travel
protection plan's fulfillment materials by means other than
postal mail.

For the purposes of this paragraph, the term "delivery" means
handing fulfillment materials to the policyholder or
certificateholder or sending fulfillment materials by postal
mail or electronic means to the policyholder or
certificateholder.

(d) An insurer shall disclose in the policy documentation
and fulfillment materials whether the travel insurance is
primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer
through an insurer's website or by others through an aggregator
site, it is not an unfair trade practice or other violation of
law if the following requirements are met:

1. The web page provides an accurate summary or short
description of the coverage.

2. The consumer has access to the full provisions of the
policy through electronic means.

(2) A person offering, soliciting, or negotiating travel
insurance or travel protection plans on an individual or group
basis may not do so by using a negative or opt-out option that



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would require a consumer to take an affirmative action to
deselect coverage, such as unchecking a box on an electronic
form, when the consumer purchases a trip.

(3) If a consumer's destination jurisdiction requires
insurance coverage, it is not an unfair trade practice to
require that the consumer choose between the following options
as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination
jurisdiction through the travel retailer, as defined s.
626.321(1)(c)2., or limited lines travel insurance producer
supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of coverage that
meets the destination jurisdiction's requirements before
departure.

(4) (a) A person offering travel insurance to residents of
this state is subject to part IX of chapter 626, the Unfair
Insurance Trade Practices Act, except as otherwise provided in
this chapter. If a conflict arises between this chapter and the
Unfair Insurance Trade Practices Act regarding the sale and
marketing of travel insurance and travel protection plans, the
provisions of this chapter shall control.

(b) A person commits an unfair insurance trade practice
under the Unfair Insurance Trade Practices Act if the person:

1. Offers or sells a travel insurance policy that could
never result in payment of any claims for any insured under the
policy; or

2. Markets blanket travel insurance coverage as free.

Section 36. Section 647.06, Florida Statutes, is created to
read:



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647.06 Travel administrators.—

(1) Notwithstanding any other provision of the Florida Insurance Code, a person may not act or represent himself or herself as a travel administrator in this state unless the person:

(a) Is a licensed and appointed property and casualty insurance producer in this state for activities authorized under that producer license;

(b) Is a licensed insurance agency, appointed as a managing general agent in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of part VI of chapter 626 for the travel insurance it administers.

(3) An insurer is responsible for ensuring that a travel administrator administering travel insurance underwritten by the insurer:

(a) Acts in accordance with this chapter.

(b) Maintains all books and records that are relevant to the insurer and makes these books and records available to the department upon request.

Section 37. Section 647.07, Florida Statutes, is created to read:

647.07 Travel insurance policy.—

(1) Notwithstanding any other provision of the Florida Insurance Code, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance; however, travel insurance that provides coverage for



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sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits, such as baggage or trip cancellation, may be classified and filed for purposes of rates and forms under either the accident and health line of insurance or the inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy. Group or blanket policies are classified as commercial inland marine insurance under s. 627.021(2) (d). Travel insurance policies not issued to a commercial entity and primarily used for personal, family, or household purposes are considered personal inland marine insurance and shall not be subject to s. 627.062. Sections of policies or endorsements for travel insurance which are considered personal inland marine insurance consisting of travel assistance services or cancellation fee waivers are not subject to s. 627.410.

(3) Travel insurance programs may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels.

Section 38. Section 647.08, Florida Statutes, is created to read:

647.08 Rulemaking authority.—The department shall adopt rules to administer this chapter.

Section 39. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.



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===== 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 financial services; amending s.
215.555, F.S.; redefining the term "covered policy"
under the Florida Hurricane Catastrophe Fund in
relation to certain collateral protection insurance
policies; amending s. 319.30, F.S.; revising a certain
electronic signature requirement for a motor vehicle
salvage certificate of title; amending ss. 440.12 and
440.20, F.S.; authorizing the payment of certain
workers' compensation benefits to be transmitted to
the employee's account with a licensed money
transmitter; amending s. 624.155, F.S.; revising
requirements and procedures for the civil remedy
notice provided to insurers and the Department of
Financial Services; revising the timeframe for an
insurer to pay damages or for certain circumstances to
be corrected; revising circumstances that toll the
applicable statute of limitations and the period the
statute of limitations is tolled; amending s. 624.307,
F.S.; providing that certain aggregate information
containing trade secret information may be publicly
disclosed by the department or the Office of Insurance
Regulation except under certain circumstances;
prohibiting the Commissioner of Insurance Regulation



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1287 from certain lobbying for compensation during a
1288 specified timeframe after vacation of public position;
1289 amending s. 624.315, F.S.; providing that certain
1290 aggregate information containing trade secret
1291 information may be publicly disclosed by the
1292 department or office, except under certain
1293 circumstances; amending s. 624.422, F.S., requiring
1294 insurers to file with the department certain contact
1295 information for service of process; requiring the
1296 department to publish such information on its website;
1297 amending s. 626.321, F.S.; providing that certain
1298 travel insurance licenses are subject to review by the
1299 department rather than by the office; revising persons
1300 who may be licensed to transact in travel insurance;
1301 specifying licensure and registration requirements for
1302 certain persons; defining the term "travel retailer";
1303 specifying requirements for, restrictions on, and
1304 authorized acts by travel retailers and limited lines
1305 travel insurance producers; defining the term "offer
1306 and disseminate"; authorizing certain persons to sell,
1307 solicit, and negotiate travel insurance; amending s.
1308 626.854, F.S.; revising a notice requirement before
1309 certain persons acting on behalf of a residential
1310 property insurer may schedule an onsite inspection of
1311 the insured property; prohibiting a certain attempt to
1312 conduct an unscheduled meeting with the insured or
1313 claimant; amending s. 626.931, F.S.; deleting a
1314 requirement for certain surplus lines agents to file
1315 quarterly affidavits with the Florida Surplus Lines



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1316 Service Office; conforming cross-references; amending
1317 s. 626.932, F.S.; revising the time when surplus lines
1318 agents must remit surplus lines taxes; amending s.
1319 626.935, F.S.; conforming a provision to changes made
1320 by the act; amending s. 627.062, F.S.; specifying that
1321 certain periods ending on a weekend or on certain
1322 holidays are extended until the conclusion of the next
1323 business day; prohibiting the office from disapproving
1324 a homeowners' insurance rate in a rate filing solely
1325 on specified grounds; amending s. 627.0629, F.S.;
1326 authorizing, rather than requiring, rate filings for
1327 certain residential property insurance to include
1328 certain rate factors; amending ss. 627.0651 and
1329 627.410, F.S.; specifying that certain periods ending
1330 on a weekend or on certain holidays are extended until
1331 the conclusion of the next business day; amending s.
1332 627.7011, F.S.; authorizing an insurer to offer
1333 specified homeowner's policies or endorsements that
1334 adjust certain losses on certain roofs on an actual
1335 cash value basis; providing that a policy or
1336 endorsement is deemed to provide replacement cost
1337 coverage unless the insured makes a selection of
1338 actual cash value coverage; requiring the selection
1339 form to contain a specified notice; specifying a
1340 method by which an applicant may make such selection;
1341 amending s. 627.70132, F.S.; adding property insurance
1342 coverages for which a notice of a claim must be given
1343 to the insurer within a specified timeframe or be
1344 barred; specifying a timeframe for such notice for



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1345 supplemental or reopened claims; providing
1346 applicability; amending s. 627.714, F.S.; revising
1347 criteria for assessing a residential condominium unit
1348 owner's loss assessment coverage; reviving,
1349 reenacting, and amending s. 627.715(4), F.S.;
1350 providing an exemption from a diligent effort
1351 requirement for surplus lines agents exporting
1352 contracts or endorsements providing flood coverage;
1353 providing for expiration; amending s. 627.7152, F.S.;
1354 specifying the manner in which an assignee of certain
1355 property insurance policy benefits must serve a notice
1356 of intent to initiate litigation; amending s.
1357 627.7295, F.S.; decreasing the timeframe during which
1358 an insurer may not cancel a new policy or binder of
1359 motor vehicle insurance for nonpayment of premium,
1360 except under certain circumstances; amending s.
1361 627.914, F.S.; requiring insurers or self-insurance
1362 funds that write workers' compensation insurance and
1363 that are in receivership to continue to report certain
1364 information to the office; authorizing the outsourcing
1365 of reporting under certain circumstances; requiring
1366 the office to approve a certain reporting plan;
1367 authorizing the office to use the information for
1368 certain purposes; amending s. 628.801, F.S.;
1369 specifying that the office may examine an insurer's
1370 managing general agent or insurance holding company;
1371 amending s. 629.401, F.S.; revising criteria for
1372 surplus lines insurance in insurance exchanges;
1373 amending ss. 634.171, 634.317, and 634.419, F.S.;



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1374 authorizing licensed personal lines and general lines
1375 agents to solicit, negotiate, advertise, or sell motor
1376 vehicle service agreements, home warranty contracts,
1377 and service warranty contracts, respectively, without
1378 specified licenses; creating ch. 647, F.S., entitled
1379 "Travel Insurance"; creating s. 647.01, F.S.;
1380 providing legislative purpose; providing
1381 applicability; creating s. 647.02, F.S.; defining
1382 terms; creating s. 647.03, F.S.; defining the terms
1383 "primary certificateholder" and "primary
1384 policyholder"; requiring travel insurers to pay the
1385 insurance premium tax on specified travel insurance
1386 premiums; providing construction; specifying
1387 requirements for travel insurers; creating s. 647.04,
1388 F.S.; providing that a travel protection plan may be
1389 offered for one price if its meets specified
1390 requirements; creating s. 647.05, F.S.; specifying
1391 sales practice requirements, prohibited sales
1392 practices, and authorized sales practices relating to
1393 travel insurance; specifying a policyholder or
1394 certificateholder's right to cancel a travel
1395 protection plan for a full refund; defining the term
1396 "delivery"; specifying unfair insurance trade
1397 practices; providing construction; creating s. 647.06,
1398 F.S.; specifying qualifications for travel
1399 administrators; providing an exemption from certain
1400 licensure; providing that insurers are responsible for
1401 ensuring certain acts by travel administrators;
1402 creating s. 647.07, F.S.; specifying the



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1403 classification for travel insurance for rate filing
1404 purposes; specifying authorized forms of travel
1405 insurance; providing applicability of certain
1406 provisions of the Rating Law; authorizing the
1407 development and provision of travel insurance programs
1408 on certain bases; creating s. 647.08, F.S.; requiring
1409 the department to adopt rules; providing effective
1410 dates.



527860

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (632742) (with directory and title amendments)

Between lines 53 and 54
insert:

(5) REIMBURSEMENT PREMIUMS.—

(b) The State Board of Administration shall select an independent consultant to develop a rate formula for determining the actuarially indicated premium to be paid to the fund. The rate formula must ~~shall~~ specify, for each zip code or other



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limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies in that zip code or other area. In establishing premiums, the board shall consider the coverage elected under paragraph (4)(b) and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the board to be appropriate. For the 2020-2021, 2021-2022, and 2022-2023 contract years, the rapid cash build-up factor shall be suspended. Thereafter, the fund's rate formula may provide for a rapid cash build-up factor of up to 25 percent only when the available cash balance as of December 31 of the previous year is less than 50 percent of the statutory capacity. For the purpose of calculating the rapid cash build-up factor trigger, the available cash balance must not be reduced by more than 50 percent of the estimated reserves for participating insurer's reimbursements ~~The formula must provide for a cash build-up factor. For the 2009-2010 contract year, the factor is 5 percent. For the 2010-2011 contract year, the factor is 10 percent. For the 2011-2012 contract year, the factor is 15 percent. For the 2012-2013 contract year, the factor is 20 percent. For the 2013-2014 contract year and thereafter, the factor is 25 percent.~~ The rate formula may provide for a procedure to determine the premiums to be paid by new insurers that begin writing covered policies after the beginning of a contract year, taking into consideration when the insurer starts writing covered policies, the potential exposure of the insurer, the potential exposure of the fund, the administrative costs to



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the insurer and to the fund, and any other factors deemed appropriate by the board. The formula must be approved by unanimous vote of the board. The board may, at any time, revise the formula pursuant to the procedure provided in this paragraph.

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

And the directory clause is amended as follows:

Delete lines 5 - 6

and insert:

Section 1. Paragraph (c) of subsection (2) and paragraph (b) of subsection (5) of section 215.555, Florida Statutes, are amended to read:

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

And the title is amended as follows:

Delete line 1268

and insert:

policies; requiring the suspension of the rapid cash build-up factor in the fund's rate formula during specified contract years; providing that, after the suspension, the rate formula may provide for a cash build-up factor of up to a specified percentage only under certain circumstances; specifying a limitation on calculating the trigger for the cash build-up factor; amending s. 319.30, F.S.; revising a certain



527424

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2020	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (632742) (with directory and title amendments)

Between lines 53 and 54
insert:

(17) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.-

(a) Findings and intent.-

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to



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procure affordable reinsurance for the 2019 hurricane season with an attachment point below the insurers' respective Florida Hurricane Catastrophe Fund attachment points, were unable to procure sufficient amounts of such reinsurance, or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many consumers and potential increases in the number of policies issued by the Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate before the 2020 hurricane season.

2. It is the intent of the Legislature to create a temporary emergency program, applicable to the 2020, 2021, and 2022 hurricane seasons, to address these market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

(b) Applicability of other provisions of this section.—All other provisions of this section and the rules adopted under this section apply to the program created by this subsection unless specifically superseded by this subsection.

(c) Optional coverage.—For the contract year commencing June 1, 2020, and ending May 31, 2021, the contract year commencing June 1, 2021, and ending May 31, 2022, and the contract year commencing June 1, 2022, and ending May 31, 2023, the board shall offer for each of such years the optional coverage as provided in this subsection.

(d) Additional definitions.—As used in this subsection, the term:



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40 1. "TEACO addendum" means an addendum to the reimbursement
41 contract reflecting the obligations of the fund and TEACO
42 insurers under the program created by this subsection.

43 2. "TEACO insurer" means an insurer that has opted to
44 obtain coverage under the TEACO options in addition to the
45 coverage provided to the insurer under its reimbursement
46 contract.

47 3. "TEACO options" means the temporary emergency additional
48 coverage options created under this subsection.

49 4. "TEACO reimbursement premium" means the premium charged
50 by the fund for coverage provided under the TEACO options.

51 5. "TEACO retention" means the amount of losses below which
52 a TEACO insurer is not entitled to reimbursement from the fund
53 under the TEACO option selected. A TEACO insurer's retention
54 options shall be calculated as follows:

55 a. The board shall calculate and report to each TEACO
56 insurer the TEACO retention multiples. There shall be three
57 TEACO retention multiples for defining coverage. Each multiple
58 shall be calculated by dividing \$3 billion, \$4 billion, or \$5
59 billion by the total estimated TEACO reimbursement premium,
60 assuming all insurers selected that option. The total estimated
61 TEACO reimbursement premium, for purposes of the calculation
62 under this sub-subparagraph, shall be calculated using the
63 assumption that all insurers have selected a specific TEACO
64 retention multiple option and have selected the 90-percent
65 coverage level.

66 b. The TEACO retention multiples as determined under sub-
67 subparagraph a. shall be adjusted to reflect the coverage level
68 elected by the insurer. For insurers electing the 90-percent



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coverage level, the adjusted retention multiple is 100 percent of the amount determined under sub-subparagraph a. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under sub-subparagraph a. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under sub-subparagraph a.

c. An insurer shall determine its provisional TEACO retention by multiplying its provisional TEACO reimbursement premium by the applicable adjusted TEACO retention multiple and shall determine its actual TEACO retention by multiplying its actual TEACO reimbursement premium by the applicable adjusted TEACO retention multiple.

d. For a TEACO insurer that experiences multiple covered events causing loss during the contract year, the insurer's full TEACO retention shall be applied to each of the covered events causing the two largest losses for that insurer. For other covered events resulting in losses, the TEACO option does not apply and the insurer's retention shall be one-third of the full retention as calculated under paragraph (2) (e).

(e) TEACO addendum.—

1. The TEACO addendum shall provide for reimbursement of TEACO insurers for covered events occurring during the contract year in exchange for the TEACO reimbursement premium paid into the fund under paragraph (f). Any insurer writing covered policies has the option of choosing to accept the TEACO addendum for any of the three contract years that the coverage is offered.

2. The TEACO addendum shall contain a promise by the board



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to reimburse the TEACO insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's TEACO retention, plus 10 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (4) (b) .

3. The TEACO addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources.

4. The TEACO addendum shall also provide that the obligation of the board with respect to all TEACO addenda shall not exceed an amount equal to two times the difference between the industry retention level calculated under paragraph (2) (e) and the \$3 billion, \$4 billion, or \$5 billion industry TEACO retention level options actually selected, but in no event may the board's obligation exceed the actual claims-paying capacity of the fund plus the additional capacity created in paragraph (g) . If the actual claims-paying capacity and the additional capacity created under paragraph (g) fall short of the board's obligations under the reimbursement contract, each insurer's share of the fund's capacity shall be prorated based on the premium an insurer pays for its normal reimbursement coverage and the premium paid for its optional TEACO coverage as each such premium bears to the total premiums paid to the fund times the available capacity.

5. The priorities, schedule, and method of reimbursements under the TEACO addendum shall be the same as provided under subsection (4) .

6. A TEACO insurer's maximum reimbursement under the TEACO



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addendum shall be calculated by multiplying the insurer's share of the estimated total TEACO reimbursement premium as calculated under sub-subparagraph (d)5.a. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2) (e) and the \$3 billion, \$4 billion, or \$5 billion industry TEACO retention level specified in sub-subparagraph (d)5.a. as selected by the TEACO insurer.

(f) TEACO reimbursement premiums.—

1. Each TEACO insurer shall pay to the fund, in the manner and at the time provided in the reimbursement contract for payment of reimbursement premiums, a TEACO reimbursement premium calculated as specified in this paragraph.

2. The TEACO reimbursement premiums shall be calculated based on the assumption that if all insurers entering into reimbursement contracts under subsection (4) also accepted the TEACO option:

a. The industry TEACO reimbursement premium associated with the \$3 billion retention option would be equal to 85 percent of the difference between the industry retention level calculated under paragraph (2) (e) and the \$3 billion industry TEACO retention level.

b. The TEACO reimbursement premium associated with the \$4 billion retention option would be equal to 80 percent of the difference between the industry retention level calculated under paragraph (2) (e) and the \$4 billion industry TEACO retention level.

c. The TEACO reimbursement premium associated with the \$5 billion retention option would be equal to 75 percent of the difference between the industry retention level calculated under



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paragraph (2)(e) and the \$5 billion industry TEACO retention level.

3. Each insurer's TEACO reimbursement premium shall be calculated based on its share of the total TEACO reimbursement premiums based on its coverage selection under the TEACO addendum.

(g) Effect on claims-paying capacity of the fund.—For the contract term commencing June 1, 2020, the contract year commencing June 1, 2021, and the contract term beginning June 1, 2022, the program created by this subsection shall increase the claims-paying capacity of the fund as provided in subparagraph (4)(c)1. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(e) and the \$3 billion industry TEACO retention level specified in sub-subparagraph (d)5.a. The additional capacity shall apply only to the additional coverage provided by the TEACO option and shall not otherwise affect any insurer's reimbursement from the fund.

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

And the directory clause is amended as follows:

Delete line 6

and insert:

215.555, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

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

And the title is amended as follows:

Delete line 1268



527424

and insert:

policies; requiring the State Board of Administration
to offer temporary emergency additional coverage
options (TEACO) to insurers during specified contract
years; defining terms; specifying requirements for the
TEACO addendum to the reimbursement contract;
specifying requirements for, and calculations of,
TEACO reimbursement premiums; specifying the effect of
the TEACO program on the fund's claims-paying
capacity; amending s. 319.30, F.S.; revising a certain



452858

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/12/2020	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

Senate Amendment to Amendment (632742) (with title amendment)

Delete lines 145 - 187
and insert:

Section 5. Subsections (1) and (3) of section 624.155, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer



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when such person is damaged:

(a) By a violation of any of the following provisions by the insurer:

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;
3. Section 626.9705;
4. Section 626.9706;
5. Section 626.9707; or
6. Section 627.7283.

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under the totality of 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 paragraphs (a) and (b) 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) As a condition precedent to bringing an action under



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this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be provided by the department to the e-mail address designated by the insurer under s. 624.422.

(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 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 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.

(c) No action shall lie if, within 60 days after the insurer receives ~~filing~~ notice from the department in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) 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) The applicable statute of limitations for an action



452858

under this section shall be tolled for a period of:

1. Sixty ~~65~~ days after the insurer receives from the department by the mailing of the notice required by this subsection.

2. Sixty days after the date appraisal is invoked pursuant to paragraph (f) ~~or the mailing of a subsequent notice required by this subsection.~~

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

(10) The provisions of this subsection apply to an action against a motor vehicle insurer for third-party bad faith under this chapter or at common law.

(a) It is a condition precedent to such action that the insurer first receive written notice that the insurer has violated its duty to act in good faith toward its insured. A notice shall state with specificity the alleged violation and the facts and circumstances giving rise to the violation. The insurer's receipt of written notice does not preclude subsequent written notices that an insurer violated its duty to act in good faith toward its insured. The insurer shall save and document any notice.

(b) In handling claims, an insurer stands as a fiduciary for its insured. Accordingly, an insurer shall act in good faith toward its insured throughout the entirety of the claim.

(c) A bad faith failure to settle means an insurer's failure to settle a claim when, under the totality of the circumstances, it could and should have done so had it acted fairly, honestly, and with due regard for the interests of an



452858

insured. The claimant has the burden to establish through the greater weight of the evidence that specific conduct by the insurer is the cause or substantial cause of the insurer's bad faith failure to settle.

1. An insurer's negligent actions alone are insufficient to establish the insurer's bad faith failure to settle, but an insurer's negligent actions are relevant when considering the totality of the circumstances.

2. The actions or inactions of the insured or claimant are relevant in an action for a bad faith failure to settle. An insurer may assert as a defense that the conduct of the insured or claimant caused, in whole or in part, the failure to settle the claim.

(d) No action against a motor vehicle insurer for third-party bad faith shall lie if, within 45 days after the motor vehicle insurer receives notice pursuant to paragraph (a), the insurer cures the circumstances giving rise to the alleged breach of duty of good faith to the insured. A third party may proceed with a bad faith action against the insurer if the insurer fails to cure the violation within this period.

(e) Paragraph (d) does not create a duty that the insurer must offer policy limits or the amount of a demand that is less than policy limits within 45 days after it receives notice under paragraph (a). However, the absence of such offer may be considered as part of the totality of the circumstances in determining whether the insurer in bad faith failed to settle.

(f) 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



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of the insured parties who may be liable to third party
claimants, a motor vehicle 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 such insurer continues to comply with its good
faith duties to its insured throughout the entirety of the
claim, including the pendency of an interpleader action filed
under the Florida Rules of Civil Procedure within 90 days after
receiving notice of the competing claims in excess of the
available policy limits. The competing third-party claimants are
entitled to a prorated share of the policy limits as determined
by the trier of fact.

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

And the title is amended as follows:

Delete line 1281

and insert:

statute of limitations is tolled; providing
applicability; requiring that a civil remedy notice be
provided to a motor vehicle insurer before a third-
party bad faith action is brought against the insurer;
specifying requirements for the notice; providing
construction relating to the notice; requiring the
insurer to save and document any notice; providing
construction relating to an insurer's duty of good
faith, a bad faith failure to settle, the claimant's
burden of proof, negligent actions of an insurer, and
actions or inactions of the insured or claimant;
providing that such bad faith actions are barred if



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156 the insurer cures certain circumstances within a
157 certain timeframe; providing that an insurer is not
158 liable beyond policy limits in certain third-party
159 claims if it meets certain conditions; providing that
160 competing third-party claimants are entitled to a
161 prorated share of policy limits as determined by the
162 trier of fact; amending s. 624.307,



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/12/2020	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

Senate Amendment to Amendment (632742)

Delete lines 653 - 654
and insert:
made within the later of 3 years after the date of initial loss
or 12 months after the last presuit payment by the insurer to
the insured on the initial loss. A



265338

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with directory and title amendments)

Between lines 148 and 149
insert:

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The rate formula must ~~shall~~ specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies



265338

11 in that zip code or other area. In establishing premiums, the
12 board shall consider the coverage elected under paragraph (4) (b)
13 and any factors that tend to enhance the actuarial
14 sophistication of ratemaking for the fund, including
15 deductibles, type of construction, type of coverage provided,
16 relative concentration of risks, and other such factors deemed
17 by the board to be appropriate. Beginning in the 2020-2021
18 contract year, the fund's formula may provide for a rapid cash
19 build-up factor of up to 25 percent only when the available cash
20 balance as of December 31 of the previous year is less than 70
21 percent of the statutory capacity. For the purpose of
22 calculating the rapid cash build-up factor trigger, the
23 available cash balance may not be reduced by reserves for
24 projected participating insurer reimbursements ~~The formula must~~
25 ~~provide for a cash build-up factor. For the 2009-2010 contract~~
26 ~~year, the factor is 5 percent. For the 2010-2011 contract year,~~
27 ~~the factor is 10 percent. For the 2011-2012 contract year, the~~
28 ~~factor is 15 percent. For the 2012-2013 contract year, the~~
29 ~~factor is 20 percent. For the 2013-2014 contract year and~~
30 ~~thereafter, the factor is 25 percent.~~ The rate formula may
31 provide for a procedure to determine the premiums to be paid by
32 new insurers that begin writing covered policies after the
33 beginning of a contract year, taking into consideration when the
34 insurer starts writing covered policies, the potential exposure
35 of the insurer, the potential exposure of the fund, the
36 administrative costs to the insurer and to the fund, and any
37 other factors deemed appropriate by the board. The formula must
38 be approved by unanimous vote of the board. The board may, at
39 any time, revise the formula pursuant to the procedure provided



265338

in this paragraph.

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

And the directory clause is amended as follows:

Delete lines 97 - 98

and insert:

Section 1. Paragraph (c) of subsection (2) and paragraph (b) of subsection (5) of section 215.555, Florida Statutes, are amended, and paragraph (f) is

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

And the title is amended as follows:

Delete line 6

and insert:

policies; providing that the fund's rate formula may provide for a rapid cash build-up factor only if certain conditions are met; specifying a limitation on calculating the trigger for the cash build-up factor; requiring the Office of Insurance Regulation



647130

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with directory and title amendments)

Delete lines 149 - 163

and insert:

(b) The State Board of Administration shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The rate formula must ~~shall~~ specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each \$1,000 of insured value under covered policies



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11 in that zip code or other area. In establishing premiums, the
12 board shall consider the coverage elected under paragraph (4) (b)
13 and any factors that tend to enhance the actuarial
14 sophistication of ratemaking for the fund, including
15 deductibles, type of construction, type of coverage provided,
16 relative concentration of risks, and other such factors deemed
17 by the board to be appropriate. Beginning in the 2020-2021
18 contract year, the fund's formula may provide for a rapid cash
19 build-up factor of up to 25 percent only when the available cash
20 balance as of December 31 of the previous year is less than 70
21 percent of the statutory capacity. For the purpose of
22 calculating the rapid cash build-up factor trigger, the
23 available cash balance may not be reduced by reserves for
24 projected participating insurer reimbursements ~~The formula must~~
25 ~~provide for a cash build-up factor. For the 2009-2010 contract~~
26 ~~year, the factor is 5 percent. For the 2010-2011 contract year,~~
27 ~~the factor is 10 percent. For the 2011-2012 contract year, the~~
28 ~~factor is 15 percent. For the 2012-2013 contract year, the~~
29 ~~factor is 20 percent. For the 2013-2014 contract year and~~
30 ~~thereafter, the factor is 25 percent.~~ The rate formula may
31 provide for a procedure to determine the premiums to be paid by
32 new insurers that begin writing covered policies after the
33 beginning of a contract year, taking into consideration when the
34 insurer starts writing covered policies, the potential exposure
35 of the insurer, the potential exposure of the fund, the
36 administrative costs to the insurer and to the fund, and any
37 other factors deemed appropriate by the board. The formula must
38 be approved by unanimous vote of the board. The board may, at
39 any time, revise the formula pursuant to the procedure provided



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in this paragraph.

(f) The Office of Insurance Regulation shall retain an independent consultant to audit the formula developed under this subsection beginning with the 2021 contract year and every 3 years thereafter. The audit may not be performed by the independent consultant who developed the formula. The audit must evaluate whether the formula uses actuarially sound principles and whether insurers are paying an actuarially indicated premium. The Office of Insurance Regulation shall also recommend factors, if any, which would enhance the actuarial sophistication of ratemaking for the fund. The Office of Insurance Regulation shall report the findings of the audit and any recommendation to the Financial Services Commission, the President of the Senate, and the Speaker of the House of Representatives on or before March 1 of the year after the contract year audited.

(17) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.—

(a) Findings and intent.—

1. The Legislature finds that:

a. Because of temporary disruptions in the market for catastrophic reinsurance, many property insurers were unable to procure affordable reinsurance for the 2019 hurricane season with an attachment point below the insurers' respective Florida Hurricane Catastrophe Fund attachment points, were unable to procure sufficient amounts of such reinsurance, or were able to procure such reinsurance only by incurring substantially higher costs than in prior years.

b. The reinsurance market problems were responsible, at least in part, for substantial premium increases to many



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consumers and potential increases in the number of policies issued by the Citizens Property Insurance Corporation.

c. It is likely that the reinsurance market disruptions will not significantly abate before the 2020 hurricane season.

2. It is the intent of the Legislature to create a temporary emergency program, applicable to the 2020, 2021, and 2022 hurricane seasons, to address these market disruptions and enable insurers, at their option, to procure additional coverage from the Florida Hurricane Catastrophe Fund.

(b) Applicability of other provisions of this section.—All other provisions of this section and the rules adopted under this section apply to the program created by this subsection unless specifically superseded by this subsection.

(c) Optional coverage.—For the contract year commencing June 1, 2020, and ending May 31, 2021, the contract year commencing June 1, 2021, and ending May 31, 2022, and the contract year commencing June 1, 2022, and ending May 31, 2023, the board shall offer for each of such years the optional coverage as provided in this subsection.

(d) Additional definitions.—As used in this subsection, the term:

1. "TEACO addendum" means an addendum to the reimbursement contract reflecting the obligations of the fund and TEACO insurers under the program created by this subsection.

2. "TEACO insurer" means an insurer that has opted to obtain coverage under the TEACO options in addition to the coverage provided to the insurer under its reimbursement contract.

3. "TEACO options" means the temporary emergency additional



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coverage options created under this subsection.

4. "TEACO reimbursement premium" means the premium charged by the fund for coverage provided under the TEACO options.

5. "TEACO retention" means the amount of losses below which a TEACO insurer is not entitled to reimbursement from the fund under the TEACO option selected. A TEACO insurer's retention options shall be calculated as follows:

a. The board shall calculate and report to each TEACO insurer the TEACO retention multiples. There shall be three TEACO retention multiples for defining coverage. Each multiple shall be calculated by dividing \$3 billion, \$4 billion, or \$5 billion by the total estimated TEACO reimbursement premium, assuming all insurers selected that option. The total estimated TEACO reimbursement premium, for purposes of the calculation under this sub-subparagraph, shall be calculated using the assumption that all insurers have selected a specific TEACO retention multiple option and have selected the 90-percent coverage level.

b. The TEACO retention multiples as determined under sub-subparagraph a. shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the 90-percent coverage level, the adjusted retention multiple is 100 percent of the amount determined under sub-subparagraph a. For insurers electing the 75-percent coverage level, the retention multiple is 120 percent of the amount determined under sub-subparagraph a. For insurers electing the 45-percent coverage level, the adjusted retention multiple is 200 percent of the amount determined under sub-subparagraph a.

c. An insurer shall determine its provisional TEACO



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retention by multiplying its provisional TEACO reimbursement premium by the applicable adjusted TEACO retention multiple and shall determine its actual TEACO retention by multiplying its actual TEACO reimbursement premium by the applicable adjusted TEACO retention multiple.

d. For a TEACO insurer that experiences multiple covered events causing loss during the contract year, the insurer's full TEACO retention shall be applied to each of the covered events causing the two largest losses for that insurer. For other covered events resulting in losses, the TEACO option does not apply and the insurer's retention shall be one-third of the full retention as calculated under paragraph (2) (e).

(e) TEACO addendum.—

1. The TEACO addendum shall provide for reimbursement of TEACO insurers for covered events occurring during the contract year in exchange for the TEACO reimbursement premium paid into the fund under paragraph (f). Any insurer writing covered policies has the option of choosing to accept the TEACO addendum for any of the three contract years that the coverage is offered.

2. The TEACO addendum shall contain a promise by the board to reimburse the TEACO insurer for 45 percent, 75 percent, or 90 percent of its losses from each covered event in excess of the insurer's TEACO retention, plus 10 percent of the reimbursed losses to cover loss adjustment expenses. The percentage shall be the same as the coverage level selected by the insurer under paragraph (4) (b).

3. The TEACO addendum shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to



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the insurer from other sources.

4. The TEACO addendum shall also provide that the obligation of the board with respect to all TEACO addenda shall not exceed an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(e) and the \$3 billion, \$4 billion, or \$5 billion industry TEACO retention level options actually selected, but in no event may the board's obligation exceed the actual claims-paying capacity of the fund plus the additional capacity created in paragraph (g). If the actual claims-paying capacity and the additional capacity created under paragraph (g) fall short of the board's obligations under the reimbursement contract, each insurer's share of the fund's capacity shall be prorated based on the premium an insurer pays for its normal reimbursement coverage and the premium paid for its optional TEACO coverage as each such premium bears to the total premiums paid to the fund times the available capacity.

5. The priorities, schedule, and method of reimbursements under the TEACO addendum shall be the same as provided under subsection (4).

6. A TEACO insurer's maximum reimbursement under the TEACO addendum shall be calculated by multiplying the insurer's share of the estimated total TEACO reimbursement premium as calculated under sub-subparagraph (d)5.a. by an amount equal to two times the difference between the industry retention level calculated under paragraph (2)(e) and the \$3 billion, \$4 billion, or \$5 billion industry TEACO retention level specified in sub-subparagraph (d)5.a. as selected by the TEACO insurer.

(f) TEACO reimbursement premiums.-



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185 1. Each TEACO insurer shall pay to the fund, in the manner
186 and at the time provided in the reimbursement contract for
187 payment of reimbursement premiums, a TEACO reimbursement premium
188 calculated as specified in this paragraph.

189 2. The TEACO reimbursement premiums shall be calculated
190 based on the assumption that if all insurers entering into
191 reimbursement contracts under subsection (4) also accepted the
192 TEACO option:

193 a. The industry TEACO reimbursement premium associated with
194 the \$3 billion retention option would be equal to 85 percent of
195 the difference between the industry retention level calculated
196 under paragraph (2) (e) and the \$3 billion industry TEACO
197 retention level.

198 b. The TEACO reimbursement premium associated with the \$4
199 billion retention option would be equal to 80 percent of the
200 difference between the industry retention level calculated under
201 paragraph (2) (e) and the \$4 billion industry TEACO retention
202 level.

203 c. The TEACO reimbursement premium associated with the \$5
204 billion retention option would be equal to 75 percent of the
205 difference between the industry retention level calculated under
206 paragraph (2) (e) and the \$5 billion industry TEACO retention
207 level.

208 3. Each insurer's TEACO reimbursement premium shall be
209 calculated based on its share of the total TEACO reimbursement
210 premiums based on its coverage selection under the TEACO
211 addendum.

212 (g) Effect on claims-paying capacity of the fund.—For the
213 contract term commencing June 1, 2020, the contract year



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commencing June 1, 2021, and the contract term beginning June 1,
2022, the program created by this subsection shall increase the
claims-paying capacity of the fund as provided in subparagraph
(4)(c)1. by an amount equal to two times the difference between
the industry retention level calculated under paragraph (2)(e)
and the \$3 billion industry TEACO retention level specified in
sub-subparagraph (d)5.a. The additional capacity shall apply
only to the additional coverage provided by the TEACO option and
shall not otherwise affect any insurer's reimbursement from the
fund.

==== D I R E C T O R Y C L A U S E A M E N D M E N T =====
And the directory clause is amended as follows:

Delete lines 97 - 99
and insert:

Section 1. Paragraph (c) of subsection (2) and paragraph
(b) of subsection (5) of section 215.555, Florida Statutes, are
amended, and paragraph (f) of subsection (5) and subsection (17)
are added to that section, to read:

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 6 - 12
and insert:

policies; providing that the fund's rate formula may
provide for a rapid cash build-up factor only if
certain conditions are met; specifying a limitation on
calculating the trigger for the cash build-up factor;
requiring the Office of Insurance Regulation to retain



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an independent consultant to audit the fund's
reimbursement premium formula at specified intervals;
specifying requirements for the audit; requiring the
office to report audit findings and certain
recommendations to the Financial Services Commission
and the Legislature; providing legislative findings
and intent; providing applicability; requiring the
State Board of Administration to offer temporary
emergency additional coverage options (TEACO) to
insurers during specified contract years; defining
terms; specifying requirements for the TEACO addendum
to the reimbursement contract; specifying requirements
for, and calculations of, TEACO reimbursement
premiums; specifying the effect of the TEACO program
on the fund's claims-paying capacity; amending s.
319.30,



788146

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 183 and 184
insert:

Section 3. Subsections (16) and (17) are added to section
440.107, Florida Statutes, to read:

440.107 Department powers to enforce employer compliance
with coverage requirements.—

(16) (a) Each subcontractor contracting with a contractor as
defined in s. 489.105(3) shall, in connection with each



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construction project contracted for and before commencement of work, provide to each of its contractors that it directly contracts with a written certification from a principal or an authorized officer of the subcontractor. The certification must contain an attestation that the subcontractor has secured workers' compensation coverage for all of its employees, including leased employees pursuant to part XI of chapter 468, and that for all of its employees, including leased employees, for the duration of the contract, workers' compensation insurance coverage will be maintained while the subcontractor is performing work for the contractor. Each contractor who receives such certification shall retain each certification for at least 3 years after the termination date of the project.

(b) The department shall verify the coverage attested to in certifications under this subsection.

(c) An employee leasing company as defined in s. 468.520(5) shall provide the department with notice within 30 days after any employee of a client company, as defined in s. 468.520(6), which is operating pursuant to an employee leasing arrangement is denied workers' compensation benefits by the employee leasing company or the carrier of the employee leasing company on the basis that the employee of the client company was not an employee of the employee leasing company.

(d) The department shall adopt rules to administer this subsection.

(17) The Office of Program Policy Analysis and Government Accountability shall conduct a study and prepare a report to determine the feasibility of regulation of employee leasing companies by the department. The study must include a survey of



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the regulation of employee leasing companies in other states and
the staffing requirements and potential costs to the department.
The report must be completed by October 1, 2020, and presented
to the Governor, the Chief Financial Officer, the President of
the Senate, and the Speaker of the House of Representatives.

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

And the title is amended as follows:

Delete line 15

and insert:

title; amending s. 440.107, F.S.; requiring a
subcontractor, before commencement of work, to provide
a specified written certification to each of its
contractors relating to workers' compensation coverage
for the subcontractor's employees; requiring
contractors to retain the certifications for a certain
time after a project ends; requiring the Department of
Financial Services to verify coverage attested to in
the certifications; requiring employee leasing
companies to provide the department with notice of
certain denied workers' compensation benefits within a
certain timeframe; requiring the department to adopt
rules; requiring the Office of Program Policy Analysis
and Government Accountability to perform a certain
study and prepare a report relating to the feasibility
of employee leasing company regulation by the
department; requiring the report to be completed by a
certain date and presented to the Governor, the Chief
Financial Officer, and the Legislature; amending s.



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624.155, F.S.; revising



777928

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 184 - 231.

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

And the title is amended as follows:

Delete lines 15 - 21

and insert:

title; amending ss. 624.307 and 624.315, F.S.;



794740

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 252 - 270.

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

And the title is amended as follows:

Delete lines 25 - 29

and insert:

certain circumstances; amending s.



472784

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 485 - 493.

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

And the title is amended as follows:

Delete lines 52 - 56

and insert:

the conclusion of the next business day; amending s.
627.70132, F.S.;



548082

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 494 - 513.

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

And the title is amended as follows:

Delete lines 56 - 60

and insert:

on certain losses; creating s.



787114

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 497 - 504

and insert:

~~hurricane claim.~~ An initial A claim, ~~supplemental claim, or~~
~~reopened claim~~ under an insurance policy that provides property
insurance, as defined in s. 624.604, ~~for loss or damage caused~~
~~by the peril of windstorm or hurricane~~ is barred unless initial
notice of the claim ~~is, supplemental claim, or reopened claim~~
~~was~~ given to the insurer in accordance with the terms of the



787114

policy within 3 years after the date of loss ~~hurricane first~~
~~made landfall or the windstorm caused the covered damage.~~ Notice
of all supplemental claims or reopened claims must be made
within the later of 3 years after the date of loss or 12 months
after the last payment by the insurer on the loss. This section
does not

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

And the title is amended as follows:

Delete lines 57 - 59

and insert:

revising property insurance coverages and types of
claims for which a notice of a claim must be given to
the insurer within a specified timeframe; specifying
the timeframe in which notices of supplemental or
reopened claims must be made; revising the timeframe
for



461914

LEGISLATIVE ACTION

Senate

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House

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

Senate Substitute for Amendment (787114) (with title amendment)

Delete lines 497 - 504

and insert:

~~hurricane claim.~~ An initial A claim, ~~supplemental claim, or reopened claim~~ under an insurance policy that provides property insurance, as defined in s. 624.604, ~~for loss or damage caused by the peril of windstorm or hurricane~~ is barred unless initial notice of the claim ~~is,~~ supplemental claim, or reopened claim



461914

~~was~~ given to the insurer in accordance with the terms of the
policy within 3 years after the date of loss ~~hurricane first~~
~~made landfall or the windstorm caused the covered damage.~~ Notice
of all supplemental claims or reopened claims must be made
within the later of 3 years after the date of loss or 12 months
after the insurer's final payment of the initial claim. This
section does not

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

And the title is amended as follows:

Delete lines 57 - 59

and insert:

revising property insurance coverages and types of
claims for which a notice of a claim must be given to
the insurer within a specified timeframe; specifying
the timeframe in which notices of supplemental or
reopened claims must be made; revising the timeframe
for



670458

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 514 - 544.

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

And the title is amended as follows:

Delete lines 60 - 70

and insert:

providing notices of hurricane claims; amending s.



392164

LEGISLATIVE ACTION

Senate

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House

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

Senate Substitute for Amendment (670458) (with title amendment)

Delete lines 516 - 544
and insert:

627.70152 Suits arising under a property insurance policy.-
As a condition precedent to filing suit under a property
insurance policy, the attorney of record must provide the
insurer and insured with a written notice of intent to initiate
litigation before filing suit under the policy.



392164

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

13 And the title is amended as follows:

14 Delete lines 61 - 70

15 and insert:

16 627.70152, F.S.; requiring the attorney of record, as
17 a condition precedent to filing suit under a property
18 insurance policy, to provide the insurer and insured a
19 written notice of intent to initiate litigation;
20 amending s.



893146

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 536 - 542.

Between lines 693 and 694

insert:

Section 27. Paragraph (a) of subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) Compensation is not allowed for the first 7 days of the



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disability, except for benefits provided under s. 440.13.
However, if the injury results in more than 21 days of
disability, compensation is allowed from the commencement of the
disability.

(a) All weekly compensation payments, except for the first
payment, must be paid by check or, if authorized by the
employee, on a prepaid card pursuant to paragraph (b) or
deposited directly into the employee's account at a financial
institution as defined in s. 655.005 or transmitted to the
employee's account with a money transmitter licensed under part
II of chapter 560.

Section 28. Paragraph (a) of subsection (1) and paragraph
(a) of subsection (6) of section 440.20, Florida Statutes, are
amended to read:

440.20 Time for payment of compensation and medical bills;
penalties for late payment.—

(1)(a) Unless the carrier denies compensability or
entitlement to benefits, the carrier shall pay compensation
directly to the employee as required by ss. 440.14, 440.15, and
440.16, in accordance with those sections. Upon receipt of the
employee's authorization as provided for in s. 440.12(1)(a), the
carrier's obligation to pay compensation directly to the
employee is satisfied when the carrier directly deposits, by
electronic transfer or other means, compensation into the
employee's account at a financial institution as defined in s.
655.005 or onto a prepaid card in accordance with s. 440.12(1)
or transmits the employee's compensation to the employee's
account with a money transmitter licensed under part II of
chapter 560. Compensation by direct deposit or through the use



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of a prepaid card or through transmission is considered paid on the date the funds become available for withdrawal by the employee.

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a penalty of an amount equal to 20 percent of the unpaid installment, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The department may assess without a hearing the penalty against either the employer or the carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or



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the judge of compensation claims determines that the penalty should be paid by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution or by transmission to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 29. Subsection (4) of section 627.914, Florida Statutes, is redesignated as subsection (5), a new subsection (4) is added to that section, and subsections (2) and (3) of that section are amended, to read:

627.914 Reports of information by workers' compensation insurers required.—

(2) (a) Each insurer and self-insurance fund authorized to write a policy of workers' compensation insurance shall report ~~transmit~~ the following information annually on both Florida experience and nationwide experience separately:

1. ~~(a)~~ Payrolls by classification.

2. ~~(b)~~ Manual premiums by classification.

3. ~~(c)~~ Standard premiums by classification.

4. ~~(d)~~ Losses by classification and injury type.

5. ~~(e)~~ Expenses.

An insurer or self-insurance fund that is placed in receivership pursuant to part I of chapter 631 must continue to report the information required under this paragraph. At the discretion of the receiver, the insurer or self-insurance fund may outsource the reporting of such information to a third-party reporting



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98 vendor. The office shall approve a modified reporting plan that
99 is limited in terms of data elements.

100 (b) A report of the ~~this~~ information required under
101 paragraph (a) shall be filed no later than July 1 of each year.
102 All reports shall be filed in accordance with standard reporting
103 procedures for insurers, which procedures have received approval
104 by the office, and shall contain data for the most recent policy
105 period available. A statistical or rating organization may be
106 used by insurers and self-insurance funds to report the data
107 required by this section. The statistical or rating organization
108 shall report each data element in the aggregate only for
109 insurers and self-insurance funds required to report under this
110 section who elect to have the organization report on their
111 behalf. Such insurers and self-insurance funds shall be named in
112 the report.

113 (3) Individual self-insurers as defined in s. 440.02 shall
114 report only Florida data as prescribed in subparagraphs
115 (2)(a)1.-5. paragraphs ~~(2)(a)-(e)~~ to the office.

116 (a) The office shall publish the dates and forms necessary
117 to enable individual self-insurers to comply with this section.

118 (b) A statistical or rating organization may be used by
119 individual self-insurers for the purposes of reporting the data
120 required by this section and calculating experience ratings.

121 (4) The office may use the information it receives under
122 this section in its adoption of rates and experience ratings
123 modifications.

124 Section 30. Paragraph (c) of subsection (1) of section
125 626.321, Florida Statutes, is amended to read:

126 626.321 Limited licenses and registration.-



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(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance which are subject to review by the department office. Policies and certificates of travel insurance may provide coverage for travel insurance, as defined in s. 647.02 ~~risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days.~~ The license may be issued only to an individual or business entity that has filed with the department an application for a license in a form and manner prescribed by the department.÷

1. A limited lines travel insurance producer, as defined in s. 647.02, shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.

2. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed or



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156 registered, respectively. As used in this paragraph, the term
157 "travel retailer" means a business entity that:

158 a. Makes, arranges, or offers planned travel.

159 b. May, under subparagraph 3., offer and disseminate travel
160 insurance as a service to its customers on behalf of and under
161 the direction of a limited lines travel insurance producer.

162 3. A travel retailer may offer and disseminate travel
163 insurance under a limited lines travel insurance producer
164 business entity license only if all of the following
165 requirements are met:

166 a. The limited lines travel insurance producer or travel
167 retailer provides to purchasers of travel insurance:

168 (I) A description of the material terms or the actual
169 material terms of the insurance coverage.

170 (II) A description of the process for filing a claim.

171 (III) A description of the review or cancellation process
172 for the travel insurance policy.

173 (IV) The identity and contact information of the insurer
174 and limited lines travel insurance producer.

175 b. At the time of licensure, the limited lines travel
176 insurance producer establishes and maintains a register, on a
177 form prescribed by the department, of each travel retailer that
178 offers travel insurance on behalf of the limited lines travel
179 insurance producer. The limited lines travel insurance producer
180 must maintain and update the register, which must include the
181 travel retailer's federal tax identification number and the
182 name, address, and contact information of the travel retailer
183 and an officer or person who directs or controls the travel
184 retailer's operations. The limited lines travel insurance



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185 producer shall submit the register to the department upon
186 reasonable request. The limited lines travel insurance producer
187 shall also certify that the travel retailer register complies
188 with 18 U.S.C. s. 1033. The grounds for the suspension and
189 revocation and the penalties applicable to resident insurance
190 producers under this section apply to the limited lines travel
191 insurance producers and travel retailers.

192 c. The limited lines travel insurance producer has
193 designated one of its employees as the designated responsible
194 producer. The designated responsible producer, who must be a
195 licensed insurance producer, is responsible for the compliance
196 with the travel insurance laws and regulations applicable to the
197 limited lines travel insurance producer and its registrants. The
198 designated responsible producer and the president, secretary,
199 treasurer, and any other officer or person who directs or
200 controls the limited lines travel insurance producer's insurance
201 operations must comply with the fingerprinting requirements
202 applicable to insurance producers in the resident state of the
203 limited lines travel insurance producer.

204 d. The limited lines travel insurance producer has paid all
205 applicable licensing fees as set forth in applicable general
206 law.

207 e. The limited lines travel insurance producer requires
208 each employee and each authorized representative of the travel
209 retailer whose duties include offering and disseminating travel
210 insurance to receive a program of instruction or training, which
211 is subject, at the discretion of the department, to review and
212 approval. The training material must, at a minimum, contain
213 adequate instructions on the types of insurance offered, ethical



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sales practices, and required disclosures to prospective purchasers.

As used in this paragraph, the term "offer and disseminate" means to provide general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

4. A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials must include information that, at a minimum:

a. Provides the identity and contact information of the insurer and the limited lines travel insurance producer.

b. Explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

c. Explains that a travel retailer is authorized to provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

5. A travel retailer employee or authorized representative who is not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective



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purchaser's existing insurance coverage; or

c. Hold himself or herself or the travel retailer out as a
licensed insurer, licensed producer, or insurance expert.

Notwithstanding any other provision of law, a travel retailer
whose insurance-related activities, and those of its employees
and authorized representatives, are limited to offering and
disseminating travel insurance on behalf of and under the
direction of a limited lines travel insurance producer meeting
the conditions in this section may receive related compensation
upon registration by the limited lines travel insurance producer
as described in paragraph (2) (b).

6. As the insurer's designee, the limited lines travel
insurance producer is responsible for the acts of the travel
retailer and shall use reasonable means to ensure compliance by
the travel retailer with this section.

7. Any person licensed in a major line of authority as an
insurance producer, including a property and casualty insurance
producer who is not appointed by an insurer, may sell, solicit,
and negotiate travel insurance.

~~1. To a full-time salaried employee of a common carrier or
a full-time salaried employee or owner of a transportation
ticket agency and may authorize the sale of such ticket policies
only in connection with the sale of transportation tickets, or
to the full-time salaried employee of such an agent. Such policy
may not be for more than 48 hours or more than the duration of a
specified one-way trip or round trip.~~

~~2. To an entity or individual that is:~~

~~a. The developer of a timeshare plan that is the subject of~~



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~~an approved public offering statement under chapter 721;~~

~~b. An exchange company operating an exchange program approved under chapter 721;~~

~~c. A managing entity operating a timeshare plan approved under chapter 721;~~

~~d. A seller of travel as defined in chapter 559; or~~

~~e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.~~

~~3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.~~

~~a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.~~

~~b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.~~



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~~e. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.~~

~~A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity.~~

Section 31. The Division of Law Revision is directed to create chapter 647, Florida Statutes, consisting of ss. 647.01-647.08, Florida Statutes, to be entitled "Travel Insurance."

Section 32. Section 647.01, Florida Statutes, is created to read:

647.01 Purpose and scope.—

(1) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) This chapter applies to:

(a) Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state.

(b) Policies and certificates that are delivered or issued for delivery in this state.



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This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.

(3) All other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 33. Section 647.02, Florida Statutes, is created to read:

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

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Department" means the Department of Financial Services.

(5) "Eligible group," solely for the purposes of travel



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insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship, including, but not limited to, any of the following:

(a) An entity engaged in the business of providing travel or travel services, including, but not limited to:

1. A tour operator, lodging provider, vacation property owner, hotel, resort, travel club, travel agency, property manager, and cultural exchange program.

2. An operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, a common carrier, airline, cruise line, railroad, steamship company, and public bus carrier.

With regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel.

(b) A university, college, school, or other institution of learning, covering students, teachers, employees, or volunteers.

(c) An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests.

(d) A sports team or camp, or a sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers.

(e) A religious, charitable, recreational, educational, or civic organization, or a branch thereof, covering any group of members, participants, or volunteers.

(f) A financial institution or financial institution



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vendor, or a parent holding company, trustee, or agent of or
designated by one or more financial institutions or financial
institution vendors, including account holders, credit card
holders, debtors, guarantors, or purchasers.

(g) An incorporated or unincorporated association,
including a labor union, having a common interest and
constitution and bylaws, which is organized and maintained in
good faith for purposes other than obtaining insurance coverage
for its members or participants.

(h) A trust or the trustees of a fund that covers its
members, employees, or customers and is established, created, or
maintained for the benefit of its members, employees, or
customers, subject to:

1. The department's authorizing the use of a trust.

2. The premium tax provisions in s. 647.03 applicable to
incorporated or unincorporated associations that have a common
interest and constitution and bylaws and that are organized and
maintained in good faith for purposes other than obtaining
insurance coverage for their members, employees, or customers.

(i) An entertainment production company covering any group
of participants, volunteers, audience members, contestants, or
workers.

(j) A volunteer fire department, ambulance, rescue, police,
court, first-aid, civil defense, or other such volunteer group.

(k) A preschool, daycare institution for children or
adults, or senior citizen club.

(l) An automobile or truck rental or leasing company
covering a group of individuals who may become renters, lessees,
or passengers as defined by their travel status on the rented or



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leased vehicles. The common carrier, the operator, owner, or
lessor of a means of transportation, or the motor vehicle or
truck rental or leasing company is the policyholder under a
policy to which this section applies.

(m) Any other group for which the department has made the
following determinations:

1. The group members are engaged in a common enterprise or
have an economic, educational, or social affinity or
relationship.

2. Issuance of the travel insurance policy is not contrary
to the public interest.

(6) "Fulfillment materials" means documentation sent to the
purchaser of a travel protection plan confirming the purchase
and providing the travel protection plan's coverage and
assistance details.

(7) "Group travel insurance" means travel insurance issued
to an eligible group.

(8) "Limited lines travel insurance producer" means:

(a) A licensed or third-party administrator;

(b) A licensed insurance producer, including a limited
lines producer; or

(c) A travel administrator.

(9) "Travel administrator" means a person who directly or
indirectly underwrites policies for, collects charges,
collateral, or premiums from, or adjusts or settles claims on,
residents of this state, in connection with travel insurance,
except that a person is not considered a travel administrator if
the person is:

(a) A person working for a travel administrator, to the



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446 extent that the person's activities are subject to the
447 supervision and control of the travel administrator;

448 (b) An insurance producer selling insurance or engaged in
449 administrative and claims-related activities within the scope of
450 the producer's license;

451 (c) A travel retailer, as defined s. 626.321(1)(c)2.,
452 offering and disseminating travel insurance and registered under
453 the license of a limited lines travel insurance producer in
454 accordance with s. 626.321(1)(c);

455 (d) A person adjusting or settling claims in the normal
456 course of the person's practice or employment as an attorney at
457 law, without collecting charges or premiums in connection with
458 insurance coverage; or

459 (e) A business entity that is affiliated with a licensed
460 insurer while acting as a travel administrator for the direct
461 and assumed insurance business of the affiliated insurer.

462 (10) "Travel assistance services" means noninsurance
463 services for which the consumer is not indemnified based on a
464 fortuitous event, and the provision of which does not result in
465 the transfer or shifting of risk which would constitute the
466 business of insurance. The term includes, but is not limited to,
467 security advisories, destination information, vaccination and
468 immunization information services, travel reservation services,
469 entertainment, activity and event planning, translation
470 assistance, emergency messaging, international legal and medical
471 referrals, medical case monitoring, coordination of
472 transportation arrangements, emergency cash transfer assistance,
473 medical prescription replacement assistance, passport and travel
474 document replacement assistance, lost luggage assistance,



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concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

(11) "Travel insurance" means insurance coverage for personal risks incidental to planned travel, including:

(a) Interruption or cancellation of trip or event;

(b) Loss of baggage or personal effects;

(c) Damages to accommodations or rental vehicles;

(d) Sickness, accident, disability, or death occurring during travel;

(e) Emergency evacuation;

(f) Repatriation of remains; or

(g) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Commissioner of Insurance Regulation.

The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

(12) "Travel protection plan" means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 34. Section 647.03, Florida Statutes, is created to read:

647.03 Premium tax.—

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



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(a) "Primary certificateholder" means an individual who purchases travel insurance under a group policy.

(b) "Primary policyholder" means an individual who purchases individual travel insurance.

(2) A travel insurer shall pay the premium tax, as required under s. 624.509, on travel insurance premiums paid by any of the following:

(a) A primary policyholder who is a resident of this state.

(b) A primary certificateholder who is a resident of this state.

(c) A blanket travel insurance policyholder:

1. Who is a resident in this state;

2. Who has his or her principal place of business in this state; or

3. Whose affiliate or subsidiary who has purchased blanket travel insurance for eligible blanket group members has his or her principal place of business in this state.

The premium tax under this subsection is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(3) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificateholder, or an affiliate or subsidiary thereof, as required under subsection (2).

(b) Report as premium only the amount allocable to travel



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insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 35. Section 647.04, Florida Statutes, is created to read:

647.04 Travel protection plans.—A travel protection plan may be offered for one price for the combined features that the travel protection plan offers in this state if the travel protection plan meets all of the following requirements:

(1) The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each.

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

(b) Include the travel insurance disclosures required in this chapter, the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 36. Section 647.05, Florida Statutes, is created to read:

647.05 Sales practices.—

(1)(a) All documents provided to a consumer before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials,



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must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the purchase. Information on the exclusions and the opportunity to learn more about these exclusions must be included in the coverage's fulfillment materials.

(c) The fulfillment materials and the information described in s. 626.321(1)(c)3.a. must be provided to a policyholder or certificateholder as soon as practicable after the purchase of a travel protection plan. Unless the insured has started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificateholder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

1. Fifteen days after the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

2. Ten days after the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

For the purposes of this paragraph, the term "delivery" means handing fulfillment materials to the policyholder or certificateholder or sending fulfillment materials by postal mail or electronic means to the policyholder or



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certificateholder.

(d) An insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if the following requirements are met:

1. The web page provides an accurate summary or short description of the coverage.

2. The consumer has access to the full provisions of the policy through electronic means.

(2) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using a negative or opt-out option that would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(3) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that the consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination jurisdiction through the travel retailer, as defined s. 626.321(1)(c)2., or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.



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(4) (a) A person offering travel insurance to residents of this state is subject to part IX of chapter 626, the Unfair Insurance Trade Practices Act, except as otherwise provided in this chapter. If a conflict arises between this chapter and the Unfair Insurance Trade Practices Act regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) A person commits an unfair insurance trade practice under the Unfair Insurance Trade Practices Act if the person:

1. Offers or sells a travel insurance policy that could never result in payment of any claims for any insured under the policy; or

2. Markets blanket travel insurance coverage as free.

Section 37. Section 647.06, Florida Statutes, is created to read:

647.06 Travel administrators.—

(1) Notwithstanding any other provision of the Florida Insurance Code, a person may not act or represent himself or herself as a travel administrator in this state unless the person:

(a) Is a licensed property and casualty insurance producer in this state for activities authorized under that producer license;

(b) Is appointed as a managing general agent in this state;
or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of part VI of chapter 626 for



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the travel insurance it administers.

(3) An insurer is responsible for ensuring that a travel administrator administering travel insurance underwritten by the insurer:

(a) Acts in accordance with this chapter.

(b) Maintains all books and records that are relevant to the insurer and makes these books and records available to the department upon request.

Section 38. Section 647.07, Florida Statutes, is created to read:

647.07 Travel insurance policy.—

(1) Notwithstanding any other provision of the Florida Insurance Code, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance; however, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be classified and filed for purposes of rates and forms under either the accident and health line of insurance or the inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy.

(3) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, if those standards also meet the state's underwriting standards for inland marine insurance.



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Section 39. Section 647.08, Florida Statutes, is created to read:

647.08 Rulemaking authority.—The department shall adopt rules to administer 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 67 - 69

and insert:

Timeframe; requiring the

Delete line 92

and insert:

respectively, without specified licenses; amending s. 440.12, F.S.; providing that an employee receiving workers' compensation payments may authorize a carrier to transmit compensation payments to a licensed money transmitter; amending s. 440.20, F.S.; specifying that the carrier's transmission of compensation with a licensed money transmitter to the employee's account satisfies the carrier's obligation to pay compensation directly to the employee; amending s. 626.321, F.S.; providing that certain travel insurance licenses are subject to review by the Department of Financial Services rather than the Office of Insurance Regulation; revising persons who may be licensed to transact in travel insurance; specifying licensure and registration requirements for certain persons; defining the term "travel retailer"; specifying requirements for, restrictions on, and authorized acts



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by travel retailers and limited lines travel insurance producers; defining the term "offer and disseminate"; authorizing certain persons to sell, solicit, and negotiate travel insurance; amending s. 627.914, F.S.; requiring insurers or self-insurance funds that write workers' compensation insurance and that are in receivership to continue to report certain information to the office; authorizing the outsourcing of reporting under certain circumstances; requiring the office to approve a certain reporting plan; authorizing the office to use the information for certain purposes; creating ch. 647, F.S., entitled "Travel Insurance"; creating s. 647.01, F.S.; providing legislative purpose; providing applicability; creating s. 647.02, F.S.; defining terms; creating s. 647.03, F.S.; defining the terms "primary certificateholder" and "primary policyholder"; requiring travel insurers to pay the insurance premium tax on specified travel insurance premiums; providing construction; specifying requirements for travel insurers; creating s. 647.04, F.S.; providing that a travel protection plan may be offered for one price if its meets specified requirements; creating s. 647.05, F.S.; specifying sales practice requirements, prohibited sales practices, and authorized sales practices relating to travel insurance; specifying a policyholder or certificateholder's right to cancel a travel protection plan for a full refund; defining the term



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"delivery"; specifying unfair insurance trade
practices; providing construction; creating s. 647.06,
F.S.; specifying qualifications for travel
administrators; providing an exemption from certain
licensure; providing that insurers are responsible for
ensuring certain acts by travel administrators;
creating s. 647.07, F.S.; specifying the
classification for travel insurance for rate filing
purposes; specifying authorized forms of travel
insurance; authorizing certain eligibility and
underwriting standards for travel insurance; creating
s. 647.08, F.S.; requiring the department to adopt
rules; providing



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LEGISLATIVE ACTION

Senate

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House

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

Senate Substitute for Amendment (893146) (with title amendment)

Between lines 693 and 694
insert:

Section 27. Paragraph (a) of subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) Compensation is not allowed for the first 7 days of the



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disability, except for benefits provided under s. 440.13.
However, if the injury results in more than 21 days of
disability, compensation is allowed from the commencement of the
disability.

(a) All weekly compensation payments, except for the first
payment, must be paid by check or, if authorized by the
employee, paid on a prepaid card pursuant to paragraph (b), or
deposited directly into the employee's account at a financial
institution as defined in s. 655.005, or transmitted to the
employee's account with a money transmitter licensed under part
II of chapter 560.

Section 28. Paragraph (a) of subsection (1) and paragraph
(a) of subsection (6) of section 440.20, Florida Statutes, is
amended to read:

440.20 Time for payment of compensation and medical bills;
penalties for late payment.—

(1)(a) Unless the carrier denies compensability or
entitlement to benefits, the carrier shall pay compensation
directly to the employee as required by ss. 440.14, 440.15, and
440.16, in accordance with those sections. Upon receipt of the
employee's authorization as provided for in s. 440.12(1)(a), the
carrier's obligation to pay compensation directly to the
employee is satisfied when the carrier directly deposits, by
electronic transfer or other means, compensation into the
employee's account at a financial institution as defined in s.
655.005 or onto a prepaid card in accordance with s. 440.12(1)
or transmits the employee's compensation to the employee's
account with a money transmitter licensed under part II of
chapter 560. Compensation by direct deposit, ~~or~~ through the use



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of a prepaid card, or through transmission is considered paid on the date the funds become available for withdrawal by the employee.

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a penalty of an amount equal to 20 percent of the unpaid installment, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The department may assess without a hearing the penalty against either the employer or the carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or



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the judge of compensation claims determines that the penalty should be paid by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution or by transmission to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 29. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance which are subject to review by the office. Policies and certificates of travel insurance may provide coverage for travel insurance, as defined in s. 647.02 ~~risks incidental to travel, planned travel, or accommodations while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services~~



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~~only, each policy or certificate must be limited to coverage for~~
~~travel or use of accommodations of no longer than 90 days.~~ The
license may be issued only to an individual or business entity
that has filed with the department an application for a license
in a form and manner prescribed by the department.

1. A limited lines travel insurance producer, as defined in
s. 647.02, shall be licensed to sell, solicit, or negotiate
travel insurance through a licensed insurer.

2. A person may not act as a limited lines travel insurance
producer or travel retailer unless properly licensed or
registered, respectively. As used in this paragraph, the term
"travel retailer" means a business entity that:

a. Makes, arranges, or offers planned travel.

b. May, under subparagraph 3., offer and disseminate travel
insurance as a service to its customers on behalf of and under
the direction of a limited lines travel insurance producer.

3. A travel retailer may offer and disseminate travel
insurance under a limited lines travel insurance producer
business entity license only if all of the following
requirements are met:

a. The limited lines travel insurance producer or travel
retailer provides to purchasers of travel insurance:

(I) A description of the material terms or the actual
material terms of the insurance coverage.

(II) A description of the process for filing a claim.

(III) A description of the review or cancellation process
for the travel insurance policy.

(IV) The identity and contact information of the insurer
and limited lines travel insurance producer.



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b. At the time of licensure, the limited lines travel insurance producer establishes and maintains a register on the department's website and appoints each travel retailer that offers travel insurance on behalf of the limited lines travel insurance producer. The limited lines travel insurance producer must maintain and update the register, which must include the travel retailer's federal tax identification number and the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations. The limited lines travel insurance producer shall submit the register to the department upon reasonable request. The limited lines travel insurance producer shall also certify that the travel retailer register complies with 18 U.S.C. s. 1033. The grounds for the suspension and revocation and the penalties applicable to resident insurance producers under this section apply to the limited lines travel insurance producers and travel retailers.

c. The limited lines travel insurance producer has designated one of its employees as the designated responsible producer. The designated responsible producer, who must be a licensed insurance producer, is responsible for the compliance with the travel insurance laws and regulations applicable to the limited lines travel insurance producer and its registrants. The designated responsible producer and the president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations must comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.



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d. The limited lines travel insurance producer has paid all applicable licensing and appointment fees, as set forth in applicable general law.

e. The limited lines travel insurance producer requires each employee and each authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which is subject, at the discretion of the department, to review and approval. The training material must, at a minimum, contain adequate instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective purchasers.

As used in this paragraph, the term "offer and disseminate" means to provide general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

4. A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials must include information that, at a minimum:

a. Provides the identity and contact information of the insurer and the limited lines travel insurance producer.

b. Explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

c. Explains that a travel retailer is authorized to provide only general information about the insurance offered by the



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travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

5. A travel retailer employee or authorized representative who is not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

c. Hold himself or herself or the travel retailer out as a licensed insurer, licensed producer, or insurance expert.

Notwithstanding any other provision of law, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions in this section may receive related compensation upon registration by the limited lines travel insurance producer as described in paragraph (2)(b).

6. As the insurer's designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this section.

7. Any person licensed as a general or personal lines agent may sell, solicit, and negotiate travel insurance.

~~: 1. To a full-time salaried employee of a common carrier~~



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~~or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. Such policy may not be for more than 48 hours or more than the duration of a specified one-way trip or round trip.~~

~~2. To an entity or individual that is:~~

~~a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;~~

~~b. An exchange company operating an exchange program approved under chapter 721;~~

~~c. A managing entity operating a timeshare plan approved under chapter 721;~~

~~d. A seller of travel as defined in chapter 559; or~~

~~e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.~~

~~3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.~~

~~a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.~~

~~b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and~~



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~~phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.~~

~~e. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.~~

~~A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to any other officer or person who directs or controls the travel insurance operations of the entity.~~

Section 30. Present subsection (4) of section 627.914, Florida Statutes, is redesignated as subsection (5), a new subsection (4) is added to that section, and subsections (2) and (3) of that section are amended, to read:

627.914 Reports of information by workers' compensation insurers required.—

(2) (a) Each insurer and self-insurance fund authorized to



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write a policy of workers' compensation insurance shall report
~~transmit~~ the following information annually on both Florida
experience and nationwide experience separately:

- 1.~~(a)~~ Payrolls by classification.
- 2.~~(b)~~ Manual premiums by classification.
- 3.~~(c)~~ Standard premiums by classification.
- 4.~~(d)~~ Losses by classification and injury type.
- 5.~~(e)~~ Expenses.

An insurer or self-insurance fund that is placed in receivership
pursuant to part I of chapter 631 must continue to report the
information required under this paragraph. At the discretion of
the receiver, the insurer or self-insurance fund may outsource
the reporting of such information to a third-party reporting
vendor. The office shall approve a modified reporting plan that
is limited in terms of data elements.

(b) A report of the ~~this~~ information required under
paragraph (a) shall be filed no later than July 1 of each year.
All reports shall be filed in accordance with standard reporting
procedures for insurers, which procedures have received approval
by the office, and shall contain data for the most recent policy
period available. A statistical or rating organization may be
used by insurers and self-insurance funds to report the data
required by this section. The statistical or rating organization
shall report each data element in the aggregate only for
insurers and self-insurance funds required to report under this
section who elect to have the organization report on their
behalf. Such insurers and self-insurance funds shall be named in
the report.



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(3) Individual self-insurers as defined in s. 440.02 shall report only Florida data as prescribed in subparagraphs (2)(a)1.-5. paragraphs (2)(a)-(e) to the office.

(a) The office shall publish the dates and forms necessary to enable individual self-insurers to comply with this section.

(b) A statistical or rating organization may be used by individual self-insurers for the purposes of reporting the data required by this section and calculating experience ratings.

(4) The office may use the information it receives under this section in its adoption of rates and experience ratings modifications.

Section 31. The Division of Law Revision is directed to create chapter 647, Florida Statutes, consisting of ss. 647.01-647.08, Florida Statutes, to be entitled "Travel Insurance."

Section 32. Section 647.01, Florida Statutes, is created to read:

647.01 Purpose and scope.-

(1) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) This chapter applies to:

(a) Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state.

(b) Policies and certificates that are delivered or issued for delivery in this state.

This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this



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chapter.

(3) All other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 33. Section 647.02, Florida Statutes, is created to read:

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

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Department" means the Department of Financial Services.

(5) "Eligible group," solely for the purposes of travel insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship, including, but not limited to, any of



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the following:

(a) An entity engaged in the business of providing travel or travel services, including, but not limited to:

1. A tour operator, lodging provider, vacation property owner, hotel, resort, travel club, travel agency, property manager, and cultural exchange program.

2. An operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, a common carrier, airline, cruise line, railroad, steamship company, and public bus carrier.

With regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel.

(b) A university, college, school, or other institution of learning, covering students, teachers, employees, or volunteers.

(c) An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests.

(d) A sports team or camp, or a sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers.

(e) A religious, charitable, recreational, educational, or civic organization, or a branch thereof, covering any group of members, participants, or volunteers.

(f) A financial institution or financial institution vendor, or a parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including account holders, credit card



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holders, debtors, guarantors, or purchasers.

(g) An incorporated or unincorporated association, including a labor union, having a common interest and constitution and bylaws, which is organized and maintained in good faith for purposes other than obtaining insurance coverage for its members or participants.

(h) A trust or the trustees of a fund that covers its members, employees, or customers and is established, created, or maintained for the benefit of its members, employees, or customers, subject to:

1. The department's authorizing the use of a trust.

2. The premium tax provisions in s. 647.03 applicable to incorporated or unincorporated associations that have a common interest and constitution and bylaws and that are organized and maintained in good faith for purposes other than obtaining insurance coverage for their members, employees, or customers.

(i) An entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers.

(j) A volunteer fire department, ambulance, rescue, police, court, first-aid, civil defense, or other such volunteer group.

(k) A preschool, daycare institution for children or adults, or senior citizen club.

(l) An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers as defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the motor vehicle or truck rental or leasing company is the policyholder under a



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policy to which this section applies.

(m) Any other group for which the department has made the following determinations:

1. The group members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship.

2. Issuance of the travel insurance policy is not contrary to the public interest.

(6) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

(7) "Group travel insurance" means travel insurance issued to an eligible group.

(8) "Limited lines travel insurance producer" means:

(a) A licensed or third-party administrator;

(b) A licensed insurance producer, including a limited lines producer; or

(c) A travel administrator.

(9) "Travel administrator" means a person who directly or indirectly underwrites policies for, collects charges, collateral, or premiums from, or adjusts or settles claims on, residents of this state, in connection with travel insurance, except that a person is not considered a travel administrator if the person is:

(a) A person working for a travel administrator, to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in



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administrative and claims-related activities within the scope of the producer's license;

(c) A travel retailer, as defined s. 626.321(1)(c)2., offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with s. 626.321(1)(c);

(d) A person adjusting or settling claims in the normal course of the person's practice or employment as an attorney at law, without collecting charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of the affiliated insurer.

(10) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and the provision of which does not result in the transfer or shifting of risk which would constitute the business of insurance. The term includes, but is not limited to, security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.



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(11) "Travel insurance" means insurance coverage for personal risks incidental to planned travel, including:
(a) Interruption or cancellation of trip or event;
(b) Loss of baggage or personal effects;
(c) Damages to accommodations or rental vehicles;
(d) Sickness, accident, disability, or death occurring during travel;
(e) Emergency evacuation;
(f) Repatriation of remains; or
(g) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as determined by the office.

The term does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing overseas as expatriates, or any other product that requires a specific insurance producer license.

(12) "Travel protection plan" means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 34. Section 647.03, Florida Statutes, is created to read:

647.03 Premium tax.—

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

(a) "Primary certificateholder" means an individual who purchases travel insurance under a group policy.

(b) "Primary policyholder" means an individual who purchases individual travel insurance.



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(2) A travel insurer shall pay the premium tax, as required under s. 624.509, on travel insurance premiums paid by any of the following:

(a) A primary policyholder who is a resident of this state.

(b) A primary certificateholder who is a resident of this state.

(c) A blanket travel insurance policyholder:

1. Who is a resident in this state;

2. Who has his or her principal place of business in this state; or

3. Whose affiliate or subsidiary who has purchased blanket travel insurance for eligible blanket group members has his or her principal place of business in this state.

The premium tax under this subsection is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(3) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificateholder, or an affiliate or subsidiary thereof, as required under subsection (2).

(b) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 35. Section 647.04, Florida Statutes, is created to read:



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647.04 Travel protection plans.—A travel protection plan may be offered for one price for the combined features that the travel protection plan offers in this state if the travel protection plan meets all of the following requirements:

(1) The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each.

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

(b) Include the travel insurance disclosures required in this chapter, the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 36. Section 647.05, Florida Statutes, is created to read:

647.05 Sales practices.—

(1) (a) All documents provided to a consumer before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that



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contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the purchase. Information on the exclusions and the opportunity to learn more about these exclusions must be included in the coverage's fulfillment materials.

(c) The fulfillment materials and the information described in s. 626.321(1)(c)3.a. must be provided to a policyholder or certificateholder as soon as practicable after the purchase of a travel protection plan. Unless the insured has started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificateholder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

1. Fifteen days after the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

2. Ten days after the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

For the purposes of this paragraph, the term "delivery" means handing fulfillment materials to the policyholder or certificateholder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificateholder.

(d) An insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.



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(e) If travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if the following requirements are met:

1. The web page provides an accurate summary or short description of the coverage.

2. The consumer has access to the full provisions of the policy through electronic means.

(2) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using a negative or opt-out option that would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(3) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that the consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination jurisdiction through the travel retailer, as defined s. 626.321(1)(c)2., or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

(4) (a) A person offering travel insurance to residents of this state is subject to part IX of chapter 626, the Unfair Insurance Trade Practices Act, except as otherwise provided in this chapter. If a conflict arises between this chapter and the



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Unfair Insurance Trade Practices Act regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) A person commits an unfair insurance trade practice under the Unfair Insurance Trade Practices Act if the person:

1. Offers or sells a travel insurance policy that could never result in payment of any claims for any insured under the policy; or

2. Markets blanket travel insurance coverage as free.

Section 37. Section 647.06, Florida Statutes, is created to read:

647.06 Travel administrators.—

(1) Notwithstanding any other provision of the Florida Insurance Code, a person may not act or represent himself or herself as a travel administrator in this state unless the person:

(a) Is a licensed and appointed property and casualty insurance producer in this state for activities authorized under that producer license;

(b) Is a licensed insurance agency, appointed as a managing general agent in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of part VI of chapter 626 for the travel insurance it administers.

(3) An insurer is responsible for ensuring that a travel administrator administering travel insurance underwritten by the insurer:



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(a) Acts in accordance with this chapter.

(b) Maintains all books and records that are relevant to the insurer and makes these books and records available to the department upon request.

Section 38. Section 647.07, Florida Statutes, is created to read:

647.07 Travel insurance policy.—

(1) Notwithstanding any other provision of the Florida Insurance Code, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance; however, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be classified and filed for purposes of rates and forms under either the accident and health line of insurance or the inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy. Group or blanket policies are classified as commercial inland marine insurance under s. 627.021(2)(d). Travel insurance policies not issued to a commercial entity and primarily used for personal, family, or household purposes are considered personal inland marine insurance and shall not be subject to s. 627.062. Sections of policies or endorsements for travel insurance which are considered personal inland marine insurance consisting of travel assistance services or cancellation fee waivers are not subject to s. 627.410.



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(3) Travel insurance programs may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels.

Section 39. Section 647.08, Florida Statutes, is created to read:

647.08 Rulemaking authority.—The department shall adopt rules to administer this chapter.

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

And the title is amended as follows:

Delete line 92

and insert:

respectively, without specified licenses; amending ss. 440.12 and 440.20, F.S.; authorizing the payment of certain workers' compensation benefits to be transmitted to the employee's account with a licensed money transmitter; amending s. 626.321, F.S.; providing that certain travel insurance licenses are subject to review by the department rather than the office; revising persons who may be licensed to transact in travel insurance; specifying licensure and registration requirements for certain persons; defining the term "travel retailer"; specifying requirements for, restrictions on, and authorized acts by travel retailers and limited lines travel insurance producers; defining the term "offer and disseminate"; authorizing certain persons to sell, solicit, and negotiate travel insurance; amending s. 627.914, F.S.; requiring insurers or self-insurance funds that write



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workers' compensation insurance and that are in
receivership to continue to report certain information
to the office; authorizing the outsourcing of
reporting under certain circumstances; requiring the
office to approve a certain reporting plan;
authorizing the office to use the information for
certain purposes; creating ch. 647, F.S., entitled
"Travel Insurance"; creating s. 647.01, F.S.;
providing legislative purpose; providing
applicability; creating s. 647.02, F.S.; defining
terms; creating s. 647.03, F.S.; defining the terms
"primary certificateholder" and "primary
policyholder"; requiring travel insurers to pay the
insurance premium tax on specified travel insurance
premiums; providing construction; specifying
requirements for travel insurers; creating s. 647.04,
F.S.; providing that a travel protection plan may be
offered for one price if its meets specified
requirements; creating s. 647.05, F.S.; specifying
sales practice requirements, prohibited sales
practices, and authorized sales practices relating to
travel insurance; specifying a policyholder or
certificateholder's right to cancel a travel
protection plan for a full refund; defining the term
"delivery"; specifying unfair insurance trade
practices; providing construction; creating s. 647.06,
F.S.; specifying qualifications for travel
administrators; providing an exemption from certain
licensure; providing that insurers are responsible for



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736 ensuring certain acts by travel administrators;
737 creating s. 647.07, F.S.; specifying the
738 classification for travel insurance for rate filing
739 purposes; specifying authorized forms of travel
740 insurance; providing applicability of certain
741 provisions of the Rating Law; authorizing the
742 development and provision of travel insurance programs
743 on certain bases; creating s. 647.08, F.S.; requiring
744 the department to adopt rules; providing



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 536 - 543

and insert:

(2) A named insured filing suit under a property insurance

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

And the title is amended as follows:

Delete lines 67 - 69

and insert:



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11 timeframe; requiring the

By Senator Brandes

24-01620E-20

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1 A bill to be entitled
 2 An act relating to financial services; amending s.
 3 215.555, F.S.; redefining the term "covered policy"
 4 under the Florida Hurricane Catastrophe Fund in
 5 relation to certain collateral protection insurance
 6 policies; requiring the Office of Insurance Regulation
 7 to retain an independent consultant to audit the
 8 fund's reimbursement premium formula at specified
 9 intervals; specifying requirements for the audit;
 10 requiring the office to report audit findings and
 11 certain recommendations to the Financial Services
 12 Commission and the Legislature; amending s. 319.30,
 13 F.S.; revising a certain electronic signature
 14 requirement for a motor vehicle salvage certificate of
 15 title; amending s. 624.155, F.S.; revising
 16 requirements for the civil remedy notice provided to
 17 insurers and the Department of Financial Services;
 18 revising the timeframe for an insurer to pay damages
 19 or for certain circumstances to be corrected; revising
 20 circumstances that toll the applicable statute of
 21 limitations; amending ss. 624.307 and 624.315, F.S.;
 22 providing that certain aggregate information
 23 containing trade secret information may be publicly
 24 disclosed by the department or office, except under
 25 certain circumstances; amending s. 626.854, F.S.;
 26 deleting a requirement for certain persons acting on
 27 behalf of an insurer to provide certain notice before
 28 scheduling a meeting or onsite inspection for certain
 29 purposes; conforming a cross-reference; amending s.

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

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30 626.916, F.S.; adding a condition for export
 31 eligibility under the Surplus Lines Law for certain
 32 risks; amending s. 626.918, F.S.; adding certain
 33 unauthorized insurers that may become eligible surplus
 34 lines insurers; amending s. 626.931, F.S.; deleting a
 35 requirement for certain surplus lines agents to file
 36 quarterly affidavits with the Florida Surplus Lines
 37 Service Office; conforming cross-references; amending
 38 s. 626.932, F.S.; revising the time when surplus lines
 39 agents must remit surplus lines taxes; amending s.
 40 626.935, F.S.; conforming a provision to changes made
 41 by the act; amending s. 627.062, F.S.; specifying that
 42 certain periods ending on a weekend or on certain
 43 holidays are extended until the conclusion of the next
 44 business day; prohibiting the office from disapproving
 45 a homeowners' insurance rate in a rate filing solely
 46 on specified grounds; amending s. 627.0629, F.S.;
 47 authorizing, rather than requiring, rate filings for
 48 certain residential property insurance to include
 49 certain rate factors; amending ss. 627.0651 and
 50 627.410, F.S.; specifying that certain periods ending
 51 on a weekend or on certain holidays are extended until
 52 the conclusion of the next business day; amending s.
 53 627.7011, F.S.; providing that homeowners' insurers
 54 are not prohibited from offering policies or
 55 endorsements providing for a certain adjustment basis
 56 on certain losses; amending s. 627.70132, F.S.;
 57 revising property insurance coverages for which a
 58 notice of a claim must be given to the insurer within

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

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59 a specified timeframe; revising the timeframe for
 60 providing notices of hurricane claims; creating s.
 61 627.70152, F.S.; requiring named insureds to provide
 62 insurers with a specified notice as a condition
 63 precedent to filing suit under a property insurance
 64 policy; specifying the manner and timeframe in which
 65 such notice must be provided; requiring insurers to
 66 acknowledge receipt of the notice within a certain
 67 timeframe; providing that the named insured has the
 68 burden to demonstrate that the insurer is not
 69 prejudiced by certain circumstances; requiring the
 70 named insured to sign the civil complaint; amending s.
 71 627.714, F.S.; revising criteria for assessing a
 72 residential condominium unit owner's loss assessment
 73 coverage; reviving, reenacting, and amending s.
 74 627.715(4), F.S.; providing an exemption from a
 75 diligent effort requirement for surplus lines agents
 76 exporting contracts or endorsements providing flood
 77 coverage; providing for expiration; amending s.
 78 627.7152, F.S.; specifying the manner in which an
 79 assignee of certain property insurance policy benefits
 80 must serve a notice of intent to initiate litigation;
 81 amending s. 627.7295, F.S.; decreasing the timeframe
 82 during which an insurer is prohibited from canceling a
 83 new policy or binder of motor vehicle insurance for
 84 nonpayment of premium, except under certain
 85 circumstances; amending s. 629.401, F.S.; revising
 86 criteria for surplus lines insurance in insurance
 87 exchanges; amending ss. 634.171, 634.317, and 634.419,

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88 F.S.; authorizing licensed personal lines and general
 89 lines agents to solicit, negotiate, advertise, or sell
 90 motor vehicle service agreements, home warranty
 91 contracts, and service warranty contracts,
 92 respectively, without specified licenses; providing
 93 effective dates.
 94

95 Be It Enacted by the Legislature of the State of Florida:
 96

97 Section 1. Paragraph (c) of subsection (2) of section
 98 215.555, Florida Statutes, is amended, and paragraph (f) is
 99 added to subsection (5) of that section, to read:

100 215.555 Florida Hurricane Catastrophe Fund.—

101 (2) DEFINITIONS.—As used in this section:

102 (c) "Covered policy" means any insurance policy covering
 103 residential property in this state, including, but not limited
 104 to, any homeowner, mobile home owner, farm owner, condominium
 105 association, condominium unit owner, tenant, or apartment
 106 building policy, or any other policy covering a residential
 107 structure or its contents issued by any authorized insurer,
 108 including a commercial self-insurance fund holding a certificate
 109 of authority issued by the Office of Insurance Regulation under
 110 s. 624.462, the Citizens Property Insurance Corporation, and any
 111 joint underwriting association or similar entity created under
 112 law. The term "covered policy" includes any collateral
 113 protection insurance policy covering personal residences which
 114 protects both the borrower's and the lender's financial
 115 interests, in an amount at least equal to the coverage amount
 116 for the dwelling in place under the lapsed homeowner's policy,

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117 the coverage amount requested by the lender, provided the
 118 homeowner has been notified in writing of the coverage amount,
 119 or the coverage amount the homeowner requests from the insurer,
 120 if such collateral protection insurance policy can be accurately
 121 reported as required in subsection (5). Additionally, covered
 122 policies include policies covering the peril of wind removed
 123 from the Florida Residential Property and Casualty Joint
 124 Underwriting Association or from the Citizens Property Insurance
 125 Corporation, created under s. 627.351(6), or from the Florida
 126 Windstorm Underwriting Association, created under s. 627.351(2),
 127 by an authorized insurer under the terms and conditions of an
 128 executed assumption agreement between the authorized insurer and
 129 such association or Citizens Property Insurance Corporation.
 130 Each assumption agreement between the association and such
 131 authorized insurer or Citizens Property Insurance Corporation
 132 must be approved by the Office of Insurance Regulation before
 133 the effective date of the assumption, and the Office of
 134 Insurance Regulation must provide written notification to the
 135 board within 15 working days after such approval. "Covered
 136 policy" does not include any policy that excludes wind coverage
 137 or hurricane coverage or any reinsurance agreement and does not
 138 include any policy otherwise meeting this definition which is
 139 issued by a surplus lines insurer or a reinsurer. All commercial
 140 residential excess policies and all deductible buy-back policies
 141 that, based on sound actuarial principles, require individual
 142 ratemaking shall be excluded by rule if the actuarial soundness
 143 of the fund is not jeopardized. For this purpose, the term
 144 "excess policy" means a policy that provides insurance
 145 protection for large commercial property risks and that provides

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146 a layer of coverage above a primary layer insured by another
 147 insurer.
 148 (5) REIMBURSEMENT PREMIUMS.—
 149 (f) The Office of Insurance Regulation shall retain an
 150 independent consultant to audit the formula developed under this
 151 subsection beginning with the 2021 contract year and every 3
 152 years thereafter. The audit may not be performed by the
 153 independent consultant who developed the formula. The audit must
 154 evaluate whether the formula uses actuarially sound principles
 155 and whether insurers are paying an actuarially indicated
 156 premium. The Office of Insurance Regulation shall also recommend
 157 factors, if any, which would enhance the actuarial
 158 sophistication of ratemaking for the fund. The Office of
 159 Insurance Regulation shall report the findings of the audit and
 160 any recommendation to the Financial Services Commission, the
 161 President of the Senate, and the Speaker of the House of
 162 Representatives on or before March 1 of the year after the
 163 contract year audited.
 164 Section 2. Effective upon this act becoming a law,
 165 paragraph (d) of subsection (3) of section 319.30, Florida
 166 Statutes, is amended to read:
 167 319.30 Definitions; dismantling, destruction, change of
 168 identity of motor vehicle or mobile home; salvage.—
 169 (3)
 170 (d) An electronic signature that is consistent with chapter
 171 668 satisfies any signature required under this subsection,
 172 except that an electronic signature on an odometer disclosure
 173 submitted through an insurance company must be executed using an
 174 electronic signature, as defined in s. 668.003(4), which that

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uses a system providing an Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, ~~which that~~ are equivalent to or greater than+

~~1. Level 2, for each level, for a certificate of destruction or-~~

~~2. Level 3, for each level, for a salvage certificate of title.~~

Section 3. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3) (a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be delivered to the name and address designated by the insurer under s. 624.422(2).

(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 claimant, she or he shall not be

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required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.

5. The damages to be paid by the insurer for the claim, available under and pursuant to the express terms and conditions of the policy, less any amount earlier paid by the insurer and any applicable policy deductibles. The notice may not demand vague remedial action regarding changes to claims-handling procedures or practices.

6. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(c) No action shall lie if, within 60 days after the insurer receives filing notice in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) 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) The applicable statute of limitations for an action under this section shall be tolled for a period of:

1. Sixty-five ~~65~~ days by the mailing of the notice required by this subsection.

2. Sixty days after the date appraisal is invoked pursuant to paragraph (f) or the mailing of a subsequent notice required by this subsection.

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

Section 4. Subsection (4) of section 624.307, Florida

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Statutes, is amended to read:

624.307 General powers; duties.—

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law. Aggregate information may include information asserted as trade secret information unless the trade secret information can be individually extrapolated, in which case the trade secret information remains protected as provided under s. 624.4213.

Section 5. Subsection (4) is added to section 624.315, Florida Statutes, to read:

624.315 Department; annual report.—

(4) When aggregate information includes information asserted as trade secret information, the office may include the trade secret information in the report required under subsection (1) or may make the trade secret information available under subsection (2) unless the trade secret information can be individually extrapolated, in which case the trade secret information remains protected as provided under s. 624.4213.

Section 6. Subsection (13) and present subsection (18) of section 626.854, Florida Statutes, are amended to read:

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

~~(13) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at~~

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~~least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.~~

(17)-(18) Subsections (5)-(16) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

Section 7. Paragraph (f) is added to subsection (1) of section 626.916, Florida Statutes, to read:

626.916 Eligibility for export.—

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

(f) For risks placed with an insurer made eligible under s. 626.918(2)(a)1., the policy or contract under which the insurance is exported must provide that any form of alternative dispute resolution, including, but not limited to, appraisal or arbitration, must be conducted in this state.

Section 8. Paragraph (a) of subsection (2) of section 626.918, Florida Statutes, is amended to read:

626.918 Eligible surplus lines insurers.—

(2) An unauthorized insurer may not be or become an eligible surplus lines insurer unless made eligible by the office in accordance with the following conditions:

(a) The insurer must be either of the following:

1. Wholly owned by an insurer domiciled in this state which is authorized, and has been authorized for at least the 3 preceding years, in this state as to the kind or kinds of

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291 insurance to be so placed. An insurer that meets this
 292 requirement is subject to ss. 624.404, 624.407, 624.4073,
 293 624.408, 624.4085, 624.40851, 624.4095, and 624.424 and chapter
 294 625.

295 2. Currently an authorized insurer in the state or country
 296 of its domicile as to the kind or kinds of insurance proposed to
 297 be so placed and must have been such an insurer for not less
 298 than the 3 years next preceding or must be the wholly owned
 299 subsidiary of such authorized insurer or must be the wholly
 300 owned subsidiary of an already eligible surplus lines insurer as
 301 to the kind or kinds of insurance proposed for a period of not
 302 less than the 3 years next preceding. However, the office may
 303 waive the 3-year requirement if the insurer provides a product
 304 or service not readily available to the consumers of this state
 305 or has operated successfully for a period of at least 1 year
 306 next preceding and has capital and surplus of not less than \$25
 307 million.

308 Section 9. Section 626.931, Florida Statutes, is amended to
 309 read:

310 626.931 ~~Agent affidavit and~~ Insurer reporting
 311 requirements.—

312 (1) ~~Each surplus lines agent that has transacted business~~
 313 ~~during a calendar quarter shall on or before the 45th day~~
 314 ~~following the calendar quarter file with the Florida Surplus~~
 315 ~~Lines Service Office an affidavit, on forms as prescribed and~~
 316 ~~furnished by the Florida Surplus Lines Service Office, stating~~
 317 ~~that all surplus lines insurance transacted by him or her during~~
 318 ~~such calendar quarter has been submitted to the Florida Surplus~~
 319 ~~Lines Service Office as required.~~

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320 ~~(2) The affidavit of the surplus lines agent shall include~~
 321 ~~efforts made to place coverages with authorized insurers and the~~
 322 ~~results thereof.~~

323 ~~(3)~~ Each foreign insurer accepting premiums shall, on or
 324 before the end of the month following each calendar quarter,
 325 file with the Florida Surplus Lines Service Office a verified
 326 report of all surplus lines insurance transacted by such insurer
 327 for insurance risks located in this state during such calendar
 328 quarter.

329 (2) ~~(4)~~ Each alien insurer accepting premiums shall, on or
 330 before June 30 of each year, file with the Florida Surplus Lines
 331 Service Office a verified report of all surplus lines insurance
 332 transacted by such insurer for insurance risks located in this
 333 state during the preceding calendar year.

334 (3) ~~(5)~~ The department may waive the filing requirements
 335 described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

336 (4) ~~(6)~~ Each insurer's report and supporting information
 337 shall be in a computer-readable format as determined by the
 338 Florida Surplus Lines Service Office or shall be submitted on
 339 forms prescribed by the Florida Surplus Lines Service Office and
 340 shall show for each applicable agent:

341 (a) A listing of all policies, certificates, cover notes,
 342 or other forms of confirmation of insurance coverage or any
 343 substitutions thereof or endorsements thereto and the
 344 identifying number; and

345 (b) Any additional information required by the department
 346 or Florida Surplus Lines Service Office.

347 Section 10. Paragraph (a) of subsection (2) of section
 348 626.932, Florida Statutes, is amended to read:

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349 626.932 Surplus lines tax.—

350 (2) (a) The surplus lines agent shall make payable to the
351 department the tax related to each calendar quarter's business
352 as reported to the Florida Surplus Lines Service Office, and
353 remit the tax to the Florida Surplus Lines Service Office at the
354 same time as the fee payment required provided for the filing of
355 the quarterly affidavit, under s. 626.9325 s. 626.931. The
356 Florida Surplus Lines Service Office shall forward to the
357 department the taxes and any interest collected pursuant to
358 paragraph (b), within 10 days of receipt.

359 Section 11. Paragraph (d) of subsection (1) of section
360 626.935, Florida Statutes, is amended to read:
361 626.935 Suspension, revocation, or refusal of surplus lines
362 agent's license.—

363 (1) The department shall deny an application for, suspend,
364 revoke, or refuse to renew the appointment of a surplus lines
365 agent and all other licenses and appointments held by the
366 licensee under this code, on any of the following grounds:

367 ~~(d) Failure to make and file his or her affidavit or~~
368 ~~reports when due as required by s. 626.931.~~

369 Section 12. Paragraphs (a) and (j) of subsection (2) of
370 section 627.062, Florida Statutes, are amended to read:

371 627.062 Rate standards.—

372 (2) As to all such classes of insurance:

373 (a) Insurers or rating organizations shall establish and
374 use rates, rating schedules, or rating manuals that allow the
375 insurer a reasonable rate of return on the classes of insurance
376 written in this state. A copy of rates, rating schedules, rating
377 manuals, premium credits or discount schedules, and surcharge

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378 schedules, and changes thereto, must be filed with the office
379 under one of the following procedures:

380 1. If the filing is made at least 90 days before the
381 proposed effective date and is not implemented during the
382 office's review of the filing and any proceeding and judicial
383 review, such filing is considered a "file and use" filing. In
384 such case, the office shall finalize its review by issuance of a
385 notice of intent to approve or a notice of intent to disapprove
386 within 90 days after receipt of the filing. If the 90-day period
387 ends on a weekend or a holiday under s. 110.117(1)(a)-(i), it
388 must be extended until the conclusion of the next business day.
389 The notice of intent to approve and the notice of intent to
390 disapprove constitute agency action for purposes of the
391 Administrative Procedure Act. Requests for supporting
392 information, requests for mathematical or mechanical
393 corrections, or notification to the insurer by the office of its
394 preliminary findings does not toll the 90-day period during any
395 such proceedings and subsequent judicial review. The rate shall
396 be deemed approved if the office does not issue a notice of
397 intent to approve or a notice of intent to disapprove within 90
398 days after receipt of the filing.

399 2. If the filing is not made in accordance with
400 subparagraph 1., such filing must be made as soon as
401 practicable, but within 30 days after the effective date, and is
402 considered a "use and file" filing. An insurer making a "use and
403 file" filing is potentially subject to an order by the office to
404 return to policyholders those portions of rates found to be
405 excessive, as provided in paragraph (h).

406 3. For all property insurance filings made or submitted

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after January 25, 2007, but before May 1, 2012, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered property coverages.

(j) With respect to residential property insurance rate filings:

1. The rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. The office may not disapprove a rate for homeowners' insurance solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models currently found to be accurate or reliable pursuant to s. 627.0628.

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

Section 13. Paragraph (b) of subsection (2) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(2)

(b) A rate filing for residential property insurance made more than 150 days after approval by the office of a building code rating factor plan submitted by a statewide rating organization may ~~shall~~ include positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses risk of wind damage. The rate filing shall include variations from standard

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rate factors on an individual basis based on inspection of a particular structure by a licensed home inspector. If an inspection is requested by the insured, the insurer may require the insured to pay the reasonable cost of the inspection. This paragraph applies to structures constructed or renovated after the implementation of this paragraph.

Section 14. Paragraph (a) of subsection (1) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office under one of the following procedures:

(a) If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a "file and use" filing. In such case, the office shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. If the 60-day period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), it must be extended until the conclusion of the next business day. Notification to the insurer by the office of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue notice to

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the insurer of its preliminary findings within 60 days after the filing.

Section 15. Subsection (2) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(2) Every such filing must be made at least 30 days in advance of any such use or delivery. At the expiration of the 30 days, the form filed will be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office. The approval of such form by the office constitutes a waiver of any unexpired portion of such waiting period. The office may extend the period within which it may affirmatively approve or disapprove such form by up to 15 days by giving notice of such extension before expiration of the initial 30-day period. If the initial 30-day period or the 15-day extension period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), the review period must be extended until the conclusion of the next business day. At the expiration of such extended period, and in the absence of prior affirmative approval or disapproval, such form shall be deemed approved.

Section 16. Paragraph (f) is added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f) Prohibit an insurer from offering a policy or endorsement providing that a loss to a roof older than 10 years which is caused by a covered peril other than a hurricane will be adjusted on the basis of actual cash value.

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Section 17. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of ~~property insurance windstorm or hurricane~~ claim.—A claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, ~~for loss or damage caused by the peril of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim ~~is was~~ given to the insurer in accordance with the terms of the policy within 3 years after the date of loss hurricane first made landfall or the windstorm caused the covered damage. This section does not apply to sinkhole loss claims, which are subject to the time limitation under s. 627.706(5). For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses ~~from the same hurricane or windstorm which~~ the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 18. Section 627.70152, Florida Statutes, is created to read:

627.70152 Suits arising under a property insurance policy.—

(1) As a condition precedent to filing suit under a property insurance policy, the named insured must provide the insurer with a written notice of intent to initiate litigation before filing suit under the policy. Concurrent with the notice and as a precondition to filing suit, the named insured must provide a detailed written invoice or estimate of services,

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including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards. The notice must be served at least 10 business days before filing suit by certified mail, return receipt requested, to the name and address designated by the insurer in the policy forms or by electronic delivery to an e-mail address designated by the insurer in the policy forms, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute and the amount claimed. An insurer must acknowledge receipt of the notice in writing within 10 business days after receiving the notice.

(2) In any suit arising under a property insurance policy, the named insured has the burden to demonstrate that the insurer is not prejudiced by the failure of the named insured, or a public adjuster or attorney representing the named insured, to cooperate with the insurer in the claim investigation, including, but not limited to, failing to allow the insurer to inspect the property.

(3) A named insured filing suit under a property insurance policy must sign any complaint seeking relief under such policy.

Section 19. Subsection (2) of section 627.714, Florida Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

(2) The maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that unit owner's loss assessment coverage limit in

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effect 1 day before the date of the occurrence that gave rise to the loss. Such coverage is applicable to any loss assessment regardless of the date of the assessment by the association. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.

Section 20. Notwithstanding the expiration of subsection (4) of section 627.715, Florida Statutes, which occurred on July 1, 2019, that subsection is revived, reenacted, and amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a). This subsection expires July 1, 2025 ~~2019~~, or on the date on which the Commissioner of Insurance Regulation determines in writing that there is an adequate admitted market to provide coverage for the peril of flood consistent with this section, whichever date occurs first. If there are fewer than

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three admitted insurers on the date this subsection expires, the number of declinations necessary to meet the diligent-effort requirement shall be no fewer than the number of authorized insurers providing flood coverage.

Section 21. Paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, is amended to read:

627.7152 Assignment agreements.—

(9) (a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served by certified mail, return receipt requested, to the name and address designated by the insurer in the policy forms or by electronic delivery at the e-mail address designated by the insurer in the policy forms at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 22. Subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(4) The insurer may cancel the policy in accordance with

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this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first ~~30~~ 60 days immediately following the effective date of the policy or binder for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.

Section 23. Paragraph (a) of subsection (1) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(1) There may be created one or more insurance exchanges, with one or more offices each, subject to such rules as are adopted by the commission. For the purposes of this section, the term “exchange” applies to any such insurance exchange proposed or created under this section. The purposes of the exchange are:

(a) To provide a facility for the underwriting of:

1. Reinsurance of all kinds of insurance.

2. Direct insurance of all kinds on risks located entirely outside the United States.

3. Surplus lines insurance for risks located in this state eligible for export under s. 626.916 or s. 626.917 and placed through a licensed Florida surplus lines agent subject to compliance with ~~the provisions of~~ ss. 626.921, 626.922, 626.923, 626.924, 626.929, 626.9295, and 626.930, ~~and 626.931~~. With respect to compliance with s. 626.924, the required legend may refer to any coverage provided for by a security fund established under paragraph (3) (d).

4. Surplus lines insurance in any other state subject to the applicable surplus lines laws of such other state for risks

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639 located entirely outside of this state.

640 Section 24. Section 634.171, Florida Statutes, is amended
641 to read:

642 634.171 Salesperson to be licensed and appointed;
643 exceptions.—Salespersons for motor vehicle service agreement
644 companies and insurers shall be licensed, appointed, renewed,
645 continued, reinstated, or terminated as prescribed in chapter
646 626 for insurance representatives in general. However, they
647 shall be exempt from all other provisions of chapter 626
648 including fingerprinting, photo identification, education, and
649 examination provisions. License, appointment, and other fees
650 shall be those prescribed in s. 624.501. A licensed and
651 appointed salesperson shall be directly responsible and
652 accountable for all acts of her or his employees and other
653 representatives. Each service agreement company or insurer
654 shall, on forms prescribed by the department, within 30 days
655 after termination of the appointment, notify the department of
656 such termination. No employee or salesperson of a motor vehicle
657 service agreement company or insurer may directly or indirectly
658 solicit or negotiate insurance contracts, or hold herself or
659 himself out in any manner to be an insurance agent, unless so
660 qualified, licensed, and appointed therefor under the Florida
661 Insurance Code. A licensed personal lines or general lines agent
662 may solicit, negotiate, advertise, or sell motor vehicle service
663 agreements and is not required to be licensed under this
664 section. A motor vehicle service agreement company is not
665 required to be licensed as a salesperson to solicit, sell,
666 issue, or otherwise transact the motor vehicle service
667 agreements issued by the motor vehicle service agreement

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668 company.

669 Section 25. Section 634.317, Florida Statutes, is amended
670 to read:

671 634.317 License and appointment required; exception.—No
672 person may solicit, negotiate, or effectuate home warranty
673 contracts for remuneration in this state unless such person is
674 licensed and appointed as a sales representative. A licensed and
675 appointed sales representative shall be directly responsible and
676 accountable for all acts of the licensee's employees. A licensed
677 personal lines or general lines agent may solicit, negotiate,
678 advertise, or sell home warranty contracts and is not required
679 to be licensed under this section.

680 Section 26. Section 634.419, Florida Statutes, is amended
681 to read:

682 634.419 License and appointment required; exception.—No
683 person or entity shall solicit, negotiate, advertise, or
684 effectuate service warranty contracts in this state unless such
685 person or entity is licensed and appointed as a sales
686 representative. Sales representatives shall be responsible for
687 the actions of persons under their supervision. However, a
688 service warranty association licensed as such under this part
689 shall not be required to be licensed and appointed as a sales
690 representative to solicit, negotiate, advertise, or effectuate
691 its products. A licensed personal lines or general lines agent
692 may solicit, negotiate, advertise, or sell service warranty
693 contracts and is not required to be licensed under this section.

694 Section 27. Except as otherwise expressly provided in this
695 act and except for this section, which shall take effect upon
696 this act becoming a law, this act shall take effect July 1,

Page 24 of 25

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

697 24-01620E-20
2020.

20201334__



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 13, 2019

I respectfully request that **Senate Bill #1334**, relating to **Financial Services**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20

Meeting Date

1334

Bill Number (if applicable)

527860

Amendment Barcode (if applicable)

Topic

FHCF

Name

Paul Handerkhan

Job Title

Consultant

Address

120 South Monroe Street

Street

Tallahassee FL

City

State

33021

Zip

Phone

561 704 0428

Email

paul@ramboconsulting.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

FAIR

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20

Meeting Date

1334

Bill Number (if applicable)

527424

Amendment Barcode (if applicable)

Topic TEACO - CAT Fund

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Street

Tallahassee

City

State

Zip

Phone _____

Email _____

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/12

Meeting Date

1334

Bill Number (if applicable)

384996

Amendment Barcode (if applicable)

Topic Rapid cash Build up

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronough St

Street

Tallahassee

City

State

Zip

Phone 521-1200

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.

CS-001 (02/11/12)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-2020

Meeting Date

5B1334

Bill Number (if applicable)

632742

Amendment Barcode (if applicable)

Topic Financial Services

Name Joy Ryan

Job Title _____

Address 300 S. Duval St.

Street

Tallahassee, FL 32303

City

State

Zip

Phone 425-4000

Email joy@meenalanlaw
firm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Service Agreement Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20
Meeting Date

1334
Bill Number (if applicable)
632742
Amendment Barcode (if applicable)

Topic Property Ins.

Name Sen. Steve Geller

Job Title Lawyer

Address 110 East Broward Blvd
Street
Ft Lauderdale FL 33301
City State Zip

1700
Phone 954 629 7782
Email steve@gellerlawfirm.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Merlin Law Group & FAPIA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

This form is part of the public record for this meeting

S-001 (10/11/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/2020
Meeting Date

SB1834
Bill Number (if applicable)

6032742
Amendment Barcode (if applicable)

Topic Insurance

Name Hillary Cassel

Job Title Attorneys

Address 4000 Hollywood Blvd. Ste 608-S Phone (954) 589-5521
Street
Hollywood FL 33021 Email hcassel@cassel.law
City State Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Policyholders Cooperative & Florida Justice Ass.

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

02.11.20

Meeting Date

1334

Bill Number (if applicable)

452858

Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance

Name Kathy Maus

Job Title _____

Address 3600 Maclay Boulevard - Suite 101

Phone (850) 894-4111

Street

Tallahassee

FL

32312

Email kmaus@butler.legal

City

State

Zip

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20
Meeting Date

1334
Bill Number (if applicable)
452858
Amendment Barcode (if applicable)

Topic Bad Faith

Name Richard Young

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing GEICO

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20
Meeting Date

1334

~~378~~

Bill Number (if applicable)

452858

Amendment Barcode (if applicable)

Topic _____

Name FRED CUNNINGHAM

Job Title ATTORNEY

Address 2401 PGA BLVD, SUITE 140

Street

PALM BEACH GARDENS FL 33410

City

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FJA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1464

INTRODUCER: Banking and Insurance Committee; Infrastructure and Security Committee; and Senator Flores

SUBJECT: Underground Facility Damage Prevention and Safety

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Fav/CS
2.	Palecki	Knudson	BI	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1464 amends provisions of law relating to the Underground Facility Damage Prevention and Safety Act, which is intended to identify and locate underground facilities, examples of which include pipes, pipelines, and cables, prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damages to those facilities. Specifically, the bill:

- Expands the list of entities that may issue citations for existing and new enhanced-penalty violations of ch. 556, F.S., to include the State Fire Marshal, its agents, and the fire chiefs of special districts, municipalities, and counties; and provides criminal penalties for willful failure to respond to a citation.
- Increases the maximum civil penalty (up to \$2,500, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S.D.O.T. Pipeline and Hazardous Material Safety Administration (PHMSA). Eighty percent of the civil penalty will be distributed to the entity that issued the citation, and the remaining 20 percent will be retained by the clerk, in addition to any court costs.
- Requires each clerk of court to submit an annual report to the State Fire Marshal listing each violation notice written under ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Provides a criminal penalty for knowingly and willfully removing or damaging a permanent marker.

- Requires member operators and excavators to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by the State Fire Marshal, who replaces the Division of Administrative Hearings as the investigative authority. The State Fire Marshal may also issue a citation and impose a civil penalty for a violation of ch. 556, F.S., and 95 percent of any civil penalty imposed will be equally distributed among a program created to procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals, and a system used exclusively for damage prevention education. The remaining 5 percent is retained by the clerk of court to cover administrative costs.
- Requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to submit an analysis of its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives on an annual basis.

The bill may have an indeterminate positive impact on state and local revenues. See the Fiscal Impact Statement for additional details.

The bill takes effect on July 1, 2020.

II. Present Situation:

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act” (Act). The stated purpose of the chapter is aid the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility¹, e.g., a pipeline or cable, caused by excavation or demolition operations.² The Act created Sunshine State One-Call of Florida, Inc. (Sunshine 811), a not-for-profit corporation intended to provide access for excavating contractors and the public to provide notification of their intent to engage in excavation or demolition.³ Sunshine 811 is intended to provide member operators⁴ an opportunity to identify and locate their underground facilities. All operators of underground

¹ Section 556.102(13), F.S., defines the term “underground facility” as “any public or private personal property which is buried, placed below ground, or submerged on any member operator’s right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under ch. 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator’s right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to ch. 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator’s right-of-way or easement. Storm drainage systems are not considered underground facilities.”

² Section 556.101(3), F.S.

³ See ss. 556.101(2) and 556.103, F.S.

⁴ Defined in s. 556.102(8), F.S., to mean “any person who furnishes or transports materials or services by means of an underground facility.”

facilities in the state are required to be member operators, and are required to use and participate in the system.⁵

Sunshine 811 is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁶ Excavators intending to conduct excavation or demolition must notify the system not less than 2 full business days before beginning operations that are not beneath the waters of the state, and not less than 10 full business days if the operation is beneath the waters of the state, with certain exceptions.⁷ The person must also provide specified identification, location, and operational information, which remains valid for 30 calendar days.⁸ Each notification is recorded to document compliance with the Act.⁹

Upon receipt of this notice, the system provides the notifying excavator with a list of the member operators who will be advised of the notification, along with a notification number to be provided to law enforcement upon request.¹⁰ The system in turn notifies the potentially affected member operators of the planned excavation or demolition activities.¹¹ Within 2 full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹²

An excavator is required to delay excavations until the first of the following events occurs:

- Each member operator's underground facilities have been marked and located;
- The excavator has been notified that no member operator has underground facilities in the area described in the notice; or
- Expiration of the time allowed for markings.

If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.¹³

⁵ Section 556.103(1), F.S.

⁶ Section 556.104, F.S.

⁷ Section 556.105(1)(a), F.S. Member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities. Section 556.105(5), F.S.

⁸ Section 556.105(1)(a)-(d), F.S.

⁹ Section 556.105(2), F.S.

¹⁰ Section 556.105(3) and (4), F.S.

¹¹ Section 556.105(5), F.S.

¹² *Id.*

¹³ Section 556.105(6), F.S.

Violations of certain provisions of the Act are noncriminal infractions enforceable by citations issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. Such infractions may result in a civil penalty of \$500, plus court costs.¹⁴ Eighty percent of the civil penalty is distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.¹⁵

High Priority Subservice Installations

In 2010, the Legislature established a special process to address damages to any facility identified as a “high-priority subsurface installation.”¹⁶ High-priority subsurface installations are defined as “an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid” that the pipeline’s operator has identified as critical.¹⁷ If an alleged violation of a required procedure involves damage to a high-priority subsurface installation and the damage results in death or serious bodily injury, or results in property damage, including service-restoration costs, of more than \$50,000, or interruption of service to at least 2,500 customers, the incident must be reported to Sunshine 811 by the excavator or member operator within 24 hours.¹⁸ Sunshine 811 must then transmit an incident report to the Division of Administrative Hearings (DOAH) for a hearing to determine whether a violation of required procedure was the proximate cause of the incident. If DOAH finds that a violation was the proximate cause of the incident, it may impose a fine not to exceed \$50,000 (or \$10,000 if a state agency or political subdivision caused the incident).¹⁹ Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs related to DOAH’s services, and any remaining funds may be used only for damage-prevention education.²⁰

Reporting Requirements and Results

By March 31 of each year, each clerk of court must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which was filed in that county during the preceding calendar year.²¹ The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.²² The Sunshine 811 board must submit an annual progress report to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.²³ This report must include a summary of the reports provided by the clerks of court, a summary of damage data reported to the system for the prior year, and any analysis of this data by the board.²⁴

¹⁴ Section 556.107(1)(a), F.S.

¹⁵ Section 556.107(1)(c), F.S.

¹⁶ Ch. 2010-100, L.O.F., s. 10.

¹⁷ Section 556.116(1)(b), F.S.

¹⁸ Section 556.116, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 556.107(2), F.S.

²² *Id.*

²³ Section 556.103(5), F.S.

²⁴ *Id.*

In 2017, the Legislature established additional reporting requirements. First, an excavator must immediately call 911 to report any contact with or damage to an underground facility that results in the escape of natural gas or other hazardous substance or material regulated by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Material Safety Administration (PHMSA). Second, if an event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.²⁵

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage incidents were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.²⁶ These citations resulted in \$6,602.50 of fines being levied. Further, the Annual Report identifies one case referred to DOAH involving damage to a natural gas distribution main. In that case, DOAH found that the excavator's failure to notify Sunshine 811 prior to excavation was the proximate cause of the incident and imposed a \$5,000 fine.²⁷

U.S.D.O.T. Pipeline and Hazardous Material Safety Administration – Pipeline Damage Prevention Programs

The United States Department of Transportation has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.²⁸

On July 13, 2015, the Pipeline and Hazardous Material Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.²⁹

Under its rule, PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

²⁵ Ch. 2017-102, L.O.F.

²⁶ Sunshine 811, *2018-19 Annual Report*, available at https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19_annualrpt.pdf (last visited Feb. 8, 2020).

²⁷ *Id.*

²⁸ 49 U.S.C. s. 60114.

²⁹ Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Parts 196 and 198).

- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, do the state's excavation damage prevention requirements include the following:
 - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
 - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
 - An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
 - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
 - PHMSA will make the written justifications available to the public.³⁰

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.³¹ States that fail to establish an adequate enforcement program within 5 years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.³²

Duties of State Fire Marshal

Florida's Chief Financial Officer is designated by law as the State Fire Marshal.³³ The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.³⁴ It is also charged with enforcing laws related to: the prevention of fire and explosion through the regulation of conditions which could lead to fire and explosion; installation and maintenance of fire alarm systems and fire protection systems; the maintenance of fire cause and loss records; and suppression of arson and the investigation of the cause, origin, and circumstances of fire.³⁵ The State Fire Marshal operates as a division of the Department of Financial Services. It operates through an Office of the Director and two bureaus: the Bureau of Fire Prevention and the Bureau

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Section 633.104(1), F.S.

³⁴ Section 633.104(2), F.S.

³⁵ *Id.*

of Firefighter Standards and Training.³⁶ The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies fire service members that meet standards. The Bureau of Fire Prevention conducts fire/life safety inspections and reviews construction plans for all state-owned buildings, regulates the fireworks and fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers. It has six field offices and three satellite offices around the state.³⁷

Florida law provides investigatory authority for the State Fire Marshal. Upon request, the State Fire Marshall must investigate the cause, origin, and circumstances of fires and explosions where property has been damaged or destroyed and there is probable cause to believe that the fire or explosion was the result of carelessness or design. If the fire or explosion occurs in a municipality, county, or special district with an organized fire department, the local fire official must provide for an initial investigation before requesting an investigation by the State Fire Marshal. In an investigation, the State Fire Marshal may require testimony under oath from persons believed to be aware of any facts related to matters under investigation.³⁸

If the State Fire Marshal believes that there is sufficient evidence to charge a person with an offense, he or she must cause the person to be arrested and must provide the appropriate prosecuting office with all pertinent information collected. The State Fire Marshal may compel the testimony of witnesses and the production of pertinent documents and may seize personal property to be held for evidence. The State Fire Marshal may designate an agent for the purpose of conducting an investigation, and the agent may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require the attendance and testimony of witnesses and the production of documents or other evidence material to the investigation. The State Fire Marshal must keep a record of all fires and explosions investigated under its authority.³⁹

III. Effect of Proposed Changes:

Expanded Enforcement Authority and Increased Penalties

Permanent Markers

Section 1 of the bill amends s. 556.102, F.S., to define the terms “permanent marker” for purposes of the Underground Facility Damage Prevention and Safety Act. Permanent markers are clearly visible indications of the approximate location of underground facilities (examples include pipes and cables). Permanent markers are made of durable material that is reasonably expected to remain in position for the life of the underground facility.

Section 2 amends s. 556.107, F.S., to establish a criminal penalty for any person convicted of knowingly and willfully removing or damaging a “permanent marker” that has been placed to

³⁶ Chief Financial Officer, *Division of State Fire Marshal*, <https://www.myfloridacfo.com/Division/SFM/> (last visited Feb. 8, 2020).

³⁷ *Id.*

³⁸ Section 633.112, F.S.

³⁹ *Id.*

identify the approximate location of an underground facility. A violation is a second-degree misdemeanor, punishable by a term of imprisonment not exceeding 60 days and up to a \$500 fine.

Non-criminal Infractions

Section 2 of the bill amends s. 556.107, F.S., relating to noncriminal infractions for violations of certain provisions of the Act.

The bill makes violations of s. 556.105(5)(c), F.S., relating to excavation practices in tolerance zones, a noncriminal infraction.

The bill expands the list of entities that may issue citations for violations of ch. 556, F.S. In addition to the existing authorized citation issuers, the bill authorizes the State Fire Marshal or its agents, and the fire chief of the special district, municipality, or county in which an infraction happened to issue such citations.

The bill increases civil penalties from \$500 to up to \$2,500 (plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., which involve an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Specifically, the following violations are subject to this enhanced civil penalty:

- Failure by an excavator to comply with s. 556.105(1), F.S., which requires an excavator to provide notice and certain information to the Sunshine 811 system within specified timeframes prior to beginning excavation of demolition work.
- Failure by an excavator to comply with s. 556.105(5)(c), F.S., which requires an excavator to use increased caution when working within a tolerance zone,⁴⁰ such as hand digging, pot holing, soft digging, vacuum methods, or other similar procedures.
- Failure by an excavator to comply with s. 556.105(6), F.S., which requires an excavator to avoid excavation in an area until whichever of the following occurs first: each member operator's underground facilities have been located and marked; the excavator has been notified that no member operator has underground facilities in the area; or the time allowed for markings has expired.
- Failure by an excavator to comply with s. 556.106(11), F.S., which requires an excavator to stop excavation and demolition activities in the vicinity of an underground facility and notify the Sunshine 811 system if the marking for the facility is removed or no longer visible.
- Failure by an excavator to comply with s. 556.105(12), F.S., which requires an excavator to immediately notify the appropriate member operator if the excavator causes contact with or damage to a pipe and to immediately call 911 to report contact or damage that causes the escape of any natural gas or other hazardous substance or material regulated by PHMSA.

If the clerk of court collects a civil penalty for one of these violations, the bill provides that 80 percent of the civil penalty will be distributed to the entity that issued the citation. The additional 20 percent, plus any additional court costs, is retained by the clerk. The bill provides that a person who willfully fails to properly respond to a citation issued for one of these violations will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree, punishable by a term of imprisonment not

⁴⁰ "Tolerance zone" means "24 inches from the outer edge of either side of the exterior surface of a marked underground facility." Section 556.102(12), F.S.

exceeding 60 days and up to a \$500 fine.⁴¹ The bill requires a written warning to this effect be provided at the time the citation is issued.⁴²

In the event a person elects to have a hearing on the commission of an infraction, the bill provides that the applicable penalty may not exceed the applicable civil penalty for each infraction, and allows a person to appeal the amount of civil penalties imposed.

Payment of Civil Penalties

The bill allows persons cited for infractions under s. 556.116(2)(c), F.S., which authorizes the State Fire Marshal, or its agents, to issue citations and impose civil penalties for violations of 556.107(1)(a), F.S., that were the proximate cause of an incident, to post a bond equal to the sum of the penalty and court costs, and to pay the penalty plus court costs by mail or in person within 30 days of receiving the citation. Payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.

Additional Reporting Requirements

Under current law, each clerk of court, by March 31 of each year, must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year. The report states the name and address of the member or excavator who committed each infraction and indicates whether or not the civil penalty for the infraction was paid. **Section 2** of the bill contains two new reporting requirements:

- A clerk of court must submit the report to the State Fire Marshal as well
- The report must also indicate the enforcement authority, specific statutory infraction, and the type of underground facility related to the infraction.

Investigation of Incidents Involving High-Priority Subsurface Installations

Section 1 of the bill relocates the definitions of “high-priority subsurface installation” and “incident” from s. 556.116, F.S., which specifically governs high priority subsurface installations, to s. 556. 102, F.S., which provides definitions for ch. 556, F.S., governing underground facility damage prevention and safety, as a whole.

Sections 3 and 4 of the bill amend s. 556.116, F.S., relating to high-priority subsurface installations.

For incidents involving high-priority subsurface installations, the bill requires member operators to report the incident to the Sunshine 811 system and the State Fire Marshal. Then, the State Fire Marshal, or an agent thereof, if so authorized, is required to conduct an investigation of the incident to determine whether the incident occurred, and whether a violation of s. 556.107(a), F.S., was the proximate cause of the incident. The State Fire Marshal or its agents may issue citations and impose civil penalties associated with such incidents, in addition to any other civil

⁴¹ Sections 775.082 and 775.083, F.S.

⁴² Currently, if a person is found to have committed an infraction by a judge or hearing official, the person may appeal that finding to the circuit court. The bill also authorizes appeal to the circuit court of the amount of the civil penalties imposed.

penalty related to the incident. Five percent of any additional civil penalty must be retained by the clerk to cover administrative costs, and the remainder must be equally distributed to a program created to procure equipment, supplies, and educational training designed to mitigate firefighter exposure to cancer-causing chemicals and a system to be used exclusively for damage-prevention education.

These provisions replace the requirement in current law that DOAH conduct investigations of incidents involving high-priority subsurface installations. The bill removes all provisions of current law that establish the procedural requirements for DOAH review of such incidents.

The bill requires that excavators or member operators who commit non-criminal infractions regarding the transmission of an incident report to the State Fire Marshal be provided a written warning at the time the citation is issued stating that willful failure to respond to the citation may result in criminal penalties; conviction results in a misdemeanor of the second degree.

Underground Facility Damage Prevention Review

Section 5 of the bill creates s. 556.117, F.S., which requires Sunshine State One-Call of Florida, Inc., to review the reports submitted by the clerks of court to the State Fire Marshal, and any complaints of alleged violations of ch. 556, F.S., in order to identify issues and potential issues with damage prevention and enforcement. Sunshine State One-Call of Florida, Inc., is further required to identify areas of the state needing additional education related to damage prevention and enforcement, and to recommend solutions to remedy issues found. Each year, by the first of October, Sunshine State One-Call of Florida, Inc. must submit an analysis of its reviews and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Effective Date

Section 6 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may encourage increased enforcement of ch. 556, F.S. Increased enforcement will result in additional fines imposed on persons who violate certain provisions of ch. 556, F.S. As a result, increased enforcement may deter behaviors that cause damages to property, utility service outages, and serious bodily injury.

C. Government Sector Impact:

The bill may have an indeterminate positive impact on local government revenues, as it authorizes fire chiefs to issue citations for the specified violations. The bill also increases the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA.. The extent of any increase in revenues, however, is indeterminate, as the result will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs.

The bill may require the expenditure of resources by the State Fire Marshal to investigate alleged high-priority subsurface installation incidents. Again, however, the extent of any increase is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 556.102, 556.107, and 556.116.

This bill creates section 556.117 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Banking and Insurance on February 11, 2020:

The committee substitute:

- Relocates definitions;
- Makes violations relating to excavation practices in tolerance zones a noncriminal infraction;
- Gives the State Fire Marshal sole investigative authority over alleged incidents involving high-priority subsurface installations, and to issue citations and impose civil penalties for violations found to be the proximate cause of such an incident. Allows the State Fire Marshal to delegate its duties to statutorily defined agents;
- Allows persons cited for infractions related to high-priority subsurface installations to post a bond equal to the sum of the civil penalties and court costs, and to pay the penalties and court costs by mail or in person. Provides that payment is considered an admission and waiver of the right to a hearing, and may be used as evidence in any proceeding under ch. 556, F.S.
- Alters the distribution of civil penalty monies;
- Removes the requirements regarding the underground facility damage prevention review panel and its membership, and, in its place, charges Sunshine State One-Call of Florida, Inc. with reviewing clerk reports of violations and complaints of alleged violations, and identifying issues and potential issues with damage prevention and enforcement.
- Sunshine State One-Call of Florida, Inc., unlike the panel, is required to submit an analysis of these reviews, by October 1 of each year, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

CS by Infrastructure and Security on January 27, 2020:

The committee substitute:

- Clarifies that special district, municipal, and county fire chiefs may issue citations for existing and enhanced-penalty violations of the Damage Prevention Act and that failure to respond to a citation must be willful; and adds a civil penalty for knowingly and willfully removing or damaging a permanent marker.
- Replaces Sunshine One-Call with the State Fire Marshal as the entity appointing members to the panel created to review complaints of alleged violations, identify issues, and recommend needed legislation; and adds a member representing the cable industry as a potential panel member. Provides panel members serve without compensation and are not entitled to per diem or travel expenses.
- Under the bill, the State Fire Marshal will be appointing the members of the Underground Facility Damage Prevention Review Panel and creating a process for accepting applications for membership on the Review Panel.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (8) and (9) through (14) of
section 556.102, Florida Statutes, are redesignated as
subsections (10) and (12) through (17), respectively, and new
subsections (8), (9), and (11) are added to that section, to
read:

556.102 Definitions.—As used in this act:



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(8) "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under to s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.

(9) "Incident" means an event that involves damage to a high-priority subsurface installation that has been identified as such by the operator according to the notification procedures set forth in s. 556.116(1) and that:

1. Results in death or serious bodily injury requiring inpatient hospitalization.

2. Results in property damage, including service-restoration costs, in an amount in excess of \$50,000 or interruption of service to 2,500 or more customers.

(11) "Permanent marker" means a clearly visible indication of the approximate location of an underground facility which is made of material that is durable in nature and which is reasonably expected to remain in position for the life of the underground facility.

Section 2. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—



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(1) NONCRIMINAL INFRACTIONS.—

(a)1. Violations of the following provisions are noncriminal infractions:

a.1. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c.2. Section 556.105(6), relating to the avoidance of excavation.

d.3. Section 556.105(11), relating to the need to stop excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately documented.

e.4. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

f.5. Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

g.6. Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.

h.7. Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

2. Violations of the following provisions involving an underground facility transporting hazardous materials that are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation



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are noncriminal infractions, subject to enhanced civil penalties under paragraph (c):

a. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c. Section 556.105(6), relating to the avoidance of certain excavation.

d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are no longer visible or are inadequately documented.

e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal or agents as provided in ss. 633.114 and 633.116; the fire chief of the special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer, and the issuer of a citation may require an excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter. Citations shall be hand delivered to any employee of the excavator or member operator who is involved in the noncriminal infraction. The citation shall be issued in the name of the excavator or member operator, whichever is applicable.

(c)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~



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may be required to pay a civil penalty of \$500 plus court costs
for each infraction, ~~which is \$500 plus court costs~~. If a
citation is issued ~~by a state law enforcement officer, a local~~
~~law enforcement officer, a local government code inspector, or a~~
~~code enforcement officer~~, 80 percent of the civil penalty
collected by the clerk of the court must ~~shall~~ be distributed to
the governmental entity whose employee issued the citation and
20 percent of the penalty must ~~shall~~ be retained by the clerk ~~to~~
~~cover administrative costs~~, in addition to any other court
costs. Any person who fails to properly respond to a citation
issued under ~~pursuant to~~ paragraph (b) shall, in addition to the
citation, be charged with the offense of failing to respond to
the citation and, upon conviction, commits a misdemeanor of the
second degree, punishable as provided in s. 775.082 or s.
775.083. A written warning to this effect must be provided at
the time any citation is issued under ~~pursuant to~~ paragraph (b).

2. Any excavator or member operator who commits a
noncriminal infraction under subparagraph (a)2. may be required
to pay an enhanced civil penalty of \$2,500 plus court costs for
each infraction. If a citation is issued, 80 percent of the
civil penalty collected by the clerk of the court must be
distributed to the governmental entity whose employee issued the
citation and 20 percent must be retained by the clerk in
addition to any court costs.

3. Any person who willfully fails to properly respond to a
citation issued under paragraph (b) shall, in addition to the
citation, be charged with the offense of failing to respond to
the citation and, upon conviction, commits a misdemeanor of the
second degree, punishable as provided in s. 775.082 or s.



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775.083. A written warning to this effect must be provided at the time a citation is issued under paragraph (b).

(d) Any person cited for an infraction under paragraph (a) or s. 556.116(2)(c) may post a bond, which must ~~shall~~ be equal in amount to the applicable civil penalty plus any additional court costs.

(e) A person charged with a noncriminal infraction under paragraph (a) or s. 556.116(2)(c) may pay the applicable civil penalty plus the additional court costs, by mail or in person, within 30 days after the date of receiving the citation. If the person cited pays the civil penalty, she or he is deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The admission may be used as evidence in any other proceeding under this chapter.

(f) Any person may elect to have a hearing on the commission of the infraction ~~appear~~ before the county court. A person who elects to have a hearing waives ~~and if so electing is deemed to have waived~~ the limitations on the civil penalties ~~penalty~~ specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed the applicable civil penalty ~~\$5,000~~ plus court costs for each infraction. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a court hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.



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156 (h) If the court finds that a person ~~is found by a judge or~~
157 ~~hearing official to have~~ committed an infraction, the person may
158 appeal that finding or the amount of the civil penalties imposed
159 to the circuit court.

160 (i) Sunshine State One-Call of Florida, Inc., may, at its
161 own cost, retain an attorney to assist in the presentation of
162 relevant facts and law in the county court proceeding pertaining
163 to the citation issued under this section. The corporation may
164 also appear in any case appealed to the circuit court if a
165 county court judge finds that an infraction of the chapter was
166 committed. An appellant in the ~~circuit~~ court proceeding shall
167 timely notify the corporation of any appeal under this section.

168 (2) REPORT OF INFRACTIONS.—By March 31 of each year, each
169 clerk of court shall submit a report to the State Fire Marshal
170 and Sunshine State One-Call of Florida, Inc., listing each
171 citation issued for a violation ~~notice written~~ under paragraph
172 (1)(a) and s. 556.116(2)(c) which has been filed in that county
173 during the preceding calendar year. The report must state the
174 name and address of the member or excavator who committed each
175 infraction, the enforcement authority, the specific statutory
176 infraction, and the type of underground facility related to the
177 infraction and must indicate whether or not the civil penalty
178 for the infraction was paid.

179 (3) MISDEMEANORS.—

180 (a) Any person who knowingly and willfully removes or
181 otherwise destroys the valid stakes or other valid physical
182 markings described in s. 556.105(5)(a) and (b) used to mark the
183 horizontal route of an underground facility commits a
184 misdemeanor of the second degree, punishable as provided in s.



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775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after information is provided to the system under s. 556.105(1)(a).

(b) Any person who knowingly and willfully removes or damages a permanent marker placed to identify the approximate location of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 556.116, Florida Statutes, is amended to read:

556.116 High-priority subsurface installations; special procedures.—

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

~~(a) "Division" means the Division of Administrative Hearings.~~

~~(b) "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate pursuant to s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.~~

~~(c) "Incident" means an event that involves damage to a~~



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~~high-priority subsurface installation that has been identified as such by the operator according to the notification procedures set forth in subsection (2) and that:~~

~~1. Results in death or serious bodily injury requiring inpatient hospitalization.~~

~~2. Results in property damage, including service-restoration costs, in an amount in excess of \$50,000 or interruption of service to 2,500 or more customers.~~

~~(2)~~ When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

(2)(a) ~~(3)(a)~~ An alleged commission of an infraction listed in s. 556.107(1) which results in an incident must be reported to the system and the State Fire Marshal by a member operator or



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an excavator within 24 hours after learning of the alleged occurrence of an incident.

(b) Upon receipt of an allegation that an incident has occurred, the member operator or excavator ~~system~~ shall transmit an incident report to the State Fire Marshal, who shall ~~division~~ ~~and contract with the division so that the division may~~ conduct an investigation ~~a hearing~~ to determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. The State Fire Marshal may authorize its agents as provided in ss. 633.114, 633.116, and 633.118 to conduct investigations of incidents ~~The contract for services to be performed by the division must include provisions for the system to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs, in the manner set forth in s. 120.65(9).~~

(c) The State Fire Marshal or agents as provided in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident. The division may~~ issue a citation and impose a civil penalty ~~fine~~ against a violator in an amount not to exceed \$50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of \$10,000.

(d) The civil penalty ~~A fine~~ imposed under this subsection ~~by the division~~ is in addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).



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(e) If an additional civil penalty is imposed by the State Fire Marshal or his or her agents, 5 percent of the civil penalty must be retained by the clerk to cover administrative costs, and the remainder of the civil penalty must be equally distributed between a program created to procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals and between the system to be used exclusively for damage-prevention education ~~A fine against an excavator or a member operator imposed under this subsection shall be paid to the system, which shall use the collected fines to satisfy the costs incurred by the system for any proceedings under this section. To the extent there are any funds remaining, the system may use the funds exclusively for damage-prevention education.~~

(f) Any excavator or member operator who commits a noncriminal infraction under s. 556.116(2)(c) must be provided a written warning at the time a citation is issued stating that any person who willfully fails to properly respond to a citation must, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(g) This section does not change the basis for civil liability. The findings and results of an investigation a ~~hearing~~ under this section may not be used as evidence of liability in any civil action.

~~(4)(a) The division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and requests information regarding~~



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~~scheduling the final hearing within 5 business days after the division receives a petition or request for hearing. The original parties in the proceeding include all excavators and member operators identified by the system as being involved in the alleged incident. The final hearing must be conducted within 60 days after the date the petition or the request for a hearing is filed with the division.~~

~~(b) Unless the parties otherwise agree, venue for the hearing shall be in the county in which the underground facility is located.~~

~~(c) An intervenor in the proceeding must file a petition to intervene no later than 15 days before the final hearing. A person who has a substantial interest in the proceeding may intervene.~~

~~(5) The following procedures apply:~~

~~(a) Motions shall be limited to the following:~~

~~1. A motion in opposition to the petition.~~

~~2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (c). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if the discovery can be completed no later than 5 days before the final hearing.~~

~~3. A motion for continuance of the final hearing date.~~

~~(b) All parties shall attend a prehearing conference for the purpose of identifying the legal and factual issues to be considered at the final hearing, the names and addresses of witnesses who may be called to testify at the final hearing, documentary evidence that will be offered at the final hearing,~~



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~~the range of penalties that may be imposed, and any other matter that would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.~~

~~(c) Not later than 5 days before the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.~~

~~(d) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.~~

~~(e) The record shall consist only of:~~

~~1. All notices, pleadings, motions, and intermediate rulings.~~

~~2. Evidence received during the final hearing.~~

~~3. A statement of matters officially recognized.~~

~~4. Proffers of proof and objections and rulings thereon.~~

~~5. Matters placed on the record after an ex parte communication.~~

~~6. The written final order of the administrative law judge presiding at the final hearing.~~

~~7. The official transcript of the final hearing.~~

~~(f) The division shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.~~

~~(g) The administrative law judge shall issue a final order within 30 days after the final hearing or the filing of the transcript thereof, whichever is later. The final order of the~~



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~~administrative law judge must include:~~

~~1. Findings of fact based exclusively on the evidence of record and matters officially recognized.~~

~~2. Conclusions of law. In determining whether a party has committed an infraction of s. 556.107(1)(a), and whether the infraction was a proximate cause of an incident, the commission of an infraction must be proven by a preponderance of the evidence.~~

~~3. Imposition of a fine, if applicable.~~

~~4. Any other information required by law or rule to be contained in a final order.~~

~~The final order of the administrative law judge constitutes final agency action subject to judicial review pursuant to s. 120.68.~~

Section 4. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review.—
Sunshine State One-Call of Florida, Inc., shall review the
reports submitted by the clerks of court to the State Fire
Marshal and any complaints of alleged violations under this
chapter to identify issues or potential issues with damage
prevention and enforcement. The corporation shall identify areas
in the state where additional education related to damage
prevention and enforcement is needed and shall recommend
solutions to remedy issues related to damage prevention and
enforcement. The corporation shall, by October 1 of each year,
submit to the Governor, the President of the Senate, and the
Speaker of the House of Representatives an analysis of its



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reviews and any recommendations for improving underground
facility damage prevention and enforcement.

Section 5. This act shall take effect July 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 underground facility damage
prevention and safety; amending s. 556.102, F.S.;
defining the term "permanent marker" and consolidating
other definitions from throughout the chapter;
amending s. 556.107, F.S.; revising noncriminal
violations and providing noncriminal violations
relating to the transportation of certain hazardous
materials; authorizing the State Fire Marshal or his
or her agents to issue certain citations; providing
enhanced civil penalties; providing disposition of the
civil penalty; requiring a report by additional
entities; providing civil penalties relating to
removing or damaging a permanent marker; amending s.
556.116, F.S.; moving and consolidating definitions to
the definition section for the chapter; providing that
certain incident reports must be submitted to, and
investigated by, the State Fire Marshal or his or her
agents; authorizing the State Fire Marshal or his or
her agents to issue citations and civil penalties;
providing for disposition of the civil penalty;



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417 requiring written warnings for certain noncriminal
418 infractions; providing for an enhanced penalty upon
419 conviction for a failure to respond; removing
420 provisions relating to hearings by the Division of
421 Administrative Hearings of certain incidents; creating
422 s. 556.117, F.S.; requiring Sunshine State One-Call of
423 Florida, Inc., to review certain reports and
424 complaints; requiring the corporation to identify
425 areas for additional education and recommend
426 solutions; requiring an annual report to the Governor
427 and the Legislature; providing an effective date.

By the Committee on Infrastructure and Security; and Senator Flores

596-02649-20

20201464c1

1 A bill to be entitled
 2 An act relating to underground facility damage
 3 prevention and safety; amending s. 556.102, F.S.;
 4 defining the term "permanent marker" for purposes of
 5 the Underground Facility Damage Prevention and Safety
 6 Act; amending s. 556.107, F.S.; providing noncriminal
 7 violations relating to the transportation of certain
 8 hazardous materials; authorizing the State Fire
 9 Marshal or local fire chief to issue certain
 10 citations; providing enhanced civil penalties;
 11 providing disposition of the civil penalty; requiring
 12 a report by additional entities; providing criminal
 13 penalties; amending s. 556.116, F.S.; providing that
 14 certain incident reports must be submitted to, and
 15 investigated by, the State Fire Marshal, the local
 16 fire chief, a local or state law enforcement officer,
 17 a government code inspector, or a code enforcement
 18 officer; authorizing the State Fire Marshal, the local
 19 fire chief, a local or state law enforcement officer,
 20 a government code inspector, or a code enforcement
 21 officer to issue citations and civil penalties;
 22 providing for disposition of the civil penalty;
 23 removing provisions relating to hearings by the
 24 Division of Administrative Hearings of certain
 25 incidents; creating s. 556.117, F.S.; creating an
 26 underground facility damage prevention review panel
 27 under the Division of State Fire Marshal within the
 28 Department of Financial Services; providing duties and
 29 membership of the review panel; specifying the term

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30 limits of the review panel; requiring the Division of
 31 State Fire Marshal to provide support to the review
 32 panel; providing that members of the panel serve
 33 without reimbursement or compensation; providing an
 34 effective date.
 35
 36 Be It Enacted by the Legislature of the State of Florida:
 37
 38 Section 1. Subsections (9) through (14) of section 556.102,
 39 Florida Statutes, are redesignated as subsections (10) through
 40 (15), respectively, and a new subsection (9) is added to that
 41 section, to read:
 42 556.102 Definitions.—As used in this act:
 43 (9) "Permanent marker" means a clearly visible indication
 44 of the approximate location of an underground facility which is
 45 made of material that is durable in nature and which is
 46 reasonably expected to remain in position for the life of the
 47 underground facility.
 48 Section 2. Section 556.107, Florida Statutes, is amended to
 49 read:
 50 556.107 Violations.—
 51 (1) NONCRIMINAL INFRACTIONS.—
 52 (a) 1. Violations of the following provisions are
 53 noncriminal infractions:
 54 a.1- Section 556.105(1), relating to providing required
 55 information.
 56 b.2- Section 556.105(6), relating to the avoidance of
 57 excavation.
 58 c.3- Section 556.105(11), relating to the need to stop

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excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately documented.

d.4- Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

e.5- Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

f.6- Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.

g.7- Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

2. Violations of the following provisions when related to an underground pipe or other underground facility transporting hazardous materials that are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation are noncriminal infractions, subject to enhanced civil penalties under paragraph (c):

a. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c. Section 556.105(6), relating to the avoidance of certain excavation.

d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are no longer

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visible or are inadequately documented.

e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact with or damage to an underground facility.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal; the fire chief of the special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer, and the issuer of a citation may require an excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter. Citations shall be hand delivered to any employee of the excavator or member operator who is involved in the noncriminal infraction. The citation shall be issued in the name of the excavator or member operator, whichever is applicable.

(c)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~ may be required to pay a civil penalty of \$500 plus court costs for each infraction, ~~which is \$500 plus court costs~~. If a citation is issued by the State Fire Marshal; the fire chief of the special district, municipality, or county; a state law enforcement officer; ~~a~~ a local law enforcement officer; ~~a~~ a local government code inspector; ~~a~~ or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition

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to other court costs. Any person who fails to properly respond to a citation issued ~~under pursuant to~~ paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time any citation is issued ~~under pursuant to~~ paragraph (b).

2. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)2. may be required to pay an enhanced civil penalty of \$2,500 plus 5 percent in addition to any other court costs for each infraction. If a citation is issued by the State Fire Marshal; the fire chief of the special district, municipality, or county; a state law enforcement officer; a local law enforcement officer; a local government code inspector; or a code enforcement officer, 100 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation. The additional 5 percent, plus any additional court costs, is to be retained by the clerk to cover administrative costs. Any person who willfully fails to properly respond to a citation issued under paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time a citation is issued under paragraph (b).

(d) Any person cited for an infraction under paragraph (a) may post a bond, which ~~must~~ shall be equal in amount to the

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applicable civil penalty plus any additional court costs.

(e) A person charged with a noncriminal infraction under paragraph (a) may pay the applicable civil penalty plus the additional court costs, by mail or in person, within 30 days after the date of receiving the citation. If the person cited pays the civil penalty, she or he is deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The admission may be used as evidence in any other proceeding under this chapter.

(f) Any person may elect to have a hearing on the commission of the infraction ~~appear~~ before the county court. A person who elects to have a hearing waives and if so electing is deemed to have waived the limitations on the civil penalties ~~penalty~~ specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed \$5,000 plus court costs for each infraction. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a court hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

(h) If the court finds that a person is found by a judge or hearing official to have committed an infraction, the person may appeal that finding or the amount of the civil penalties imposed to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its

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own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court judge finds that an infraction of the chapter was committed. An appellant in the circuit court proceeding shall timely notify the corporation of any appeal under this section.

(2) REPORT OF INFRACTIONS.—By March 31 of each year, each clerk of court shall submit a report to the State Fire Marshal and Sunshine State One-Call of Florida, Inc., listing each violation notice written under paragraph (1)(a) which has been filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.

(3) MISDEMEANORS.—

(a) Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(a) and (b) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after information is provided to the system under s. 556.105(1)(a).

(b) Any person who knowingly and willfully removes or damages a permanent marker that has been placed to identify the approximate location of an underground facility commits a misdemeanor of the second degree, punishable as provided in s.

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775.082 or s. 775.083.

Section 3. Section 556.116, Florida Statutes, is amended to read:

556.116 High-priority subsurface installations; special procedures.—

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

~~(a) "Division" means the Division of Administrative Hearings.~~

~~(a)(b)~~ "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under ~~pursuant to~~ s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.

~~(b)(e)~~ "Incident" means an event that involves damage to a high-priority subsurface installation that has been identified as such by the operator according to the notification procedures set forth in subsection (2) and that:

1. Results in death or serious bodily injury requiring inpatient hospitalization.

2. Results in property damage, including service-restoration costs, in an amount in excess of \$50,000 or interruption of service to 2,500 or more customers.

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(2) When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

(3)(a) An alleged commission of an infraction listed in s. 556.107(1) which results in an incident must be reported to the system by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.

(b) Upon receipt of an allegation that an incident has occurred, the system shall transmit an incident report to the State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code enforcement officer in order to ~~division and contract with the division so that the division may conduct an investigation a hearing to~~

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determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. ~~The contract for services to be performed by the division must include provisions for the system to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs, in the manner set forth in s. 120.65(9).~~

(c) The State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code enforcement officer ~~division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident. The division may issue a citation and impose a civil penalty fine~~ against a violator in an amount not to exceed \$50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of \$10,000.

(d) The civil penalty A fine ~~imposed under this subsection by the division~~ is in addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).

(e) If a civil penalty is imposed by the State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code enforcement officer under this subsection, 95 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental

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entity whose employee issued the citation and civil penalty and 5 percent of the civil penalty shall be retained by the clerk to cover administrative costs. A fine against an excavator or a member operator imposed under this subsection shall be paid to the system, which shall use the collected fines to satisfy the costs incurred by the system for any proceedings under this section. To the extent there are any funds remaining, the system may use the funds exclusively for damage prevention education.

(f) This section does not change the basis for civil liability. The findings and results of an investigation a hearing under this section may not be used as evidence of liability in any civil action.

~~(4) (a) The division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and requests information regarding scheduling the final hearing within 5 business days after the division receives a petition or request for hearing. The original parties in the proceeding include all excavators and member operators identified by the system as being involved in the alleged incident. The final hearing must be conducted within 60 days after the date the petition or the request for a hearing is filed with the division.~~

~~(b) Unless the parties otherwise agree, venue for the hearing shall be in the county in which the underground facility is located.~~

~~(c) An intervenor in the proceeding must file a petition to intervene no later than 15 days before the final hearing. A person who has a substantial interest in the proceeding may intervene.~~

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~~(5) The following procedures apply:~~

~~(a) Motions shall be limited to the following:~~

~~1. A motion in opposition to the petition.~~

~~2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (c). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if the discovery can be completed no later than 5 days before the final hearing.~~

~~3. A motion for continuance of the final hearing date.~~

~~(b) All parties shall attend a prehearing conference for the purpose of identifying the legal and factual issues to be considered at the final hearing, the names and addresses of witnesses who may be called to testify at the final hearing, documentary evidence that will be offered at the final hearing, the range of penalties that may be imposed, and any other matter that would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.~~

~~(c) Not later than 5 days before the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.~~

~~(d) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.~~

~~(e) The record shall consist only of:~~

~~1. All notices, pleadings, motions, and intermediate rulings.~~

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349 ~~2. Evidence received during the final hearing.~~
 350 ~~3. A statement of matters officially recognized.~~
 351 ~~4. Proffers of proof and objections and rulings thereon.~~
 352 ~~5. Matters placed on the record after an ex parte~~
 353 ~~communication.~~
 354 ~~6. The written final order of the administrative law judge~~
 355 ~~presiding at the final hearing.~~
 356 ~~7. The official transcript of the final hearing.~~
 357 ~~(f) The division shall accurately and completely preserve~~
 358 ~~all testimony in the proceeding and, upon request by any party,~~
 359 ~~shall make a full or partial transcript available at no more~~
 360 ~~than actual cost.~~
 361 ~~(g) The administrative law judge shall issue a final order~~
 362 ~~within 30 days after the final hearing or the filing of the~~
 363 ~~transcript thereof, whichever is later. The final order of the~~
 364 ~~administrative law judge must include:~~
 365 ~~1. Findings of fact based exclusively on the evidence of~~
 366 ~~record and matters officially recognized.~~
 367 ~~2. Conclusions of law. In determining whether a party has~~
 368 ~~committed an infraction of s. 556.107(1)(a), and whether the~~
 369 ~~infraction was a proximate cause of an incident, the commission~~
 370 ~~of an infraction must be proven by a preponderance of the~~
 371 ~~evidence.~~
 372 ~~3. Imposition of a fine, if applicable.~~
 373 ~~4. Any other information required by law or rule to be~~
 374 ~~contained in a final order.~~
 375 ~~The final order of the administrative law judge constitutes~~
 376 ~~final agency action subject to judicial review pursuant to s.~~
 377

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378 ~~120.68.~~
 379 Section 4. Upon SB 1092, 2020 Regular Session, becoming a
 380 law or similar legislation in the same legislative session or an
 381 extension thereof being adopted and becoming a law, paragraph
 382 (e) of subsection (3) of section 556.116, Florida Statutes, as
 383 amended by this act, is amended to read:
 384 556.116 High-priority subsurface installations; special
 385 procedures.—
 386 (3)
 387 (e) If a civil penalty is imposed by the State Fire
 388 Marshal; the fire chief of the special district, municipality,
 389 or county; a local or state law enforcement officer; a
 390 government code inspector; or a code enforcement officer under
 391 this subsection, \$2,500 ~~95 percent~~ of the civil penalty
 392 collected by the clerk of the court shall be distributed to the
 393 governmental entity whose employee issued the citation and civil
 394 penalty, ~~and~~ 5 percent of the civil penalty shall be retained by
 395 the clerk to cover administrative costs, and the remainder of
 396 the civil penalty shall be distributed to the Firefighter Cancer
 397 Decontamination Equipment Grant Program created under s.
 398 633.137.
 399 Section 5. Section 556.117, Florida Statutes, is created to
 400 read:
 401 556.117 Underground facility damage prevention review
 402 panel.—
 403 (1) The underground facility damage prevention review panel
 404 is established under the Division of State Fire Marshal within
 405 the Department of Financial Services to review complaints of an
 406 alleged violation under this chapter to identify issues or

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407 potential issues with damage prevention and enforcement. The
 408 review panel shall identify areas in the state where additional
 409 education related to damage prevention and enforcement is needed
 410 and shall recommend solutions to remedy issues related to damage
 411 prevention and enforcement. The review panel shall also review
 412 current practices for locating underground pipes or other
 413 underground facilities that transport hazardous materials which
 414 are regulated by the Pipeline and Hazardous Materials Safety
 415 Administration of the United States Department of Transportation
 416 in this state and determine if any statutory changes are needed
 417 to make such pipelines or facilities more resilient and safer
 418 for communities. Except as otherwise provided in this section,
 419 the review panel shall operate in a manner consistent with s.
 420 20.052.

421 (2) The review panel shall consist of nine members
 422 appointed by the State Fire Marshal and shall include the
 423 following:

424 (a) One member representing the electrical utility
 425 industry.

426 (b) One member representing the telecommunications or cable
 427 industry.

428 (c) One member licensed as an underground utility and
 429 excavation contractor under chapter 489 and engaged in work
 430 within road or highway rights-of-way.

431 (d) One member representing the natural gas industry.

432 (e) One member representing the utility locator industry.

433 (f) One member representing county or municipal water and
 434 sewer service providers.

435 (g) One member representing excavators performing work

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436 unrelated to construction in road or highway rights-of-way,
 437 including landscaping, fencing, or plumbing contractors.

438 (h) One member licensed as an underground utility and
 439 excavation contractor under chapter 489 and engaged in work for
 440 public utilities.

441 (i) One member representing the public at large.

442 (3) The State Fire Marshal shall establish a process to
 443 receive applications for the purpose of appointing members to
 444 the review panel.

445 (4) Each member shall serve for a 2-year term. A member may
 446 not serve more than two consecutive 2-year terms, except that
 447 members listed in paragraphs (2)(a)-(e) shall initially serve a
 448 1-year term and those members listed in paragraphs (2)(f)-(i)
 449 shall serve a 2-year term. All subsequent appointments shall be
 450 for 2-year terms. A vacancy for an unexpired term of a member
 451 shall be filled in the same manner as the original appointment.
 452 The review panel shall elect from among its members a chair and
 453 vice chair and meet quarterly in conjunction with the meeting of
 454 the board of directors or at the call of the chair.

455 (5) The Division of State Fire Marshal shall provide staff
 456 support and meeting space to the review panel. Members of the
 457 panel shall serve without compensation and are not entitled to
 458 reimbursement for per diem or travel expenses.

459 Section 6. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-20

Meeting Date

1464

Bill Number (if applicable)

846968

Amendment Barcode (if applicable)

Topic

Name Dale Calhoun

Job Title Executive Director

Address PO Box 11026

Street

Tallahassee FL 32302

City

State

Zip

Phone 8506810496

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Natural Gas 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)

APPEARANCE RECORD

2/11/2020

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

SB1464

Meeting DateBill Number (if applicable)Topic Underground Facility Damage Prevention and SafetyAmendment Barcode (if applicable)Name Cory GuzzoJob Title Governmental Affairs ConsultantAddress 108 S Monroe StPhone 850-681-0024StreetTallahasseeFL32301CityStateZipEmail cory@flapartners.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Associated Industries of Florida (AIF)Appearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1556

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Nondiscrimination in Organ Transplants

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Favorable
2.	Palecki	Knudson	BI	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1556 prohibits insurers, nonprofit health care service plans, and health maintenance organizations that provide transplant coverage, from denying coverage solely on the basis of an individual's disability.

The bill prohibits specified entities from denying, refusing to allocate, or lowering an individual's priority for organ transplant medical services solely on the basis of an individual's disability, which under the bill refers to a developmental disability or intellectual disability. The bill:

- Defines certain terms and entities;
- Specifies when certain entities may consider an individual's disability and when they may not;
- Requires certain entities to take steps to ensure that an individual with a disability is not denied services, with exceptions;
- Requires certain entities to make reasonable modifications to transplant policies, practices, and procedures to accommodate individuals with a disability, with an exception;
- Prohibits certain entities from denying transplant services due to individual's lack of auxiliary aids and services, with an exception;
- Permits a civil action for injunctive or other equitable relief for violations;
- Does not authorize transplants that are not medically necessary.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Tissue Donation and Organ Transplantation

Organ and tissue donation and transplantation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplantation may be necessary because the recipient's organ or tissue has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas, and intestine.¹ Transplantable tissue includes:

- Skin, which can be used as a temporary dressing for burns, serious abrasions, and other exposed areas;
- Heart valves used to replace defective valves;
- Tendons used to repair torn ligaments in knees or other joints;
- Veins used in cardiac bypass surgery;
- Corneas used to restore sight; and
- Bone used in orthopedic surgery to facilitate healing of fractures or to prevent amputation.²

The Organ Procurement and Transplantation Network (OPTN)

The National Organ Transplant Act (NOTA) established the Organ Procurement and Transplantation Network (OPTN) in 1984.³ In 2000, The U.S. Department of Health and Human Services (HHS) implemented a final rule establishing a regulatory framework for the structure and operations of the OPTN.⁴ HHS implemented the final rule that established the regulatory framework for the structure and operations of the OPTN.⁵

The OPTN policies are rules that govern the operation of all member transplant hospitals, organ procurement organizations (OPOs) and histocompatibility labs in the U.S.⁶ Currently, every transplant hospital program, OPO, and transplant histocompatibility laboratory in the U.S. is an OPTN member. Membership means that an institution meets OPTN requirements and that it plays an active role in forming the policies that govern the transplant community.⁷

The OPTN is a unique public-private partnership that links all professionals involved in the U.S. donation and transplantation system. Also crucial to the system are individuals who sign organ donor cards, people who comment on policy proposals, and volunteers who support donation and

¹ Donate Life Florida, Frequently Asked Questions, <https://www.donateliflorida.org/categories/donation/> (last visited February 8, 2018).

² *Id.*

³ 42 U.S.C. 274.

⁴ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *About the OPTN*, <https://optn.transplant.hrsa.gov/governance/about-the-optn/> (last visited Feb. 8, 2020).

⁵ *Id.*

⁶ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *Policies*, <https://optn.transplant.hrsa.gov/governance/policies/> (last visited Feb. 8, 2020).

⁷ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *Members*, <https://optn.transplant.hrsa.gov/members/> (last visited Feb. 8, 2020).

transplantation, among many others. The OPTN regulates how donor organs are matched and allocated to patients on the waiting list.⁸ On average, 95 transplants take place each day in the U.S.⁹

United Network for Organ Sharing (UNOS)

The United Network for Organ Sharing (UNOS) serves as the OPTN under contract with the Health Resources and Services Administration (HRSA) of HHS. UNOS is a private, non-profit organization based in Richmond, Virginia.¹⁰

Organ Procurement Organizations (OPOs) Serving Florida

In Florida, four non-profit, federally designated OPOs work closely with hospitals and transplant centers to facilitate the organ donation and transplantation process.¹¹

- Life Alliance Organ Recovery Agency;¹²
- LifeLink Florida;¹³
- LifeQuest Organ Recovery Services;¹⁴ and
- OurLegacy.¹⁵

Organ Transplant Centers (OTCs)

There are currently 252 organ transplant centers (OTCs) in the United States.¹⁶ Florida has 11 transplant centers to serve its citizens requiring organ transplants:

- The Miami Transplant Institute at the University of Miami/Jackson Memorial Medical Center;
- Broward General Medical Center/JMH Liver Transplant Program;

⁸ U.S. Department of Health & Human Services, Health Resources & Services Administration, U.S. Government Information on Organ Donation and Transplantation, *The Organ Transplant Process*, <https://organdonor.gov/about/process/transplant-process.html> (last visited Feb. 8, 2020).

⁹ U.S. Department of Health & Human Services, Health Resources & Services Administration, U.S. Government Information on Organ Donation and Transplantation, *Organ Donation and Transplantation Can Save Lives*, <https://optn.transplant.hrsa.gov/> (last visited Feb. 8, 2020).

¹⁰ *Id.*

¹¹ Donate Life Florida, Organ Procurement Organizations and Transplant Centers, Organ Procurement Organizations (OPOs) Serving Florida <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Feb. 8, 2020).

¹² University of Miami, Miller College of Medicine, *Life Alliance Organ Recovery Agency* <http://surgery.med.miami.edu/laora> (last visited Feb. 8, 2020).

¹³ The LifeLink Foundation, *Our Mission* <https://www.lifelinkfoundation.org/> (last visited Feb. 8, 2020). The LifeLink Foundation is a non-profit community service organization dedicated to the recovery of life-saving and life-enhancing organs and tissue for transplantation therapy. The Foundation works in a sensitive, diligent, and compassionate manner to facilitate the donation of desperately needed organs and tissues for waiting patients, support research efforts to enhance the available supply of organs and tissue for transplant patients, improve clinical outcomes of patients post transplantation and work closely with the United Network For Organ Sharing (UNOS) to support its goals.

¹⁴ LifeQuest Organ Recovery Services, *Mission* <https://lifequestfla.org/about/> (last visited Feb. 8, 2020). The mission of LifeQuest is to honor individuals' donor designations, to ensure families' opportunities to donate and to maximize the Gift of Life through organ and tissue donation.

¹⁵ OurLegacy, *Mission* <https://www.ourlegacyfl.org/mission> (last visited Feb. 8, 2020). The mission of OurLegacy is dedicated to saving and improving lives through organ and tissue donation and public education, while honoring all donors and their loved ones whose generosity makes the gift of life possible.

¹⁶ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *Members* <https://optn.transplant.hrsa.gov/members> (last visited Feb. 8, 2020).

- Cleveland Clinic Florida;
- Memorial Healthcare System;
- Tampa General Hospital;
- Largo Medical Center;
- All Children's Hospital;
- Gulf Coast Medical Center, a Division of Lee Memorial Health System;
- University of Florida Health, Shands Transplant Center;
- Transplant Program at Mayo Clinic Hospital;
- Sacred Heart Health System, Pensacola;
- AdventHealth Transplant Institute; and
- Halifax Health Center for Transplant Services.

The Organ Transplant Advisory Council (OTAC)

The Florida Legislature established the Organ Transplant Advisory Council (OTAC) in 1985 to recommend indications for adult and pediatric organ transplants to Florida's Agency for Health Care Administration (AHCA). The council consists of twelve members who are physicians.¹⁷ The OTAC has met 22 times, with its first meeting held August 27, 2007; and its most recent meeting held on April 14, 2015.

The responsibilities of the council are to:

- Recommend to the AHCA indications for adult and pediatric organ transplants;
- Formulate guidelines and standards for organ transplants; and
- Development of End Stage Organ Disease and Tissue/Organ Transplant programs.

The recommendations, guidelines, and standards developed by the council are applicable only to those health programs funded through the AHCA.¹⁸

Oversight and Implementation of Florida's Organ Donation and Transplantation System

The organ donation and transplantation system consists of an extensive network of federal, state, and local entities, as well as individual organ donors, recipients, and individuals on organ transplant waitlists. The process of organ donation relies on coordination among these entities to match organs from donors to individuals on organ transplant waitlists. The Legislature's Office of Program Policy Analysis and Government Accountability's (OPPAGA) January 22, 2020, research memo, *Reviewing Florida Organ Donation and Transplantation System*, lists the participants in Florida's organ transplantation system as follows:¹⁹

¹⁷ Agency for Health Care Administration, *Organ Transplant Advisory Council*, available at https://ahca.myflorida.com/medicaid/organ_transplant/index.shtml (last visited Feb. 8, 2020).

¹⁸ Section 765.53, F.S.

¹⁹ Office of Program Policy Analysis and Government Accountability, Research Memo, *OPPAGA Review of Florida's Organ Donation and Transplant System*, (Jan. 22, 2020) (on file with the Senate Committee on Health Policy).

Entity	Level	Role Within the Organ Donation and Transplantation System
U.S. Department of Health and Human Services	Federal	Oversees the two federal agencies responsible for organ procurement and transplantation regulation
Federal Centers for Medicare & Medicaid Services (CMS)	Federal	Monitors procurement and transplant program success and quality
Health Resources and Services Administration (HRSA)	Federal	Oversees the Organ Procurement and Transplantation Network and contractors (United Network for Organ Sharing and Scientific Registry of Transplant Recipients)
Scientific Registry of Transplant Recipients	Private/ Nonprofit	Provides statistical and other analytic support to OPTN for the formulation and evaluation of organ allocation
Organ Procurement and Transplantation Network (OPTN)	Private/ Nonprofit	Maintains a national registry for organ matching and carries out numerous other responsibilities relating to organ procurement and transplantation
United Network for Organ Sharing (UNOS)	Private/ Nonprofit	Operates OPTN under contract with HRSA
Agency for Health Care Administration	State	Contracts with Donate Life Florida for online donor registration and education system; coordinates with DHSMV to obtain donor registry funding; certifies and monitors organ procurement organizations for compliance and collects fees
Donate Life Florida	Private/ Nonprofit	Contracts with AHCA to operate a statewide online donor registry and to provide donor education
Department of Highway Safety and Motor Vehicles	State	Coordinates with county tax collector offices where donor education and registration occur when issuing driver licenses and identification cards; encourages and registers organ donors when issuing identification cards and driver licenses; provides donor educational materials; collects voluntary financial contributions to donor registry
County Tax Collector Offices	Local	Encourage and register organ donors when issuing identification cards and driver licenses; may provide donor educational materials; collect voluntary financial contributions to donor registry
Organ Procurement Organizations (Certified by CMS)	Regional within the State	Follow policies set by CMS and OPTN; primarily responsible for procuring organs and matching donor organs to patients on waitlists and coordinating with hospital transplant centers for transport of matched organs
Transplant Centers	Local/Private/ Nonprofit	Evaluate patients to determine eligibility to be placed on waitlists and suitability of and procuring organs at donor hospitals after being contacted by an OPO; perform transplant surgeries and conduct pre- and post-transplant care

Entity	Level	Role Within the Organ Donation and Transplantation System
Donor Hospitals	Local/ Private/ Nonprofit	Responsible for timely notification of OPO in their region of death or imminent death of a patient who is a viable organ donor ²⁰

The Organ Transplant Process

Step 1- Get a physician referral or contact the transplant center directly as a self-referral to be evaluated by a transplant program as a potential transplant candidate.

Step 2- Select a Transplant Center. The OPTN has a list of member transplant centers. While a transplant candidate may be referred to a transplant center or program, he or she may want to make sure that it meets his or her need. Factors to consider are:

- Location;
- Compatibility with insurance;
- Financial arrangements; and
- Support group availability.

Step 3- Contact the transplant hospital to schedule an evaluation to find out if the candidate is a good candidate for transplant. The standard transplant evaluation usually includes the following tests and assessments:

- Blood typing;
- Tissue typing;
- Dental exam;
- Chest X-ray;
- Cardiac work-up;
- Pulmonary work-up;
- Infectious disease testing;
- Cancer screening;
- Gender-specific testing;
- Psychological evaluation to determine emotional preparedness;
- Evaluation of social and financial supports; and
- Ability to care for oneself and the new organ after transplant.

Other testing may be required depending on the needed organ and the individual's health history.²¹

The exact process varies among transplant centers, as each center determines its own criteria for evaluating patients. Each organ transplant center is required by law to provide its specific guidelines and criteria for inclusion and exclusion of patients as candidates for transplant.

²⁰ *Id.*

²¹ United Network for Organ Sharing, Talking About Transplantation, *What Every Patient Needs to Know*, 2019, p. 11, available at <https://www.unos.org/wp-content/uploads/unos/WEPNTK.pdf> (last visited Feb. 8, 2020).

Step 4- If the transplant team members determine that a candidate is suitable for a transplant, they will add him or her to the OPTN national waiting list of all people waiting for a transplant. The transplant team will contact the candidate in writing about 10 days after he or she is listed to let the patient know the date and time his or her name was added to the national list.²²

Organ Allocation

More than 120,000 people in the U.S. are waiting to receive an organ transplant. There are not enough donated organs to transplant everyone in need, so a balance of the following is sought:

- Justice (fair consideration of candidates' circumstances and medical needs); and
- Medical utility (trying to increase the number of transplants performed and the length of time patients and organs survive).²³

Many factors are used to match organs with patients in need. Some are the same for all organs, but the system must accommodate some unique differences for each organ.²⁴

Before an organ is allocated, all transplant candidates on the waiting list that are incompatible with the donor are automatically screened out from any potential match. Then the system determines the order in which the compatible candidates will receive offers, according to national policies.

There are 58 local Donation Service Areas, and 11 regions, that are used for United States organ allocation. Hearts and lungs have less time to be transplanted, so the OPTN uses a radius from the donor hospital, instead of regions, when allocating those organs.

Factors in Organ Allocation

Each organ has different criteria for allocation, but federal policy dictates that wealth, social status, citizenship, residency, political influence, national origin, ethnicity, sex, or religion are never factors.²⁵ Blood type and other medical factors weigh into the allocation of every donated organ, and other factors are unique to each organ-type. For example, to receive a kidney, the following additional medical factors weigh heavily in the allocation process:

- Waiting time;
- Donor/recipient immune system compatibility;
- Pediatric status;
- Prior living donor;
- How far the candidate lives from donor hospital; and
- Survival benefit.

²² U.S. Department of Health and Human Services, Health Resources & Services Administration, Organdonor.gov, *The Organ Transplant Process* <https://www.organdonor.gov/about/process/transplant-process.html> (last visited Feb. 8, 2020).

²³ U.S. Department of Health and Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *How Organ Allocation Works* <https://optn.transplant.hrsa.gov/learn/about-transplantation/how-organ-allocation-works/> (last visited Feb. 8, 2020).

²⁴ *Id.*

²⁵ U.S. Department of Health and Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *Policies*, 5.4 *Organ Offers* (Jan. 9, 2020), p. 92, available at https://optn.transplant.hrsa.gov/media/1200/optn_policies.pdf (last visited Feb. 8, 2020).

For a heart or a liver transplant, the following medical factors weigh heavily in the allocation process:

- Medical need; and
- How far the candidate lives from donor hospital.

For a lung transplant, the following medical factors weigh heavily in the allocation process:

- Survival benefit;
- Medical urgency;
- Waiting time; and
- How far the candidate lives from donor hospital.

Wait Times for Organ Transplants

Candidate wait times vary widely for many reasons. The shortage of organs causes most patients to wait for a transplant. Some patients are more ill than others when they are put on the transplant waiting list. Some patients get sick more quickly than other patients or respond differently to treatments. Patients may have medical conditions that make it more difficult to find a good match.²⁶

How long a patient waits depends on many factors. These can include:

- Blood type;
- Tissue type;
- Height and weight of transplant candidate;
- Size of donated organ;
- Medical urgency;
- Time on the waiting list;
- The distance between the donor's hospital and the potential donor organ;
- How many donors there are in the local area over a period of time; and
- The transplant center's criteria for accepting organ offers.²⁷

Depending on the kind of organ needed, some factors are more important than others.

The Donor Matching System

The OPTN has policies regulating how donor organs are matched and allocated to patients on the waiting list. There are some common factors in how organs are matched, such as blood type and how severe the patient's illness is. However, depending on the organ, some factors become more important than others, so there is a different policy for each organ.²⁸ The OPTN operates the

²⁶ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network Transplant Process, *Wait Times* <https://optn.transplant.hrsa.gov/learn/about-transplantation/transplant-process/> (last visited Feb. 8, 2020).

²⁷ *Id.*

²⁸ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, *Donor Matching System* <https://optn.transplant.hrsa.gov/learn/about-transplantation/donor-matching-system/> (last visited Feb. 8, 2020).

national database of all patients in the U.S. waiting for a transplant. OPTN's computer system matches the donor's organs to potential recipients.²⁹

When transplant hospitals accept patients onto the waiting list, the patients are registered in a centralized, national computer network that links all donors and transplant candidates. The UNOS center is staffed 24 hours a day throughout the year, and it assists with the matching, sharing, and transportation of organs via this computer network.

Transplant centers, tissue typing laboratories, and OPOs are involved in the organ sharing process. When donor organs are identified, the procuring organization typically accesses the computerized organ matching system, enters information about the donor organs, and runs the match program. At times, when requested or when there is a need to identify perfectly matched kidney donors to recipients, the matching process is handled by organ center personnel at UNOS headquarters in Richmond, Virginia.

For each organ that becomes available, the computer program generates a list of potential recipients ranked according to objective criteria (i.e. blood type, tissue type, size of the organ, medical urgency of the patient, time on the waiting list, and distance between donor and recipient). After printing the list of potential recipients, the procurement coordinator contacts the transplant surgeon caring for the top-ranked patient (i.e. patient whose organ characteristics best match the donor organ and whose time on the waiting list, urgency status, and distance from the donor organ adhere to allocation policy) to offer the organ. Depending on various factors, such as the donor's medical history and the current health of the potential recipient, the transplant surgeon determines if the organ is suitable for the patient. If the organ is turned down, the next listed individual's transplant center is contacted, and so on, until the organ is placed.

Once the organ is accepted for a potential recipient, transportation arrangements are made for the surgical teams to come to the donor hospital, and surgery is scheduled. For heart, lung, or liver transplantation, the recipient of the organ is identified prior to the organ recovery and called into the hospital where the transplant will occur to prepare for the surgery.

The recovered organs are stored in a cold organ preservation solution and transported from the donor to the recipient hospital. For heart and lung recipients, it is best to transplant the organ within 6 hours of organ recovery. Livers can be preserved up to 24 hours after recovery. For kidneys and typically the pancreas, laboratory tests designed to measure the compatibility between the donor organ and recipient are performed. A surgeon will not accept the organ if these tests show that the patient's immune system will reject the organ. Therefore, the recipient is usually not identified until after these organs are recovered.

For example, some organs can survive outside the body longer than others. So the distance between the donor's hospital and the potential recipient's hospital must be taken into consideration. How long individual organs can stay alive outside of the body is approximately the following:

- Hearts and Lungs: 4-6 hours;
- Livers: 8-12 hours;

²⁹ *Id.*

- Pancreas: 12-18 hours;
- Kidney: 24-36 hours; and
- Intestines: 8-16 hours.

When matching organs from deceased donors to patients on the waiting list, many of the factors taken into consideration are the same for all organs. These usually include:

- Blood type;
- Body size;
- Severity of patient's medical condition;
- Distance between the donor's hospital and the patient's hospital;
- The patient's waiting time; and
- Whether the patient is available (for example, whether the patient can be contacted and has no current infection or other temporary reason that transplantation cannot take place).

Allocation Calculators

The Calculated Panel Reactive Antibody (CPRA) calculator is used to evaluate candidates for kidney, pancreas, and kidney/pancreas transplants. This calculator uses the same formula as the UNetSM computer system. UNet is the computer system used by the transplant center to calculate kidney, pancreas, and kidney/pancreas allocation scores for candidates in need of a transplant. This calculator produces a value based on the unacceptable antigens.³⁰

Estimated Post Transplant Survival (EPTS) score is assigned to all adult candidates on the kidney waiting list, as part of the new kidney allocation system. An EPTS score is assigned to all adult candidates on the kidney waiting list and is based on four factors:

- Candidate time on dialysis;
- Current diagnosis of diabetes;
- Prior solid organ transplants; and
- Candidate age.

A candidate's EPTS score can range from 0 percent to 100 percent. An EPTS score of 20 percent or less will receive offers for kidneys from donors with KDPI scores of 20 percent or less before other candidates at the local, regional, and national levels of distribution. The EPTS score is not used in allocation of kidneys from donors with KDPI scores greater than 20 percent.

The Kidney Donor Profile Index (KDPI) calculator summarizes the risk of graft failure after kidney transplant. The Kidney Donor Risk Index (KDRI) combines a variety of donor factors to summarize the risk of graft failure after kidney transplant into a single number. The KDRI expresses the relative risk of kidney graft failure for a given donor compared to the median kidney donor from last year.

The KDPI and KDRI are combined and put on a cumulative percentage scale. A donor with a KDPI of 80 percent or higher has a greater expected risk of graft failure. If diabetes or hypertension statuses are unknown, the calculator will assume the donor has the same chance as

³⁰ See <https://unos.org/technology/unet/> (last visited Feb. 8, 2020).

a randomly selected donor having the condition. If Hepatitis C Virus (HCV) status is unknown, the calculator will assume the donor is negative for HCV.

The Lung Allocation Score (LAS) is a numerical calculation used for allocating lungs to candidates age 12 and older to calculate lung allocation scores for patients in need of a lung transplant.³¹

Organ Transplant Costs

The cost of transplantation and follow-up care varies across the country and by organ. Even before a transplantation, these costs can add up quickly. These costs may include:

- Medical costs
 - Pre-transplant evaluation and testing;
 - Hospital stay and surgery;
 - Additional hospital stays for complications;
 - Follow-up care and testing;
 - Anti-rejection and other drugs, which can cost more than \$10,000 per year;
 - Fees for surgeons, physicians, radiologist and anesthesiologist;
 - Fees for the surgical recovery (procurement) of the organ from the donor;
 - Physical, occupational, and vocational rehabilitation; and
 - Insurance deductibles and co-payments.
- Nonmedical costs
 - Transportation to and from the transplant center, before and after transplantation;
 - Food, lodging, long distance phone calls for the patient and his or her family;
 - Child care; and
 - Lost wages if the patient's employer does not pay for the patient's time away from work.³²

The most common funding sources for organ transplants are:

- Insurance;
- Extending insurance coverage through COBRA;
- Medicare and Medicaid;
- TRICARE;
- Charitable organizations;
- Advocacy organizations;
- Fundraising campaigns; and
- Other sources of insurance.³³

³¹ U.S. Department of Health & Human Services, Health Resources & Services Administration, Organ Procurement and Transplantation Network, Transplant Process, *Allocation Calculators* <https://optn.transplant.hrsa.gov/resources/allocation-calculators/> (last visited Feb. 8, 2020).

³² U.S. Department Of Health And Human Services, Health Resources and Services Administration, Healthcare Systems Bureau, Division of Transplantation, *Partnering With Your Transplant Team: The Patient's Guide to Transplantation* (2008), p. 22, available at <https://www.unos.org/wp-content/uploads/unos/PartneringWithTransplantTeam.pdf> (last visited Feb. 8, 2020).

³³ *Id.*

Organ Transplants and Medicare

Medicare Part B covers doctor services for certain organ transplants. Medicare Part A covers heart, lung, kidney, pancreas, intestine, and liver transplants under certain conditions at Medicare-certified facilities. Part A also covers some stem cell transplants under certain conditions. Part B covers cornea transplants, under some conditions. Stem cell and cornea transplants are not limited to Medicare-approved transplant centers. Organ transplant coverage under Medicare includes:

- Medically necessary tests, labs, and exams before surgery;
- Transplant immunosuppressive drugs (under certain conditions);
- Follow-up care, and
- Procurement of organs.³⁴

A Medicare recipient's out-of-pocket costs may include:

- Twenty percent of the Medicare-approved amount for doctors' services;
- The Part B deductible; and
- Various amounts for organ transplant facility charges.

Medicare does not pay a living donor for a kidney transplant.³⁵

Organ Transplants and Florida Medicaid

Florida Medicaid coverage for organ transplants is restricted to those transplants currently accepted as therapeutic modalities and do not include experimental procedures. For children under 21, Florida Medicaid covers kidney, liver, cornea, heart, lung pancreas, intestines, bone marrow, and multivisceral³⁶ transplants that are medically necessary and appropriate.³⁷ The following are samples of the AHCA's Medicaid fee-for-service reimbursement rates for specific transplant surgery:

- Adult Heart: Facility \$135,000; physician \$27,000;
- Adult Liver: Facility \$95,600; physician \$27,000;
- Adult Lung: Facility \$205,000; physician \$33,000;
- Pediatric Lung: Facility \$280,000.00; physician \$40,800; and
- Adult and Pediatric Intestinel/Multivisceral: Facility \$450,000; physician: \$50,000.³⁸

³⁴ Medicare.gov., The Official U.S. Government Site for Medicare; *Open Enrollment Is Over - Get Ready for A New Year of Coverage*, available at <https://www.medicare.gov/> (last visited Feb. 8, 2020).

³⁵ *Id.*

³⁶ A multivisceral transplant is the transplantation of three or more abdominal organs all at once, namely the liver together with the pancreatoduodenal complex, the stomach as well as the small bowel with/without the right hemicolon. Medical Dictionary by Farlex, available at <https://medical-dictionary.thefreedictionary.com/Multivisceral+Transplantation> (last visited Jan. 23, 2020).

³⁷ Agency for Health Care Administration, *Florida Standards for the Coverage of Organ Transplant Services*, (effective April 1, 2015), p. 1, available at https://ahca.myflorida.com/mecicaid/organ_transplant/pdfs/state_plan_standards_for_coverage_updated_2015.pdf (last visited Feb. 8, 2020).

³⁸ *Id.*

Discrimination in Access to Anatomical Gifts and Organ Transplants

On September 25, 2019, the National Council on Disability (NCD) submitted a report to the President and Congress entitled, *Organ Transplant Discrimination Against People with Disabilities*.³⁹ The report found, among other things, that people with disabilities are frequently denied access to organ transplants based on a transplant center's written and unwritten policies excluding people with disabilities as candidates for a transplant, and even refusing to evaluate a particular person's medical suitability for an organ transplant because of the person's disability. The NCD is an independent federal agency charged with advising the President, Congress, and other federal agencies on disability policy to advance the goals of the federal Americans with Disabilities Act (ADA): equal opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.⁴⁰

The Americans with Disabilities Act & The Rehabilitation Act of 1973

The Americans with Disabilities Act (ADA)⁴¹ and section 504 of the Rehabilitation Act of 1973⁴² prohibit discrimination on the basis of disability. The Rehabilitation Act specifically prohibits discrimination against otherwise qualified individuals on the basis of disability in:

- Programs and activities receiving financial assistance from HHS;⁴³ and
- Programs or activities conducted by HHS.⁴⁴

According to the NCD, while there are few empirical studies analyzing how organ transplant centers actually evaluate patients for transplantation, particularly with respect to how any particular disability influences which patients are selected, the primary forms of disability discrimination occurring at organ transplant centers are:

- Refusal to evaluate a person with a disability as a candidate for transplant; and
- Refusal to place a person with a disability on the national organ transplant waiting list.

The ADA defines “disability” as:

- A physical or mental impairment that substantially limits one or more of the major life activities;
- A record of such an impairment; or
- Being regarded as having such an impairment.⁴⁵

The ADA specifies the meaning of the phrase “physical or mental impairment” to mean:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - Neurological;

³⁹ National Council on Disability, Bioethics and Disability Series, *Organ Transplant Discrimination Against People with Disabilities*, available at https://ncd.gov/sites/default/files/NCD_Organ_Transplant_508.pdf (last visited Feb. 8, 2020).

⁴⁰ National Council on Disabilities, Letter to UNOS, OPTN, HRSA Regarding Organ Transplants (Sept. 25, 2019), available at <https://ncd.gov/publications/2019/ncd-letter-unos-optn-hrsa-regarding-organ-transplants> (last visited Feb. 8, 2020).

⁴¹ 28 C.F.R. Part 35 and 36.

⁴² 29 U.S.C. s. 794.

⁴³ 45 C.F.R. 84.

⁴⁴ 45 C.F.R. 85.

⁴⁵ 28 C.F.R. 35.104.

- Musculoskeletal;
- Special sense organs;
- Respiratory (including speech organs);
- Cardiovascular;
- Reproductive;
- Digestive;
- Genitourinary;
- Hemic and lymphatic;
- Skin;
- Endocrine; or
- Any mental or psychological disorder such as:
 - Mental retardation;
 - Organic brain syndrome;
 - Emotional or mental illness; or
 - Specific learning disabilities.⁴⁶

The phrase “physical or mental impairment” specifically includes, but is not limited to:

- Contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments;
- Cerebral palsy;
- Epilepsy;
- Muscular dystrophy;
- Multiple sclerosis;
- Cancer;
- Heart disease;
- Diabetes;
- Emotional illness;
- HIV disease (whether symptomatic or asymptomatic);
- Tuberculosis;
- Drug addiction; and
- Alcoholism.

The ADA also specifies the meaning of the phrase “major life activities” to include functions such as:

- Caring for oneself;
- Performing manual tasks;
- Walking;
- Seeing;
- Hearing;
- Speaking;
- Breathing;
- Learning; and
- Working.

⁴⁶ *Id.*

Enforcement of the ADA and The Rehabilitation Act of 1973

An individual who believes that he or she has been subjected to discrimination on the basis of his or her disability, by a public entity, may file a complaint with the Department of Justice (DOJ) no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown.⁴⁷ The DOJ, or designated agency, will investigate, and if discrimination on the basis of disability is found, the DOJ, or designated agency, will issue a non-compliance letter of findings to the Assistant Attorney General and initiate negotiations with the public entity to secure compliance by voluntary means.⁴⁸ If the public entity declines to enter into voluntary compliance negotiations, or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.⁴⁹ If the complainant prevails, he or she may be awarded a reasonable attorney's fee, including litigation expenses and costs.⁵⁰

Cause of Action Under the Florida Civil Rights Act of 1992

The general purposes of the Florida Civil Rights Act of 1992 (Act) were set out by the Legislature as follows:

- To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity;
- To make available to the state their full productive capacities;
- To secure the state against domestic strife and unrest;
- To preserve the public safety, health, and general welfare; and
- To promote the interests, rights, and privileges of individuals within the state.⁵¹

The Act creates both a state and individual cause of action for any violation of a Florida statute making unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, *handicap*, or marital status in the areas of education, employment, housing, or public accommodations for relief and damages under s. 760.11(5), F.S., unless greater damages are expressly provided for.⁵² [emphasis added]

Section 760.22(12), F.S., as created by the Florida Fair Housing Act defines “handicap” to mean:

- A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or
- A person has a developmental disability, as that term is defined in s. 393.063, F.S.,⁵³ which manifests itself before the age of 18 and constitutes a substantial handicap that can reasonably be expected to continue indefinitely, including:
 - A disorder or syndrome that is attributable to intellectual disability;

⁴⁷ 28 C.F.R. 35.170.

⁴⁸ 28 C.F.R. 35.173.

⁴⁹ 28 C.F.R. 35.174.

⁵⁰ 28 C.F.R. 35.175.

⁵¹ Section 760.01, F.S.

⁵² Section 760.07, F.S.

⁵³ Section 760.22(7), F.S.

- Cerebral palsy;
- Autism;
- Spina bifida;
- Down syndrome;
- Phelan-McDermid syndrome;⁵⁴ or
- Prader-Willi syndrome.^{55 56}

III. Effect of Proposed Changes:

Requirements for Covered Entities

Section 1 amends s. 765.523, F.S., to prohibit specified covered entities from denying, refusing to allocate, or lowering an individual's priority for organ transplant medical services solely on the basis of an individual's disability.

The bill defines the following:

- Auxiliary aids and services;
- Covered entity;
- Disability;
- Organ transplant; and
- Qualified individual.

Under the bill, “disability” means a “developmental disability” or “intellectual disability” as those terms are defined in s. 393.063, F.S.

- Developmental disability under s. 393.063(12), F.S., means a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome, that manifests before age 18, and that constitutes a substantial handicap that can be reasonably expected to continue indefinitely.
- Intellectual disability under s. 393.063(24), F.S., means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before age 18 and can be expected to continue indefinitely.

⁵⁴ U.S. Department of Health and Human Services, National Institutes of Health, Genetic and Rare Disease Information Center, *22q13.3 deletion syndrome* <https://rarediseases.info.nih.gov/diseases/10130/phelan-mcdermid-syndrome> (last visited Feb. 8, 2020). 22q13.3 deletion syndrome, also known as Phelan-McDermid syndrome, is a chromosome disorder caused by the loss (deletion) of a small piece of chromosome 22. The deletion occurs near the end of the long arm (or q arm) of the chromosome at a location designated as q13.3. Not everyone with 22q13.3 deletion syndrome will have the same medical, developmental, or behavioral problems (features). Common problems include low muscle tone (hypotonia), intellectual disability, developmental delays especially delayed or absent speech, and tendency to overheat. Children may be tall and thin.

⁵⁵ U.S. Department of Health and Human Services, National Institutes of Health, U.S. National Library of Medicine, *Prader-Willi Syndrome* <https://ghr.nlm.nih.gov/condition/prader-willi-syndrome> (last visited Feb. 8, 2020). Prader-Willi syndrome is a complex genetic condition. In infancy, this condition is characterized by weak muscle tone (hypotonia), feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite, which leads to chronic overeating (hyperphagia) and obesity. People with Prader-Willi syndrome typically have mild to moderate intellectual impairment and learning disabilities. Behavioral problems include temper outbursts, stubbornness, and compulsive behavior such as picking at the skin. Sleep abnormalities can also occur. Both affected males and females have underdeveloped genitals. Puberty is delayed or incomplete, and most affected individuals are infertile.

⁵⁶ Section 393.063(12), F.S.

Under the bill, “covered entity” means any of the following:

- A licensed health care practitioner.
- A hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled.
- Any other entity responsible for potential recipients of an anatomical gift.

The bill mandates that a covered entity may not do any of the following, solely on the basis of an individual’s disability:

- Consider a qualified individual ineligible for a transplant;
- Deny medical or other organ transplant services, including:
 - Evaluations;
 - Surgery;
 - Counseling; and
 - Post-transplant treatment and services;
- Refuse to refer the individual to an organ procurement organization or specialist for evaluation for an organ transplant;
- Refuse to place a qualified individual on an organ transplant waiting list;
- Place a qualified individual at a lower priority on an organ transplant waiting list; or
- Consider the individual’s inability to independently comply with the post-transplant medical requirements if the individual has the necessary support system to assist him or her with such compliance.

The bill also mandates that, unless the covered entity can demonstrate that making modifications to its policies, practices, or procedures to allow an individual with a disability access to services would fundamentally alter the nature of the services, a covered entity must make reasonable modifications to its policies, practices, or procedures to allow an individual with a disability access to services, including:

- Transplant-related counseling;
- Information;
- Coverage; or
- Treatment.

The bill requires that, unless a covered entity can demonstrate that taking affirmative steps to ensure that an individual with a disability is not denied services due to the absence of auxiliary aids and services, would fundamentally alter the nature of the services being offered, or would result in an undue burden on the covered entity, a covered entity must take additional steps to ensure that an individual with a disability is not denied services due to the absence of auxiliary aids and services.

The bill provides that a covered entity may consider an individual’s disability, following an evaluation, if a physician finds the person’s disability to be medically significant to the life of the transplant but only to the extent that the covered entity is making treatment or coverage recommendations or decisions for the individual.

If a person has the necessary support system to assist him or her in complying with post-transplant medical requirements, a covered entity may not consider the individual's inability to independently comply with the post-transplant medical requirements to be medically significant.

The bill allows a person with a disability to file a civil action for injunctive or other equitable relief for violations.

The bill prohibits insurers, nonprofit health care service plans, and health maintenance organizations that provide transplant coverage from denying coverage solely on the basis of an individual's disability.

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It appears that the bill is intended to apply to individual, small, and large group policies. However, the bill does not amend s. 627.6699, F.S., relating to small employer group plans. Pursuant to s. 627.6699(15), F.S., a law requiring coverage for a specific health care service or benefit, or a law requiring reimbursement, utilization, or consideration of a specific category of licensed health care practitioner, does not apply to a limited benefit policy or contract offered or delivered to a small employer unless the law is made expressly applicable to such policies or contracts.

Section 1 of the bill restricts the definition of disability to developmental disabilities and intellectual disabilities. Sections 2, 3, and 4 prohibit insurers, nonprofit health care service plans, and health maintenance organizations that provide transplant coverage from denying coverage solely on the basis of an individual's disability, but do not define the term disability for purposes of those sections. It is unclear whether the definition of disability created in section 1 of the bill is intended to apply to the other sections of the bill.

VII. Related Issues:

The bill could be interpreted as preempted by federal law. The federal National Organ Transplant Act (NOTA) established the OPTN. The OPTN policies and procedures are rules that govern and control the operation of all member transplant hospitals, OPOs, and histocompatibility labs in the U.S.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 765.523, 627.64197, 627.65736, and 641.31075.

IX. Additional Information:

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

CS by Banking and Insurance on February 11, 2020:

- The CS amends the following definitions:
 - Replaces the reference to the Health Insurance Portability and Accountability Act (HIPAA) with a reference to “federal [laws]” within the definition of “auxiliary aids and services.”
 - Removes residential facilities licensed under ch. 393, F.S., and institutional medical units in correctional facilities from the definition of “covered entity.”
 - Narrows the definition of “disability” to include only the conditions contemplated by the terms “developmental disability” and “intellectual disability” as defined in s. 393.063, F.S.
 - Relocates the description of reasonable modifications to policies from the definition of “qualified individual” to subsection (4), which requires covered entities to make reasonable modifications.

- The CS expands the types of support networks to be considered to include any “community-based services coverage.”
- The CS amends titles to eliminate references to nondiscrimination.

B. Amendments:

None.

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



844372

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 765.523, Florida Statutes, is created to
read:

765.523 Discrimination in access to anatomical gifts and
organ transplants prohibited.—

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

(a) "Auxiliary aids and services" means:



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1. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

2. Qualified readers, recorded texts, texts in an accessible electronic format, or other effective methods of making visually delivered materials available to individuals with visual impairments.

3. Supported decisionmaking services, including any of the following:

a. The use of a support person to assist an individual in making medical decisions, communicating information to the individual, or ascertaining his or her wishes.

b. The provision of information to a person designated by the individual, consistent with federal and state laws governing the disclosure of health information.

c. Measures used to ensure that the individual's guardian or legal representative, if any, is included in decisions involving the individual's health care and that medical decisions are in accordance with the individual's own expressed interests.

d. Any other aid or service that is used to provide information in a format that is readily understandable and accessible to individuals with cognitive, neurological, developmental, or intellectual disabilities.

(b) "Covered entity" means any of the following:

1. A licensed health care practitioner as defined in s. 456.001.

2. A health care facility as defined in s. 408.07.

3. Any other entity responsible for potential recipients of



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an anatomical gift or organ transplant.

(c) "Disability" has the same meaning as "developmental disability" and "intellectual disability" as those terms are defined in s. 393.063.

(d) "Organ transplant" means the transplantation or transfusion of a part of a human body into the body of another individual for the purpose of treating or curing a medical condition.

(e) "Qualified individual" means an individual who has a disability and meets the clinical eligibility requirements for the receipt of an anatomical gift or an organ transplant, regardless of:

1. The support networks available to the individual;
2. The provision of auxiliary aids and services; or
3. Reasonable modifications to the policies, practices, or procedures of a covered entity pursuant to subsection (4).

(2) A covered entity may not do any of the following solely on the basis of an individual's disability:

(a) Consider a qualified individual ineligible to receive an anatomical gift or organ transplant.

(b) Deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and posttransplant treatment and services.

(c) Refuse to refer the individual to an organ procurement organization or a related specialist for the purpose of evaluation or receipt of an organ transplant.

(d) Refuse to place a qualified individual on an organ transplant waiting list.

(e) Place a qualified individual at a lower priority



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position on an organ transplant waiting list than the position at which the qualified individual would have been placed if not for the disability.

(3)(a) A covered entity may take an individual's disability into account if, following an individualized evaluation of him or her, a physician finds the individual's disability to be medically significant to the provision of the anatomical gift or organ transplant, but only to the extent that the covered entity is making treatment or coverage recommendations or decisions for the individual.

(b) If an individual has the necessary support system to assist him or her in complying with posttransplant medical requirements, a covered entity may not consider the individual's inability to independently comply with the posttransplant medical requirements to be medically significant for the purposes of paragraph (a).

(4) A covered entity shall make reasonable modifications to policies, practices, or procedures when the modifications are necessary to allow an individual with a disability access to services, including transplant-related counseling, information, coverage, or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services. Such modifications shall include, but not be limited to, communication with the persons responsible for supporting the individual with his or her postsurgical and posttransplant care, including medication. Such modifications shall also consider the support networks available to the individual, including, but not limited to, family, friends, and home and community-based services coverage when



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determining whether the individual is able to comply with
posttransplant medical requirements.

(5) A covered entity shall take such steps as may be
necessary to ensure that an individual with a disability is not
denied services, including transplant-related counseling,
information, coverage, or treatment, due to the absence of
auxiliary aids and services, unless the covered entity can
demonstrate that taking the steps would fundamentally alter the
nature of the services being offered or would result in an undue
burden on the covered entity.

(6) If a covered entity violates this section, the
qualified individual who is affected by the violation may bring
an action in the appropriate circuit court for injunctive or
other equitable relief.

(7) This section may not be construed to require a covered
entity to make a referral or recommendation for or perform a
medically inappropriate organ transplant.

Section 2. Section 627.64197, Florida Statutes, is created
to read:

627.64197 Coverage for organ transplants.—A health
insurance policy issued, delivered, or renewed on or after July
1, 2020, in this state by an insurer which provides coverage for
organ transplants on an expense-incurred basis may not deny
coverage for an organ transplant solely on the basis of an
insured's disability. This section may not be construed to
require such insurer to provide coverage for an organ transplant
that is not medically necessary. For purposes of this section,
the term "organ transplant" has the same meaning as in s.
765.523.



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Section 3. Section 627.65736, Florida Statutes, is created to read:

627.65736 Coverage for organ transplants.—A group health insurance policy delivered, issued, or renewed on or after July 1, 2020, in this state by an insurer or nonprofit health care services plan which provides coverage for organ transplants on an expense-incurred basis may not deny coverage for an organ transplant solely on the basis of an insured's disability. This section may not be construed to require such insurer or nonprofit health care service plan to provide coverage for an organ transplant that is not medically necessary. For purposes of this section, the term "organ transplant" has the same meaning as in s. 765.523.

Section 4. Section 641.31075, Florida Statutes, is created to read:

641.31075 Coverage for organ transplants.—A health maintenance contract issued or renewed on or after July 1, 2020, in this state by a health maintenance organization which provides coverage for organ transplants may not deny coverage for an organ transplant solely on the basis of a subscriber's disability. This section may not be construed to require such health maintenance organization to provide coverage for an organ transplant that is not medically necessary. For purposes of this section, the term "organ transplant" has the same meaning as in s. 765.523.

Section 5. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:



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156 Delete everything before the enacting clause
157 and insert:

158 A bill to be entitled
159 An act relating to nondiscrimination in organ
160 transplants; creating s. 765.523, F.S.; defining
161 terms; prohibiting certain entities from making
162 certain determinations or engaging in certain actions
163 related to organ transplants solely on the basis of an
164 individual's disability; specifying an instance where
165 certain entities may consider an individual's
166 disability, with an exception; requiring certain
167 entities to make reasonable modifications in their
168 policies, practices, and procedures under certain
169 circumstances, with an exception; providing criteria
170 for such modifications; requiring certain entities to
171 take certain necessary steps to ensure an individual
172 with a disability is not denied services, with
173 exceptions; providing a cause of action for injunctive
174 and other relief; providing construction; creating ss.
175 627.64197, 627.65736, and 641.31075, F.S.; prohibiting
176 insurers, nonprofit health care service plans, and
177 health maintenance organizations that provide coverage
178 for organ transplants from denying coverage solely on
179 the basis of an individual's disability under certain
180 circumstances; providing construction; defining the
181 term "organ transplant"; providing an effective date.

By Senator Bean

4-01472B-20

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1 A bill to be entitled
 2 An act relating to nondiscrimination in organ
 3 transplants; creating s. 765.523, F.S.; defining
 4 terms; prohibiting certain entities from making
 5 certain determinations or engaging in certain actions
 6 related to organ transplants solely on the basis of an
 7 individual's disability; specifying an instance where
 8 certain entities may consider an individual's
 9 disability, with an exception; requiring certain
 10 entities to make reasonable modifications in their
 11 policies, practices, and procedures under certain
 12 circumstances, with an exception; requiring certain
 13 entities to take certain necessary steps to ensure an
 14 individual with a disability is not denied services,
 15 with exceptions; providing a cause of action for
 16 injunctive and other relief; providing construction;
 17 creating ss. 627.64197, 627.65736, and 641.31075,
 18 F.S.; prohibiting insurers, nonprofit health care
 19 service plans, and health maintenance organizations
 20 that provide coverage for organ transplants from
 21 denying coverage solely on the basis of an
 22 individual's disability under certain circumstances;
 23 providing construction; defining the term "organ
 24 transplant"; providing an effective date.
 25
 26 WHEREAS, the Americans with Disabilities Act prohibits
 27 discrimination against individuals with disabilities, yet many
 28 individuals with disabilities still experience discrimination in
 29 accessing critical health care services, and

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

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30 WHEREAS, in other states nationwide, individuals with
 31 mental or physical disabilities have historically been denied
 32 lifesaving organ transplants based on assumptions that their
 33 lives are less worthy, that they are incapable of complying with
 34 posttransplant medical requirements, or that they lack adequate
 35 support systems to ensure compliance with posttransplant medical
 36 requirements, and
 37 WHEREAS, although organ procurement organizations must
 38 consider medical and psychosocial criteria when determining if a
 39 patient is suitable to receive an organ transplant, organ
 40 procurement organizations that participate in Medicare and other
 41 federally funded programs are required to use patient selection
 42 criteria that result in a fair and nondiscriminatory
 43 distribution of organs, and
 44 WHEREAS, residents of this state in need of organ
 45 transplants are entitled to assurances that they will not
 46 encounter discrimination on the basis of a disability, NOW,
 47 THEREFORE,
 48
 49 Be It Enacted by the Legislature of the State of Florida:
 50
 51 Section 1. Section 765.523, Florida Statutes, is created to
 52 read:
 53 765.523 Discrimination in access to anatomical gifts and
 54 organ transplants prohibited.-
 55 (1) As used in this section, the term:
 56 (a) "Auxiliary aids and services" means:
 57 1. Qualified interpreters or other effective methods of
 58 making aurally delivered materials available to individuals with

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

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59 hearing impairments.

60 2. Qualified readers, recorded texts, texts in an
 61 accessible electronic format, or other effective methods of
 62 making visually delivered materials available to individuals
 63 with visual impairments.

64 3. Supported decisionmaking services, including any of the
 65 following:

66 a. The use of a support person to assist an individual in
 67 making medical decisions, communicating information to the
 68 individual, or ascertaining his or her wishes.

69 b. The provision of information to a person designated by
 70 the individual, consistent with the Health Insurance Portability
 71 and Accountability Act and other applicable laws and rules
 72 governing the disclosure of health information.

73 c. If an individual has a court-appointed guardian or other
 74 legal representative authorized to make health care decisions on
 75 his or her behalf, any measures used to ensure that the guardian
 76 or legal representative is included in decisions involving the
 77 individual's health care and that medical decisions are in
 78 accordance with the individual's own expressed interests.

79 d. Any other aid or service that is used to provide
 80 information in a format that is readily understandable and
 81 accessible to individuals with cognitive, neurological,
 82 developmental, or intellectual disabilities.

83 (b) "Covered entity" means any of the following:

84 1. A licensed health care practitioner as defined in s.
 85 456.001.

86 2. A health care facility as defined in s. 408.07.

87 3. A residential facility licensed under chapter 393.

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88 4. An institutional medical unit in a correctional
 89 facility.

90 5. Any other entity responsible for potential recipients of
 91 an anatomical gift.

92 (c) "Disability" means, with respect to an individual, a
 93 physical or mental impairment that substantially limits one or
 94 more major life activities of the individual, a record of the
 95 individual having such impairment, or the individual being
 96 regarded as having such impairment.

97 (d) "Organ transplant" means the transplantation or
 98 transfusion of a part of a human body into the body of another
 99 individual for the purpose of treating or curing a medical
 100 condition.

101 (e) "Qualified individual" means an individual who has a
 102 disability and meets the eligibility requirements for the
 103 receipt of an anatomical gift, regardless of:

104 1. The support networks available to the individual;

105 2. The provision of auxiliary aids and services; or

106 3. Reasonable modifications to the policies or practices of
 107 a covered entity, including modifications to allow:

108 a. Communication with the persons responsible for
 109 supporting the individual with his or her postsurgical and
 110 posttransplant care, including medication; and

111 b. The consideration of support networks available to the
 112 individual, including family, friends, and home and community-
 113 based services funded through Medicare, the state's Medicaid
 114 managed medical assistance program, or another health plan in
 115 which the individual is enrolled or any program or source of
 116 funding available to the individual, in determining whether the

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individual is able to comply with posttransplant medical requirements.

(2) A covered entity may not do any of the following solely on the basis of an individual's disability:

(a) Consider a qualified individual ineligible to receive an anatomical gift or organ transplant.

(b) Deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and posttransplant treatment and services.

(c) Refuse to refer the individual to an organ procurement organization or a related specialist for the purpose of evaluation or receipt of an organ transplant.

(d) Refuse to place a qualified individual on an organ transplant waiting list.

(e) Place a qualified individual at a lower priority position on an organ transplant waiting list than the position at which the qualified individual would have been placed if not for the disability.

(3)(a) A covered entity may take an individual's disability into account if, following an individualized evaluation of him or her, a physician finds the individual's disability to be medically significant to the provision of the anatomical gift, but only to the extent that the covered entity is making treatment or coverage recommendations or decisions for the individual.

(b) If an individual has the necessary support system to assist him or her in complying with posttransplant medical requirements, a covered entity may not consider the individual's inability to independently comply with the posttransplant

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medical requirements to be medically significant for the purposes of paragraph (a).

(4) A covered entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to allow an individual with a disability access to services, including transplant-related counseling, information, coverage, or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services.

(5) A covered entity shall take such steps as may be necessary to ensure that an individual with a disability is not denied services, including transplant-related counseling, information, coverage, or treatment, due to the absence of auxiliary aids and services, unless the covered entity can demonstrate that taking the steps would fundamentally alter the nature of the services being offered or would result in an undue burden on the covered entity.

(6) If a covered entity violates this section, the qualified individual who is affected by the violation may bring an action in the appropriate circuit court for injunctive or other equitable relief.

(7) This section may not be construed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

Section 2. Section 627.64197, Florida Statutes, is created to read:

627.64197 Nondiscrimination of coverage for organ transplants.—A health insurance policy issued, delivered, or renewed on or after July 1, 2020, in this state by an insurer

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which provides coverage for organ transplants on an expense-incurred basis may not deny coverage for an organ transplant solely on the basis of an insured's disability. This section may not be construed to require such insurer to provide coverage for an organ transplant that is not medically necessary. For purposes of this section, the term "organ transplant" has the same meaning as in s. 765.523.

Section 3. Section 627.65736, Florida Statutes, is created to read:

627.65736 Nondiscrimination of coverage for organ transplants.—A group health insurance policy delivered, issued, or renewed on or after July 1, 2020, in this state by an insurer or nonprofit health care services plan which provides coverage for organ transplants on an expense-incurred basis may not deny coverage for an organ transplant solely on the basis of an insured's disability. This section may not be construed to require such insurer or nonprofit health care service plan to provide coverage for an organ transplant that is not medically necessary. For purposes of this section, the term "organ transplant" has the same meaning as in s. 765.523.

Section 4. Section 641.31075, Florida Statutes, is created to read:

641.31075 Nondiscrimination of coverage for organ transplants.—A health maintenance contract issued or renewed on or after July 1, 2020, in this state by a health maintenance organization which provides coverage for organ transplants may not deny coverage for an organ transplant solely on the basis of a subscriber's disability. This section may not be construed to require such health maintenance organization to provide coverage

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for an organ transplant that is not medically necessary. For purposes of this section, the term "organ transplant" has the same meaning as in s. 765.523.

Section 5. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2020

Meeting Date

1556

Bill Number (if applicable)

Topic Organ Transplants Nondiscrimination

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Menden Way

Phone 850 567 1202

Street

Tallahassee

City

FL

State

32309

Zip

Email watsonstrategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Renal 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)

2/11/2020

Meeting Date

1556

Bill Number (if applicable)

Topic Nondiscrimination in Organ Transplant

Amendment Barcode (if applicable)

Name Kirk Hall

Job Title CEO

Address 2898 Mahan Dr. Ste. 1
Street

Phone 850-921-0468

Tallahassee FL 32308
City State Zip

Email Kirk@arcflorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Arc 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

APPEARANCE RECORD

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

2-11-2020

Meeting Date

SB 1556

Bill Number (if applicable)

Topic Nondiscrimination in Organ Transplants

Amendment Barcode (if applicable)

Name Lynnette Mitchell

Job Title Educational Advocate

Address 1822 Sandford Road

Phone 863-812-1091

Street

Lakeland

City

FL

State

33801

Zip

Email Lcmitchell@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1618

INTRODUCER: Senator Diaz

SUBJECT: Construction Materials Mining Activities

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Palecki	Knudson	BI	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 1618 creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County. The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report, at minimum, the ground vibration, frequency, intensity, air blast, and time and date of the blast. The bill prohibits the seismologists from certain conflicts of interest or dishonest practices. The bill requires the State Fire Marshal to post the report on the Division's website and to adopt rules to implement and enforce the act.

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

The bill appropriates, for the fiscal year 2020-2021, \$600,000 in recurring funds and \$440,000 in nonrecurring funds from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

II. Present Situation:

State Fire Marshal

The Chief Financial Officer of Florida is designated as the State Fire Marshal.¹ The State Fire Marshal has the authority to set standards, limits, and regulations regarding the use of explosives for construction materials mining activities.² This authority includes, directly or indirectly, the operation, handling, licensure, or permitting of explosives, and setting standards or limits,

¹ Section 633.104, F.S.

² Section 552.30(1), F.S.

including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast, and time, date, occurrence, and notice restrictions.³

Construction Materials Mining Activities

It is common practice for mining companies to use explosives as they extract sand and limestone from Florida soil.⁴ These materials are used to make construction components such as aggregates, sand, cement, and roadbase materials.⁵ The use of explosives is governed by federal, state, and local government laws.⁶

At the federal level, Title 30 of the U.S. Code and its various implementing regulations establish basic safety, health, certification, reporting, and environmental requirements for the use of explosives in mining operations. At the state level, ch. 552, F.S., governs the requirements and enforcement for the manufacture, distribution, and use of explosives.

As of 2000, state law preempts local regulations imposing standards, limits, or other regulations regarding the use of explosives for construction materials mining activities.⁷ However, the State Fire Marshal may use his or her discretion to delegate the monitoring of and enforcement of regulations governing the use of explosives by construction materials mining activities, including the assessment and collection of reasonable fees, to the applicable municipality or county.⁸ This must be accomplished by a written agreement with the local government.⁹

Ground Vibration Limits

Pursuant to Florida law, the State Fire Marshal must establish statewide ground vibration limits for construction materials mining activities in conformance with federal limits.¹⁰ The legal limit in Florida is 0.5 inches per second peak particle velocity when using explosives within 2 miles of an urban development due to the potential damage to plaster-on-lath construction.¹¹

Permits

To use explosives, a company must have a permit issued by the Regulatory Licensing Section in the Division of State Fire Marshal (“Division”) under the Department of Financial Services (DFS).¹² All blasting activities must be monitored by a seismologist. There are restrictions on the use of explosives, including limiting activity to daylight hours between 8 a.m. and 5 p.m.,

³ *Id.*

⁴ DFS, Division of State Fire Marshal, *Mine Blasting Information*, https://www.myfloridacfo.com/Division/SFM/BFP/mine_blasting.htm (last visited Feb. 7, 2020).

⁵ Section 552.30(1), F.S.

⁶ Title 30, U.S.C.; s. 552.30(2), F.S.; Fla. Admin. Code R. 69A-2.024. For examples of local ordinances, see Miami-Dade County’s Code of Ordinances, §13-4; City of Miramar’s Code of Ordinances, §2-66.

⁷ Ch. 2000-266, Laws of Fla.

⁸ Section 552.30(2), F.S.

⁹ Fla. Admin. Code R. 69A-2.024(9)(a).

¹⁰ *Id.*; see United States Bureau of Mines, *Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria* (Figure B-1), available at <https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>.

¹¹ Fla. Admin. Code R. 69A-2.024(15).

¹² Fla. Admin. Code R. 69A-2.024(3).

Monday through Friday.¹³ Blasting is prohibited on weekends and official holidays unless consent is granted by the State Fire Marshal.¹⁴

A person who is permitted to engage in construction materials mining activity must submit written notification to the county or municipality where the activity is to be conducted after the issuance of a permit and at least 20 days prior to a blast. Such person must also submit subsequent notices following permit renewals and revisions.¹⁵

Reporting

Pursuant to DFS rules, each person engaged in construction materials mining activity shall submit to the State Fire Marshal, upon request, the results of ground vibration and air blast measurements, along with specific information including the date and time of the blast and amount of explosives.¹⁶

Seismologists

Seismology is the study of earthquakes and related phenomena. A seismologist studies the Earth's structure and other geological events for commercial and other purposes.¹⁷ Seismologists can conduct research, record and analyze data, or apply their knowledge to help detect and monitor explosions.

Ground vibration measurements made pursuant to DFS rule must be made by a seismologist that:

- Has 5 years of continuous experience measuring and evaluating levels of ground vibration and air overpressure produced by blasting;
- Has demonstrable expertise in the use, location, and operation of seismographic equipment and analysis of seismographic data;
- Has prior experience in monitoring side effects produced by blasting used in construction materials mining activity;
- Has not engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining; and
- Is not an employee of the mining permit holder, blaster, or user.¹⁸

A seismologist may not be an employee of a mining permit holder, blaster, or user, or another entity regulated under ch. 552, F.S., to be considered independent.¹⁹ In addition, the seismologist may not have been an expert witness, investigator, or consultant for the mining permit holder, blaster, or user or for an aggrieved party in a legal action where the mining permit holder, blaster, or user is alleged to have caused damages.²⁰

¹³ Fla. Admin. Code R. 69A-2.024(6).

¹⁴ *Id.*

¹⁵ Fla. Admin. Code R. 69A-2.024(8).

¹⁶ For full list of requirements, see Fla. Admin. Code R. 69A-2.024(7).

¹⁷ U.S. Bureau of Labor Statistics, *You're a what? Seismologist*, Jan. 2015, <https://www.bls.gov/careeroutlook/2015/youre-a-what/seismologist.htm> (last visited Feb. 7, 2020).

¹⁸ Fla. Admin. Code R. 69A-2.024(4).

¹⁹ Fla. Admin. Code R. 69A-2.024(2).

²⁰ *Id.*

Complaints

The State Fire Marshal is required to investigate any alleged violation of ch. 552, F.S.²¹ A person who believes that a mining operation is in violation of state law or DFS rules, or that the operation's use of explosives is unsafe or causes damage to the property of others, may file a complaint with the Division.²² The Division suggests including the following information in a complaint:

- The date and time of the blast;
- Photographs;
- Written statements from witnesses;
- Reports by independent inspectors or experts who have inspected the affected property;
- Samples of damaged material; and
- Other material or information that will support the facts leading to the complaint.²³

If the Division determines, through investigation, that the complaint is justified and a violation occurred, it has the authority to impose administrative penalties against a mining company that exceeds established blasting limits or violates other laws or rules.²⁴ These penalties range from a monetary fine to the suspension or revocation of the company's permit.²⁵

Miami-Dade Blasting Concerns

The Lake Belt Region in Miami-Dade County provides over half of the limestone that Florida requires, which can only be extracted by blasting.²⁶ Several communities within Miami-Dade County have concerns about the blasting activities in their area and the effects on their residences. Miami-Dade County enacted an ordinance that requires persons who use explosives and blasting agents, generally, to obtain a county occupational license and/or user permit to perform blasting in the incorporated and unincorporated areas of the county in addition to operating pursuant to statutory requirements.²⁷

With regard to regulation of blasting activity, the Town of Miami Lakes has made unsuccessful attempts to limit blasting.²⁸ The City of Miramar banned all blasting in the city in 1999, but the city government reports that the effects of blasting performed outside of city limits are still felt by residents within the city.²⁹ The City of Miramar also created an advisory committee in 2017 as an information source and to facilitate communication between the city and its residents who

²¹ Fla. Admin. Code R. 69A-2.024(11).

²² DFS, Division of State Fire Marshal, *Blasting in Florida, A guide to filing complaints*, available at https://www.myfloridacfo.com/Division/SFM/BFP/Documents/Blasting_in_Florida_brochure.pdf.

²³ *Id.*

²⁴ Sections 552.151, 552.161, and 552.171, F.S.; Fla. Admin. Code R. 69A-2.024(11).

²⁵ *Id.*

²⁶ DEP, *Limestone, Shell, Dolomite*, <https://floridadep.gov/water/mining-mitigation/content/limestone-shell-dolomite> (last visited Feb. 7, 2020); see also South Florida Water Management District, *Lake Belt Mitigation Committee*, <https://www.sfwmd.gov/our-work/lake-belt-committee> (last visited Feb. 7, 2020).

²⁷ Miami-Dade County's Code of Ordinances, s. 13-4.

²⁸ Town of Miami Lakes, *Blasting Concerns*, https://www.miamilakes-fl.gov/index.php?option=com_content&view=article&id=1482&Itemid=866 (last visited Feb. 7, 2020).

²⁹ City of Miramar, *Blasting Concerns*, <https://www.miramarfl.gov/388/Blasting-Concerns> (last visited Feb. 7, 2020).

are impacted by mining.³⁰ The City of Doral monitors blasting activity and daily blasting records are kept by the quarries or an independent seismologist.³¹

2018 Mine Blasting Study

In 2017, the Florida Legislature appropriated funds to DFS to allow it to contract for a study to review whether the established statewide ground vibrations limits for construction material mining activities were still appropriate and to review any legitimate claims for damages caused by such mining activities. The study was required to include a review of measured amplitudes and frequencies, structure responses, theoretical analyses of material strengths and strains, and assessments of home damages.³² The SFM's selected vendor, RESPEC, Inc., delivered its final study to DFS at the end of July 2018.³³

The study concluded that limiting vibrations to 0.5 inches per second was overly restrictive and suggested changing the ruling to address plaster-on-lath and drywall construction. The study also concluded that the 2-mile urban development distance requirement from blasting had no scientific justification and recommended eliminating it or replacing it with a requirement with scientific support. Since the study, there have not been any revisions to state law or DFS rule.

III. Effect of Proposed Changes:

Legislative Findings

The bill revises s. 552.30, F.S. The bill provides legislative findings that:

- Construction materials mining activities require the use of explosives to fracture the material before excavation;
- The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site;
- It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the blasts do not exceed physical ground vibration and air blast limits; and
- More permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

Monitoring and Reporting Pilot Program

The bill creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services (DFS) for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

³⁰ City of Miramar's Code of Ordinances, s. 2-66.

³¹ City of Doral, *Blasting/Mining Information*, <https://www.cityofdoral.com/residents/blasting-mining-information/> (last visited Feb. 7, 2020).

³² Section 552.30(3), F.S.

³³ Respec, *Construction Materials Mining Activities Consultation and Study Preparation Services Final Report*, July 2018, available at <https://www.myfloridacfo.com/Division/SFM/BFP/documents/MineBlastingStudy.pdf>.

The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities in the county, including, at minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal must post the reports on the Division's website.

The bill prohibits a seismologist that is hired or contracted by the state to conduct the monitoring and reporting required from:

- Being employed by or under contract with a person who engages in or contracts for construction materials mining activities; or
- Engaging in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

Notice Requirements

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

Rulemaking

Requires the State Fire Marshal to adopt rules to implement and enforce the bill.

Appropriation

The bill appropriates, for the fiscal year 2020-2021, the recurring sum of \$600,000 and the nonrecurring sum of \$440,000 from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

Effective Date

This bill provides an effective date of October 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:

None.

C. Government Sector Impact:

There will be a negative fiscal impact to the Division to create the monitoring and reporting pilot program, hire or contract with seismologists, and adopt rules. However, an appropriation has been provided under the bill so the impact may be offset if it covers the costs incurred by the Division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 552.30 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 Diaz

36-01876A-20

20201618__

A bill to be entitled

An act relating to construction materials mining activities; amending s. 552.30, F.S.; providing legislative findings; creating a pilot program within the Division of State Fire Marshal to monitor and report on the use of explosives in construction materials mining activities in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts occurring in connection with construction materials mining activities in Miami-Dade County and to post the reports of the seismologists on the division's website; providing requirements for such seismologists; requiring a person who engages in construction materials mining activities in Miami-Dade County to submit certain written notice relating to the use of an explosive to the State Fire Marshal; requiring the State Fire Marshal to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 552.30, Florida Statutes, is amended to read:

552.30 Construction materials mining activities.—

(1) Notwithstanding the provisions of s. 552.25, the State Fire Marshal shall have the sole and exclusive authority to adopt ~~promulgate~~ standards, limits, and regulations regarding

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

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the use of explosives used for in conjunction with construction materials mining activities. Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, the term "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

(2) The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities.

(3) The State Fire Marshal is directed to conduct or contract for a study to review whether the established statewide ground vibration limits for construction materials mining activities are still appropriate and to review any legitimate

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claims paid for damages caused by such mining activities. The study must include a review of measured vibration amplitudes and frequencies, structure responses, theoretical analyses of material strength and strains, and assessments of home damages.

(a) The study shall be funded using the specified portion of revenues received from the water treatment plant upgrade fee pursuant to s. 373.41492.

(b) The State Fire Marshal shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016, which contains the findings of the study and any recommendations.

(4)(a) The Legislature finds that construction materials mining activities require the use of explosives to fracture the material before excavation. The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site. It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the blasts do not exceed physical ground vibration and air blast limits. The Legislature further finds that more permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

(b) A monitoring and reporting pilot program for the use of explosives is created within the Division of the State Fire Marshal to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

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(c) The State Fire Marshal shall hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County, including, at a minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal shall post the reports on the division's website to be available to the public.

(d) A seismologist hired or contracted by the State Fire Marshal as required by this subsection may not:

1. Be an employee of or under contract with a person who engages in or contracts for construction materials mining activities.

2. Have engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

(e) A person who engages in construction materials mining activities shall provide written notice to the State Fire Marshal of the use of an explosive for construction materials mining activities in Miami-Dade County before the detonation of the explosive.

(f) The State Fire Marshal shall adopt rules to implement and enforce this subsection.

Section 2. For fiscal year 2020-2021, the recurring sum of \$600,000 and the nonrecurring sum of \$440,000 are appropriated from the General Revenue Fund to the Division of State Fire Marshal within the Department of Financial Services for the purpose of implementing the monitoring and reporting pilot program for the use of explosives in Miami-Dade County pursuant

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117 to s. 552.30(4), Florida Statutes.

118 Section 3. This act shall take effect October 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2020

Meeting Date

SB 1618

Bill Number (if applicable)

Topic Construction Materials/Moving Activities

Amendment Barcode (if applicable)

Name Edward G. Labrador

Job Title Legislative Counsel

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Bill 4131K
2-9-20

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/20

Meeting Date

1618

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing SIERRA CLUB 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 1626

INTRODUCER: Senator Flores

SUBJECT: Price Transparency in Health Care Services

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			HP	
3.			RC	

I. Summary:

SB 1626 provides that a contract between an insurer or health maintenance organization (HMO) and a health care provider may not limit the ability of the health care provider to disclose whether the cost-sharing obligation of an insured or subscriber exceeds the retail price of a covered service or to disclose the availability of a more affordable service. Further, the bill provides that an insurer or HMO may not require an insured or subscriber to pay an amount for covered service that exceeds the cash price of the service in the absence or coverage through a policy or contract of health insurer or HMO.

II. Present Situation:

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027.¹ 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.

Federal law prescribes maximum out-of-pocket limits for cost sharing by insureds or subscribers who purchase qualified health plans.² The minimum annual deductible is the amount that an individual must pay for medical expenses before the plan will pay any medical costs. The maximum out of pocket cost is the total amount (deductibles, copayments, and coinsurance) an individual must pay for covered services during a plan year. A high-deductible health plan HDHP has a higher annual deductible than typical health plans offered by insurers or HMOs, and

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 Feb. 2, 2020).

² For the 2020 plan year, the out-of-pocket limit for a Marketplace plan or qualified health plan is \$8,200 for an individual plan and \$16,400 for a family plan. See Health.gov, Glossary, <https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/> (last viewed Dec. 1, 2019).

a maximum limit on the sum of the annual deductible and out-of-pocket medical expenses that an insured or subscriber must pay for covered expenses.³

From 2007 through 2017, enrollment in HDHPs with a health savings account (HSA) increased from 4.2 percent to 18.9 percent (and without an HSA it increased from 10.6 percent to 24.5 percent) among adults aged 18–64 with employment-based coverage, while enrollment in traditional plans decreased.⁴ Enrollment in HDHPs reached 47 percent of the commercially insured, pre-Medicare population in 2018, representing a 3.3-percentage-point increase from 2017.⁵

According to the Kaiser Family Foundation, the average deductible for single coverage was \$1,655 in 2019 for employer-based plans.⁶ The average deductible for HDHPs was \$2,486 for a single plan. Further, the Kaiser Family Foundation said the average HDHP deductible for family coverage was about \$3,700 for employer-based plans in 2019.

Regulation of Health Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) is responsible for the regulation of health insurers, health maintenance organizations, and other risk-bearing entities.⁷ To operate in Florida, an insurer or HMO must obtain a certificate of authority from the OIR.⁸ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Prior to receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.⁹ As part of the certification process used by the AHCA, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.¹⁰

Section 627.6385, F.S., requires health insurers writing individual policies to make available on their website a method for policyholders to estimate their copayments, deductibles, and other

³ For 2020, a high deductible health plan (HDHP) is defined as any plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family. An HDHP's total yearly out-of-pocket expenses (including deductibles, copayments, and coinsurance) may not exceed \$6,900 for an individual or \$13,800 for a family. See Health.gov, *High Deductible Plan*, <https://www.healthcare.gov/high-deductible-health-plan/> (last viewed Dec. 1, 2019).

⁴ Cohen RA, Zammitti EP. High-deductible health plan enrollment among adults aged 18–64 with employment-based insurance coverage. NCHS Data Brief, no 317. Hyattsville, MD: National Center for Health Statistics. 2018. at <https://www.cdc.gov/nchs/products/databriefs/db317.htm> (last viewed Jan. 30, 2020).

⁵ Daly, R., High-Deductible Plans Surge: CDC (Aug. 29, 2018) at <https://www.hfma.org/topics/news/2018/08/61762.html> (last viewed Jan. 20, 2020).

⁶ Kaiser Family Foundation, 2019 Employer Health Benefits Survey (Sept. 25, 2019) at <https://www.kff.org/report-section/ehbs-2019-section-8-high-deductible-health-plans-with-savings-option/> (last viewed Jan. 20, 2019).

⁷ Section 20.121, F.S. The Financial Services Commission, composed of the Governor, Attorney General, Commissioner of Agriculture, and the Chief Financial Officer, are the agency head for purposes of rulemaking.

⁸ Section 641.21(1), F.S.

⁹ Sections 624.401 and 641.49, F.S.

¹⁰ Section 641.495, F.S.

cost-sharing responsibilities for health care services and procedures.¹¹ Likewise, federal law¹² requires insurance policies and contracts to provide price and coverage information to enrollees, including cost sharing and payments with respect to coverage.¹³

III. Effect of Proposed Changes:

Section 1 creates s. 627.4303, F.S., to prohibit certain provisions in contracts between health insurers and health care providers. A contract between a health insurer and a health care provider may not limit a provider's ability to disclose whether a patient's cost-sharing obligation exceeds the retail price for a covered service or to disclose the availability of a more affordable service. Further, a health insurer may not require an insured to pay an amount for a covered service that exceeds the retail price of the service in the absence of health insurance.

As used in this section, the term, "health insurer," means a health insurer issuing major medical coverage through an individual or group policy or a health maintenance organization issuing major medical coverage through an individual or group contract.

Section 2 provides this bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹¹ The Agency for Healthcare Administration, available at <http://www.floridahealthfinder.gov/index.html> (last viewed March 2, 2019).

¹² Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; and amended by the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010.

¹³ 45 CFR Part 147 and Section 2715A Public Health Service Act.

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

None.

B. Private Sector Impact:

For individuals with high deductible health plans, the option of paying a lower cash price may prevent delays in obtaining necessary health care services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

It appears that the intent of the bill is to apply the requirements to individual, and small and large group policies, as well as HMO contracts. However, the bill does not amend s. 627.6699, F.S., relating to small employer group plans. Amending ch. 641, F.S., would provide greater clarity regarding the application of the HMO requirements.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.4303 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.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 627.4303, Florida Statutes, is created
to read:

627.4303 Price transparency in health care services.-

(1) As used in this section, the term "health insurer"
means a health insurer issuing major medical coverage through an
individual or group policy.



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(2) In its contract with a health care provider, a health insurer may not limit the health care provider's ability to disclose whether a patient's cost-sharing obligation exceeds the cash price for a covered service in the absence of health insurance coverage or the availability of a more affordable service.

(3) A health insurer may not require an insured to make a payment for a covered service in an amount that exceeds the cash price of the service in the absence of health insurance coverage.

Section 2. Paragraph (g) is added to subsection (5) of section 627.6699, Florida Statutes, to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(g) A health benefit plan covering small employers must comply with s. 627.4303.

Section 3. Section 641.514, Florida Statutes, is created to read:

641.514 Price transparency in health care services.—

(1) This section applies to a health maintenance organization issuing major medical coverage through an individual or a group contract.

(2) In its contract with a health care provider, a health maintenance organization may not limit the health care provider's ability to disclose whether a patient's cost-sharing obligation exceeds the cash price for a covered service in the absence of coverage through the health maintenance organization or the availability of a more affordable service.

(3) A health maintenance organization may not require a



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subscriber to make a payment for a covered service in an amount
that exceeds the cash price of the service in the absence of
coverage through the health maintenance organization.

Section 4. This act shall take effect July 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 health care services pricing;
creating s. 627.4303, F.S.; defining the term "health
insurer"; prohibiting health insurers, in their
contracts with health care providers, from limiting
the provider's ability to disclose certain information
to patients; prohibiting a health insurer from
requiring an insured to make a payment for a covered
service in an amount that exceeds a certain price;
amending s. 627.6699, F.S.; requiring health benefit
plans covering small employers to comply with such
restrictions; creating s. 641.514, F.S.; providing
applicability; prohibiting health maintenance
organizations, in their contracts with health care
providers, from limiting the provider's ability to
disclose certain information to patients; prohibiting
a health maintenance organization from requiring a
subscriber to make a payment for a covered service in
an amount that exceeds a certain price; providing an
effective date.

By Senator Flores

39-01740-20

20201626__

1 A bill to be entitled
 2 An act relating to price transparency in health care
 3 services; creating s. 627.4303, F.S.; defining the
 4 term "health insurer"; prohibiting a health insurer
 5 from limiting a contracted health care provider's
 6 ability to disclose certain pricing information to a
 7 patient; prohibiting a health insurer from requiring
 8 an insured to pay an amount for covered services which
 9 exceeds a certain price; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Section 627.4303, Florida Statutes, is created
 14 to read:
 15 627.4303 Price transparency in health care services.—
 16 (1) As used in this section, the term "health insurer"
 17 means a health insurer issuing major medical coverage through an
 18 individual or group policy or a health maintenance organization
 19 issuing major medical coverage through an individual or group
 20 contract.
 21 (2) In its contract with a health care provider, a health
 22 insurer may not limit the health care provider's ability to
 23 disclose whether a patient's cost-sharing obligation exceeds the
 24 cash price for a covered service in the absence of health
 25 insurance coverage or the availability of a more affordable
 26 service.
 27 (3) A health insurer may not require an insured to make a
 28 payment for a covered service in an amount that exceeds the cash
 29 price of the service in the absence of health insurance

Page 1 of 2

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

39-01740-20

20201626__

30 coverage.
 31 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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

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 1828

INTRODUCER: Senator Broxson

SUBJECT: Litigation Financing Consumer Protection

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Pre-meeting
2. _____	_____	JU	_____
3. _____	_____	RC	_____

I. Summary:

SB 1828 creates the Litigation Financing Consumer Protection Act, which establishes oversight and consumer protections relating to such transactions within the Office of Financial Regulation (OFR). In such a transaction, a third party (financier) provides a nonrecourse cash advance to a consumer in exchange for an assignment of the consumer's contingent right to receive a portion of the potential proceeds of his or her civil action or claim. If the consumer loses the lawsuit, the financing firm generally does not receive a payment. For individuals involved in personal injury litigation, the cash advance may be used to pay medical expenses or mortgages, or other expenses.

The bill caps the interest rate on such litigation financing contracts (contracts) at 30 percent of the funded amount per year. A financier may impose a fee of up to \$500 with regard to a single civil claim, regardless of the number of financing contracts the consumer enters into with the litigation financier respecting the civil action or claim.

The bill requires such entities to register with OFR. Further, the bill requires the specified terms, conditions, and disclosures for a contract, which includes a right of rescission of the contract by the consumer within 5 business days after execution of the contract or receipt of the funds. This provision allows a consumer to cancel the contract without penalty, interest, charges, fees, or other obligation.

The bill prohibits a litigation financier from engaging in the following activities:

- Paying or offering to pay or accepting a commission, referral fee, or other consideration to any person for referring a consumer to a litigation financier.
- Advertising false or misleading information about its products or services.
- Referring a consumer to a specific attorney, law firm, or health care practitioner with exception.

- Failing to provide a copy of all complete litigation financing contracts to the consumer in a timely manner.
- Attempting to effect arbitration or waiver of a consumer's right to a jury trial.
- Offering or providing legal advice to the consumer regarding the contract or the subject civil action or claim.
- Reporting to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the civil action or claim to repay the litigation financier.
- Entering into a contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract.
- Knowingly entering into a litigation-financing contract with a consumer, who already has a contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer provides written consent for such an arrangement.

The provisions of the bill would not apply to commercial tort claims, workers' compensation claims, or lending or financing arrangements between an attorney or a law firm and lending institution.

The bill requires disclosure of such contracts in a civil action and protects communications between a consumer's attorney and a litigation financier about a litigation-financing contract.

The fiscal impact on the Office of Financial Regulation is indeterminate at this time.

II. Present Situation:

Third party litigation financing typically refers to financing provided by entities other than the plaintiffs, defendants, or their lawyers. Litigation financing involves a nonrecourse loan or cash advance made to an individual, who is represented by an attorney, in personal injury lawsuits.¹ The financing company (financier) contracts with the consumer, who agrees to repay the company the amount financed plus any financing fees or charges out of proceeds of the litigation at the conclusion of the action.

A funding is typically 5-10 percent of the expected value of a claim. The financier provides the financing agreement to the consumer and his or her attorney for review and approval. Both the consumer and the attorney must sign the agreement.² After providing the final approval, the financier disburses the funds to the consumer.

The typical amount of such agreements varies; one source noted that it is around \$2,000.³ Another source noted that the average size of these consumer transactions ranges from \$2,500 to \$7,500, with monthly financing fees that can be considerably higher than the monthly interest rates on credit card balances or consumer bank loans.⁴ Further, the study suggest that many

¹ Litigation financing can involve commercial or consumer financing. See https://www.namic.org/pdf/publicpolicy/190128_LitigationLendingUpdate.pdf.

² Schuller, Eric, *Consumer Legal Funding 101*, on file with Banking and Insurance Committee.

³ *Id.*

⁴ Zakara, Laura, Overview of Alternative Litigation Financing in the United States, Research Brief, RAND Institute of Civil Justice (2010) at www.rand.org (last viewed Jan. 2, 2020).

consumers who accept this type of funding have exhausted more common sources of financing and are attracted to it because they need to meet pressing financial obligations or because a non-recourse loan may guarantee them some recovery from their lawsuits.⁵

In some states, concerns have been raised that some cash advance arrangements may exploit consumers due to the complex nature of the transaction and potentially significant financing fees that may substantially reduce the proceeds from the litigation.⁶ According to one consumer advocate,

The designation as a nonrecourse loan should not alone allow the lender to evade the protections afforded borrowers of loans. Many loans that are collateralized are nonrecourse-certain car title and real property loans-but still are deemed loans providing the consumer protections such as usury limits. The nonrecourse nature of consumer litigation loans is the argument used to allow for a predatory rate of interest. Similar to payday loans, however, the data available on performance of these loans shows the default rate to be low. These loans are closely underwritten to protect the lender.⁷

Advocates of litigation financing contend that such financing levels the playing field and reduces the risks for firms and their clients to settle for less than what their cases are valued.⁸ Critics of litigation financing contend that the financing disrupts the legal process by involving outside parties that can potentially exert control, encourages the filing of frivolous claims, and gives plaintiff's attorney an unfair advantage in settlement negotiations.⁹

Discovery Issues Related to Consumer Finance Litigation

Prior to executing a litigation finance contract for a cash finance, the financing entity and the consumer seeking the funds must discuss the potential transactions, which involves due diligence and an analysis of the merits of the litigation to be funded. These communications may involve a litigant's attorney. Based on a review of a case, a financier determines the potential value of the claim with the consumer's attorney. A financier and a litigant may enter nondisclosure or confidentiality agreements, and the opposing party may not know about the role of the financier.¹⁰ There is concern that these communications and materials may be subject to discovery.

⁵ *Id.*

⁶ *Personal injury cash advance firms say yes to reforms*, (Feb. 28, 2005), Claims Journal, at <https://www.claimsjournal.com/news/east/2005/02/28/51995.htm> (last viewed Jan. 20, 2020).

⁷ Florida Alliance for Consumer Protection, *White Paper: Litigation Financing Consumer Protection*, on file with Banking and Insurance Committee.

⁸ Egan, Mary Ellen, *Other People's Money: Rise of litigation finance companies raises legal and ethical concerns* (Dec. 1, 2018) ABA Journal (Dec. 2018) at http://www.abajournal.com/magazine/article/litigation_finance_legal_ethical_concerns (last viewed Jan. 20, 2020).

⁹ *Id.*

¹⁰ Gersham, Jacob, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, The Wall Street Journal, Mar. 21, 2018.

Oversight of Litigation Financing in Florida

In Florida, interest rates and usury are governed under ch. 687, F.S., generally.¹¹ Any charges, including interest, in excess of the combined total of all charges of a consumer loan exceed the statutory limits under the Florida Consumer Finance Act, constitute a violation of ch. 687, F.S.¹² In a 2005 case, the Court noted that there are no laws regulating such agreements in Florida and this method of funding may warrant regulation in Florida.¹³ In another case, a Florida resident sought relief under Florida's Unfair Trade Practices Act,¹⁴ Florida's Consumer Finance Act,¹⁵ and Florida's Interest, Usury, and Lending Practices Act.¹⁶ The funding agreement in this complaint alleged that the financier charged him 51 percent interest, a \$600 processing fee, and a \$345 origination fee, which was charged every 6 months.¹⁷

In a 2002 opinion, the Florida Bar provided the following comments regarding litigation financing:

The Florida Bar discourages the use of nonrecourse advance funding companies. The terms of the funding agreements offered to clients may not serve the client's best interests in many instances. The Committee continues to have concerns...of the problems that can arise when a client obtains financial assistance from a party, such as the client's lack of incentive to cooperate.¹⁸

Oversight of Consumer Litigation Financing Transactions in Other States

Registration or Licensure; Interest Rate Caps

Committee staff conducted a limited survey relating to the state regulation of litigation financing. Eight states require registration or licensure of these entities.¹⁹ Some states, such as Ohio, do not require registration, and instead mandate terms and disclosures in the contract.²⁰

Five states have enacted laws relating to interest rates or fees.²¹ For example, Nevada licenses and regulates consumer litigation financing and requires that the funded amount plus charges and

¹¹In Florida, a usurious contract is a loan with an interest rate higher than 18 percent per year for a loan up to \$500,000 or a loan exceeding \$500,000 with an interest rate greater than 25 percent, with some exceptions, as provided in ss. 687.071 and 687.02, F.S.

¹² Section 516.031(1) and (3), F.S. The maximum interest rate is 30 percent per annum, computed on the first \$3,000 of the principal amount; 24 percent per annum on that part of the principal amount exceeding \$3,000 and up to \$4,000; and 18 percent per annum on that part of the principal amount exceeding \$4,000 and up to \$25,000.

¹³ *Fausone v. U.S. Claims, Inc.*, 915 So.2d 626 (2005).

¹⁴ Part II, ch. 501, F.S.

¹⁵ Ch. 516, F.S.

¹⁶ Ch. 687, F.S.

¹⁷ *Taylor v. Certified Legal Funding, Inc.* 2018 WL 3860243 (M.D. FL 2018). On October 30, 2018, a stipulated final judgment was entered in favor of Certified Legal Funding, Inc. against Ronald Taylor.

¹⁸ 00-3 Fla. Ethics Op. Fla. Bar (Mar. 15, 2002) at <https://www.floridabar.org/etopinions/etopinion-00-3/> (viewed Jan. 20, 2020).

¹⁹ Indiana (IC 24-12), Maine (ME Rev. Stat. Ann. 9-A, s. 12), Nebraska (Neb. Rev. St. s. 25-3301, et. seq.), Nevada (NRS 604C.320), Oklahoma (Okla. Stat. s. 14A-3-801(6)), Tennessee (Tenn. Code Ann. s. 47-16-101, et. seq.), Vermont (8 V.S.A. s. 2252), and West Virginia.

²⁰ Ohio Rev. Code s. 1349.55(A)(1).

²¹ Arkansas (A.C.A. s. 4-57-109), Indiana (Ind. Code 24-4.5-3-110), Nevada (NRS 604C.310), Tennessee, and West Virginia.

fees of each transaction must not exceed a rate of 40 percent of the funded amount annually.²² Tennessee authorizes two types of fees for such loans. A financier may impose a fee of up to 10 percent of the original amount provided to the consumer.²³ In addition, a financier may impose a maximum annual fee of \$360 per year for each \$1,000 of the unpaid principal of the funds advanced to the consumer for up to a maximum of 3 years.²⁴ West Virginia caps interest on such transactions at 18 percent.²⁵ Indiana authorizes a litigation financier to impose an annual fee of 36 percent of the funded amount and an annual servicing charge of up to 7 percent of the funded amount, as well as a onetime document charge.²⁶

In Colorado, the Supreme Court held that a litigation finance company that agrees to advance money to tort plaintiffs in exchange for future litigation proceeds is making a loan subject to regulation under Colorado's Uniform Consumer Credit Code even if the plaintiff does not have an obligation to repay any deficiency if the litigation proceeds are ultimately less than the amount due.²⁷ In this particular case, the Court noted that the amount of the loan is usually less than \$1,500, and the interest rates on some of these loans approached triple digits. One sample agreement provided \$1,234 to the consumer, with a payoff of \$1,851 after 6 months and \$4,010.50 after 2 years, for a 60 percent annual return.²⁸ In South Carolina, the Department of Consumer Affairs ruled that entities that fund litigation in exchange for a portion of the recovery are providing loans that must comply with state laws governing lending.²⁹

Communication Privileges

Vermont³⁰ and Indiana³¹ have enacted legislation that provides the communication between a consumer's attorney and the financing company may not be discoverable or limit the scope of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

²² State of Nevada, Department of Business and Industry Financial Institutions Division, *FID Guidance S.B. 432, Consumer Litigation Funding* (Sep. 30, 2019) at [http://fid.nv.gov/uploadedFiles/fid.nv.gov/content/Licensing/Installment_Loan_Company\(1\)/SB432_Consumer%20Litigation%20Funding%20Guidance%2009.30.2019.pdf](http://fid.nv.gov/uploadedFiles/fid.nv.gov/content/Licensing/Installment_Loan_Company(1)/SB432_Consumer%20Litigation%20Funding%20Guidance%2009.30.2019.pdf) (viewed Jan. 20, 2020).

²³ T.C.A. s. 47-16-110(b).

²⁴ T.C.A. s. 47-16-110(c) (2014).

²⁵ W. Va. Code s. 46A-6N-9.

²⁶ IC 24-4.5-3-202 and IC 24-12.

²⁷ *Oasis Legal. Finance Group v. Coffman*, (Nov. 16, 2015), 2015 CO 63, at <https://www.scribd.com/document/289971303/Lawcash-Colo-Opinion> (last viewed Jan. 20, 2020).

²⁸ Fisher, Daniel, *Lawsuit Finance Contracts are Loans Colorado Supreme Court Rules*, *Forbes*, Nov. 165, 2015, at <https://www.forbes.com/sites/danielfisher/2015/11/16/lawsuit-finance-contracts-are-loans-colorado-supreme-court-rules/#52fab63b182a> (last viewed Jan. 20, 2020).

²⁹ O'Brien, John, *South Carolina agency rules lawsuit loans subject to state law*, (Nov. 17, 2014) at <https://legalnewsline.com/stories/510628059-south-carolina-agency-rules-lawsuit-loans-are-traditional-loans-subject-to-state-law> (viewed Jan. 20, 2020).

³⁰ 8 V.S.A. s. 2255.

³¹ IC 24-12.

Disclosure of Financing Agreements

West Virginia³² and Wisconsin³³ require disclosure of litigation financing contracts in civil actions or claims.

Office of Financial Regulation

The Office of Financial Regulation (OFR) is established under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.³⁴ Commission members serve as the agency head of the Financial Services Commission.³⁵ The OFR regulates state-chartered financial institutions, finance companies, and the securities industry.³⁶

Department of Legal Affairs

The Consumer Protection Division of the Department of Legal Affairs³⁷ is the civil enforcement authority for violations of the Florida Deceptive and Unfair Trade Practices Act.³⁸ The Division protects consumers by pursuing individuals and entities that engage in unfair methods of competition or unconscionable, deceptive and unfair practices in trade or commerce. The Attorney General also collaborates with other state attorneys general as well as state and federal agencies in joint enforcement efforts.

The Florida Deceptive and Unfair Trade Practices Act, provides remedies and penalties for unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.³⁹ Violations of this part include any violation of this act and rules adopted pursuant to the Federal Trade Commission Act⁴⁰ (FTC Act), which would include the standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts. Willful violations of the act occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule. Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,⁴¹ an action to recover actual damages caused by the violation, as well as the imposition of a civil penalty of generally not more than \$10,000 for each willful violation. Actions can be brought by a state attorney, the Department of Legal Affairs,⁴² or by a consumer.⁴³

³² Section 46A-6N.

³³ Wisc. Stat. s. 804.01(2)(bg).

³⁴ Section 20.121(3), F.S.

³⁵ *Id.*

³⁶ Section 20.121(3)(a)2., F.S.

³⁷ Florida Office of the Attorney General, Division of Consumer Protection of the Department of Legal Affairs at <http://www.myfloridalegal.com/pages.nsf/Main/18A7753257FE439085256CC9004EC4F7> (last viewed Feb. 5, 2020).

³⁸ Part II of ch. 501, F.S.

³⁹ Section 501.204, F.S.

⁴⁰ 15 U.S.C. ss. 41-58.

⁴¹ Section 501.207, F.S.

⁴² Section 501.203(2), F.S.

⁴³ Section 501.211(1), F.S.

Mandatory Disclosure of Certain Insurance Information in Florida

Section 627.4137, F.S., requires a liability insurer⁴⁴ to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- 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; and
- A copy of the policy.

The required statement must be under oath by a corporate officer or the insurer's claims manager or superintendent. 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. A review of insurance information required under s. 627.4137, F.S., allows a claimant to evaluate the damages that could be paid by the tortfeasor. Florida courts have explained that the purpose of the disclosure requirements in s. 627.4137, F.S., is to allow a claimant to make an informed decision whether to settle a case.⁴⁵

III. Effect of Proposed Changes:

Section 1 creates part XIII of ch. 559, F.S., and provides that it may be cited as the "Litigation Financing Consumer Protection Act."

Section 2 creates s. 559.952, F.S., and provides definitions for the following terms: consumer, enforcing authority, funded amount, health care practitioner, interest, litigation financier, litigation financing, net proceeds, and office. The term, "litigation financing," does not include:

- Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct provides such services.
- A commercial tort claim as defined in s. 679.1021(1)(l), F.S.
- A claim under the Workers' Compensation Law.
- A consumer finance loan, as defined in s. 516.01, F.S.

Section 3 creates s. 559.953, F.S., to establish registration requirements for litigation financiers under the Office of Financial Regulation (OFR). Provides the OFR with authority to revoke a registration if certain conditions are met.

Section 4 creates s. 559.954, F.S., to establish mandatory terms within a litigation-financing contract. These terms include a right of rescission, an acknowledgment regarding whether the

⁴⁴ Section 627.4137, F.S., does not apply to personal injury protection insurance. See *Progressive American Ins. Co. v. Rural/Metro Corp. of Florida*, 994 So.2d 1202 (Fla. 5th DCA 2008).

⁴⁵ See *Cheverie v. Geisser*, 783 So.2d 1115 (Fla. 4th DCA 2001)(rejecting the argument that compliance with s. 627.4137, F.S., is a technicality and explaining the Legislature recognized the importance to claimants of access to the information required by statute in making settlement decisions); *Gira v. Wolfe*, 115 So.3d 414, 417 (Fla. 2d DCA 2013)(explaining that "the legislature has recognized the importance of a claimant's access to the type of insurance information covered in the statute in order for a claimant to make settlement decisions").

consumer is represented by an attorney, and a provision requiring notice to a settlement fund or trust regarding any outstanding financial obligations from the contract.

Section 5 creates s. 559.955, F.S., to provide prohibited acts of litigation financiers. The prohibited acts are:

- Paying or accepting a referral fee to or from an attorney, law firm, or health care practitioner;
- False advertising;
- Referring consumers to a specific attorney, law firm, or health care practitioner;
- Failing to promptly supply a copy of the contract to the consumer;
- Obtaining a waiver of remedies the consumer may have in the civil action or claim;
- Attempting to effect arbitration or a waiver to the right to a jury trial;
- Offering or providing legal advice regarding the contract or subject claim;
- Assigning the contract;
- Reporting to a consumer credit reporting agency if the net proceeds of the civil action are insufficient to repay the litigation financier;
- Entering into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing contract; and
- Entering into a contemporaneous financing arrangement without the consumer's written consent.

Section 6 creates s. 559.956, F.S., to establish mandatory disclosures within a litigation-financing contract. The disclosures are:

- Notice of the right to a completed contract;
- A statement that the litigation financier will not and has no right to make decisions or influence the consumer or his attorney regarding the civil action or claim;
- The total funded amount provided to the consumer;
- An itemized list of all fees and charges;
- The annual percentage rate of return;
- The total amount due from the consumer in 6-month intervals for 3 years;
- A statement that the consumer will owe no charges or fees other than those disclosed;
- The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment after contract execution;
- Notice that if the consumer owes the litigation financier nothing if there is no recovery in the civil action or claim;
- Notice that the litigation financier will accept a reduced sum not exceeding the net proceeds of the civil action or claim if the net proceeds are insufficient to make a full repayment;
- Notice of the right of rescission; and
- Notice that the consumer should exercise due diligence before signing the contract.

Section 7 creates s. 559.957, F.S., to authorize a consumer to assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim. Further, the section establishes a priority of liens with exceptions.

Section 8 creates s. 559.958, F.S., relating to interest rate, fees, charges, and penalties applicable to the contract. The bill caps the interest rate of such contracts at 30 percent of the funded

amount per year, calculated using simple interest. Interest may only accrue until a court enters a final order or a settlement agreement is executed in the civil action or claim subject to the contract, whichever is earlier, but no longer, than 3 years from the date the consumer receives the funds from the litigation financier. A litigation financier may not charge, contract for, or receive any charges or fees the combined total of which exceeds \$500 with regard to a single civil action or claim, regardless of the number of litigation financing contracts the consumer enters into with the litigation financier.

A litigation financier may not charge, contract for, or receive any interest, charges, or fees for rescission or cancellation of a contract.

Section 9 creates s. 559.959, F.S., to require a party to any civil action must provide to the other parties any contract under which a litigation financier has a contingent right to receive compensation sourced from potential proceeds of the civil action or claim.

Section 10 creates s. 559.961, F.S., to provide that communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

Section 11 creates s. 559.962, F.S., to provide that a violation of part XIII, ch. 559, F.S., is an unfair or deceptive trade act or practice under part II of ch. 501, F.S.

Section 12 provides this bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill caps the annual interest rate on litigation funding contracts at 30 percent per year. A financier may impose a fee of up to \$500 with regard to a single civil claim, regardless of the number of financing contracts the consumer enters into with the litigation financier respecting the civil action or claim.

The bill requires disclosure of litigation financing contracts in a civil action and protects communications between a consumer's attorney and a litigation financier about such contracts.

C. Government Sector Impact:

The bill would require the OFR to process registration applications. It is unknown how many litigation financiers currently operate in Florida. The bill would require the OFR to provide modifications to the Regulatory Enforcement and Licensing system. The fiscal impact is indeterminate at this time.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 559.952, 559.953, 559.954, 559.955, 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962.

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.

⁴⁶ Office of Financial Regulation, *2020 Agency Legislative Bill Analysis of SB 1828* (Jan. 27, 2020).

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



793752

LEGISLATIVE ACTION

Senate

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House

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. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.952, 559.953, 559.954, 559.955,
559.956, 559.957, 559.958, 559.959, and 559.961, is created and
may be cited as the "Litigation Financing Consumer Protection
Act."

Section 2. Section 559.952, Florida Statutes, is created to



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read:

559.952 Definitions.—As used in this part, the term:

(1) "Consumer" means any individual residing, physically present, or domiciled in this state.

(2) "Funded amount" means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) "Health care practitioner" has the same meaning as in s. 456.001.

(4) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) "Litigation financier" means a person engaged in the business of litigation financing.

(6) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) Lending or financing arrangements between an attorney



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or a law firm and a lending institution to fund litigation costs.

(d)A consumer finance loan, as defined in s. 516.01.

(7) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt by the consumer, whichever is later, the consumer provides written rescission notice and returns any funds already provided under the contract to the litigation financier.

(2) The consumer's written acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(3) A statement indicating that, in the event the proceeds of the subject civil action or claim are paid into a settlement fund or trust, the litigation financier must notify the fund or trust administrator of any outstanding financial obligations arising from the contract.



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(4) The consumer's initials on each page of the contract and the signature of the consumer on the executed contract.

Section 4. Section 559.954, Florida Statutes, is created to read:

559.954 Prohibited acts.—A litigation financier may not:

(1) Pay or offer to pay a commission, a referral fee, or other consideration to any person, including an attorney, a law firm, or a health care practitioner, for referring a consumer to a litigation financier.

(2) Accept a commission, a referral fee, a rebate, or other consideration from any person, including an attorney, a law firm, or a health care practitioner.

(3) Advertise false or misleading information about its products or services.

(4) Refer a consumer to a specific attorney, law firm, or health care practitioner, except that, if a consumer lacks legal representation, the litigation financier may refer the consumer to an attorney referral service operated by a county or state bar association.

(5) Fail to supply a copy of an executed litigation financing contract to the consumer upon execution of a contract.

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, which the consumer might otherwise have in the subject civil action or claim.

(7) Attempt to effect arbitration or waiver of a consumer's right to a jury trial in the subject civil action or claim.

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or



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claim.

(9) Assign a litigation financing contract in whole or in part.

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier.

(11) Direct, or make any decisions with respect to, the conduct of the subject civil action or claim or any settlement thereof.

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract.

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

(14) Provide litigation financing for a claim under chapter 440.

Section 5. Section 559.955, Florida Statutes, is created to read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of the following disclosures on the front page of the contract in at least 12-point boldfaced type:

(a) Notice of the consumer's right to a copy of the fully executed contract upon execution of the contract.



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(b) A statement that the litigation financier has no right to and will not make any decisions or attempt to influence the consumer or his or her attorney about the conduct of the civil action or claim subject to the contract and that the right to make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all charges and fees payable by the consumer.

(e) The interest rate.

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all charges, fees, and interest.

(g) A statement that the consumer will owe no charges, fees, or interest other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all charges, fees, and interest owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:



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CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR, OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to read:

559.956 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds



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of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.957, Florida Statutes, is created to read:

559.957 Interest, fees, charges, and penalties.—

(1) A litigation financier may not directly or indirectly charge, contract for, or receive an interest rate of greater than 30 percent of the funded amount per annum. In determining compliance with the statutory maximum interest rate, the computations used must be simple interest and not add-on interest or any other computation.

(2) The maximum interest rate that may be contracted for and received by a litigation financier is 12 times the maximum monthly rate, and the maximum monthly rate must be computed on the basis of one-twelfth of the annual rate for each full month. The maximum daily rate must be computed on the basis of the maximum monthly rate divided by the number of days in the month.

(3) Interest may only accrue until a court enters a final order or a settlement agreement is executed in the civil action or claim subject to the litigation financing contract, whichever is earlier, but in no case may interest accrue for a period exceeding 3 years from the date the consumer receives the funds from the litigation financier. The total interest amount



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assessed must be calculated based on the actual number of days
for which interest accrued.

(4) A litigation financier may not directly or indirectly
charge, contract for, or receive any charges or fees the
combined total of which exceeds \$500 with regard to a single
civil action or claim, regardless of the number of litigation
financing contracts the consumer enters into with the litigation
financier respecting the civil action or claim.

(5) A litigation financier may not directly or indirectly
charge, contract for, or receive any interest, charges, or fees
for rescission or cancellation of a litigation financing
contract under s. 559.953(1).

Section 8. Section 559.958, Florida Statutes, is created to
read:

559.958 Litigation financing contracts; discovery.—Except
as otherwise ordered by the court, a party to any civil action
or claim, without awaiting a discovery request, shall provide to
the other parties any contract under which a litigation
financier has a contingent right to receive compensation sourced
from potential proceeds of the civil action or claim.

Section 9. Section 559.959, Florida Statutes, is created to
read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation
financier as it pertains to a litigation financing contract do
not limit, waive, or abrogate the scope or nature of any
statutory or common-law privilege, including the work-product
doctrine and the attorney-client privilege.

Section 10. Section 559.961, Florida Statutes, is created



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to read:

559.961 Violation; enforcement.—

(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.

(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 11. This act shall take effect July 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 litigation financing consumer protection; creating the Litigation Financing Consumer Protection Act; creating s. 559.952, F.S.; defining terms; creating s. 559.953, F.S.; specifying mandatory litigation financing contract terms; creating s. 559.954, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 559.955, F.S.; requiring specified mandatory litigation financing contract disclosures; creating s. 559.956, F.S.; authorizing a consumer to assign his or her contingent right to proceeds from a civil action or claim; establishing the priority of liens against or rights to civil action or claim proceeds; creating s.



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559.957, F.S.; authorizing litigation financiers to charge interest up to a specified amount annually; requiring simple interest computations for purposes of interest rates; specifying computations for a maximum annual, monthly, and daily percentage rate; providing a maximum interest accrual period; requiring that the total interest must be calculated based on the actual number of days for which interest accrued; capping the fees and charges that litigation financiers may assess; prohibiting a litigation financier from assessing specified fees or charges; creating s. 559.958 , F.S.; requiring litigation financing contract disclosure under specified circumstances; creating s. 559.959 , F.S.; providing that specified communications between attorneys and litigation financiers do not limit or waive statutory or common-law privilege; creating s. 559.961, F.S.; providing that a violation of this part is a violation of the Florida Deceptive and Unfair Trade Practices Act; providing that a contract that does not comply with the provisions of this part is void and unenforceable; providing an effective date.



469258

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (793752) (with title amendment)

Delete line 7

and insert:

559.956, 559.957, 559.959, and 559.961, is created and

Delete lines 226 - 233.

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



469258

11 And the title is amended as follows:
12 Delete lines 282 - 284
13 and insert:
14 assessing specified fees or charges;



481944

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (793752) (with title amendment)

Delete line 7

and insert:

559.956, 559.958, 559.959, and 559.961, is created and

Delete lines 193 - 225.

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



481944

11 And the title is amended as follows:
12 Delete lines 272 - 282.



504878

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (793752)

Delete lines 99 - 117
and insert:

(9) Report to a consumer credit reporting agency if
insufficient funds remain from the net proceeds of the subject
civil action or claim to repay the litigation financier.

(10) Direct, or make any decisions with respect to, the
conduct of the subject civil action or claim or any settlement
thereof.



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11 (11) Enter into a litigation financing contract with a
12 consumer incorporating the consumer's obligations to the
13 litigation financier under an existing litigation financing
14 contract.

15 (12) Knowingly enter into a litigation financing contract
16 with a consumer already under a litigation financing contract
17 with another litigation financier without first paying the
18 entire funded amount and all charges owed under the existing
19 contract, unless the consumer consents to a contemporaneous
20 financing arrangement in writing.

21 (13) Provide litigation financing for a claim under chapter

By Senator Broxson

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1 A bill to be entitled
 2 An act relating to litigation financing consumer
 3 protection; creating the Litigation Financing Consumer
 4 Protection Act; creating s. 559.952, F.S.; defining
 5 terms; creating s. 559.953, F.S.; requiring litigation
 6 financiers to register with the Office of Financial
 7 Regulation; providing registration requirements;
 8 creating s. 559.954, F.S.; providing mandatory
 9 litigation financing contract terms; creating s.
 10 559.955, F.S.; prohibiting litigation financiers from
 11 engaging in specified conduct; creating s. 559.956,
 12 F.S.; providing for mandatory litigation financing
 13 contract disclosures; creating s. 559.957, F.S.;
 14 providing for a contingent right to civil action
 15 proceeds assignability; establishing the priority of
 16 liens against or rights to civil action or claim
 17 proceeds; creating s. 559.958, F.S.; authorizing
 18 litigation financiers to charge interest up to a
 19 specified amount annually; providing for simple
 20 compounding; providing for a maximum annual, monthly,
 21 and daily percentage rate; providing a maximum
 22 interest accrual period; providing that total interest
 23 must be calculated based on the actual number of days
 24 for which interest accrued; capping the fees and
 25 charges that litigation financiers may assess;
 26 prohibiting a litigation financier from assessing
 27 specified fees or charges; creating s. 559.959, F.S.;
 28 requiring litigation financing contract disclosure
 29 under specified circumstances; creating s. 559.961,

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30 F.S.; providing that specified communications between
 31 attorneys and litigation financiers do not limit or
 32 waive statutory or common-law privilege; creating s.
 33 559.962, F.S.; providing that a violation of this part
 34 is a violation of the Florida Deceptive and Unfair
 35 Trade Practices Act; providing that this act does not
 36 limit the powers, duties, and rights of specified
 37 persons created under other law; providing an
 38 effective date.

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

41
 42 Section 1. Part XIII of chapter 559, Florida Statutes,
 43 consisting of sections 559.952, 559.953, 559.954, 559.955,
 44 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962, is
 45 created and may be cited as the "Litigation Financing Consumer
 46 Protection Act."

47 Section 2. Section 559.952, Florida Statutes, is created to
 48 read:

49 559.952 Definitions.—As used in this part, the term:

50 (1) "Consumer" means any natural person residing,
 51 physically present, or domiciled in this state.

52 (2) "Enforcing authority" has the same meaning as in s.
 53 501.203.

54 (3) "Funded amount" means the funds actually received and
 55 retained by a consumer under a litigation financing contract.

56 (4) "Health care practitioner" has the same meaning as in
 57 s. 456.001.

58 (5) "Interest" means the cost of obtaining litigation

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financing and includes any profit or advantage of any kind whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(6) "Litigation financier" means a person, an entity, or a partnership engaged in the business of litigation financing.

(7) "Litigation financing" means a nonrecourse transaction in which a litigation financier provides funds to a consumer in exchange for an assignment of the consumer's contingent right to receive an amount of the potential proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when such services or costs are provided by an attorney representing the consumer in accordance with the Florida Rules of Professional Conduct.

(b) A commercial tort claim as defined in s. 679.1021(1)(m).

(c) A claim under the Workers' Compensation Law.

(d) Normal business lending or financing arrangements between an attorney or a law firm and a lending institution to fund litigation costs.

(e) A consumer finance loan, as defined in s. 516.01.

(8) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as specified in s. 559.956(2).

(9) "Office" means the Office of Financial Regulation.

Section 3. Section 559.953, Florida Statutes, is created to

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read:

559.953 Litigation financier registration; registration revocation.—

(1) A litigation financier may not engage in litigation financing in this state before registering as a litigation financier under this section.

(a) A litigation financier that is a corporation, limited liability company, or partnership is registered under this section if it has:

1. Met the bond requirements of subsection (2);

2. A status of active and in good standing as reflected in the office's records; and

3. Filed articles of organization or incorporation, a certificate of limited partnership, or another organizational document, or, if a foreign entity, an application for a certificate of authority with the office stating therein that it is a litigation financier.

(b) A litigation financier that is not a corporation, limited liability company, or partnership is registered under this section if it has:

1. Met the bond requirements of subsection (2); and

2. Filed a litigation financier registration application with the office on a form prescribed by the office which contains, at a minimum:

a. The applicant's full legal name and any fictitious name used by the applicant;

b. The applicant's physical address, mailing address, and telephone number;

c. A statement that the applicant is a litigation

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117 financier; and

118 d. Any other information the office deems necessary.

119 (2) Each litigation financier must file with the office a
 120 \$250,000 surety bond, which must meet all of the following
 121 requirements:

122 (a) Be issued by a surety company authorized to do business
 123 in this state.

124 (b) Be payable to the office for the payment of damages
 125 awarded to a consumer under part II of this chapter.

126 (c) Be effective so long as the office's records designate
 127 a litigation financier as such or a litigation financing
 128 contract with the litigation financier is effective.

129 (3) A litigation financier must amend its registration
 130 within 30 days after the information contained therein changes
 131 or becomes inaccurate in any respect. A litigation financier
 132 that is not a corporation, limited liability company, or
 133 partnership may amend its registration by filing with the office
 134 an amendment on a form prescribed by the commission.

135 (4) If the office determines that a litigation financier
 136 has not complied with the requirements of this section, the
 137 office must serve the litigation financier notice in a record of
 138 its intent to revoke the litigation financier's registration.
 139 Such notice:

140 (a) Must specifically state all grounds for revocation.

141 (b) May be sent by electronic mail to a litigation
 142 financier that provided the office with an electronic mail
 143 address.

144 (5) A litigation financier has 60 days from the date the
 145 office sends the notice required by subsection (4) to correct

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146 each ground for revocation or demonstrate to the reasonable
 147 satisfaction of the office that each ground determined by the
 148 office does not exist. The office must revoke the litigation
 149 financier registration of any litigation financier who fails to
 150 comply with the requirements of this subsection.

151 (6) The office has the authority reasonably necessary to
 152 enable it to administer this section efficiently, to perform
 153 duties imposed upon it, and to adopt rules to implement this
 154 section.

155 Section 4. Section 559.954, Florida Statutes, is created to
 156 read:

157 559.954 Litigation financing contracts; terms.—The
 158 litigation financing terms must be set forth in a written
 159 contract containing all of the following:

160 (1) A right of rescission allowing the consumer to cancel
 161 the contract without penalty, interest, charges, fees, or
 162 further obligation if, within 5 business days after contract
 163 execution or funds receipt by the consumer, whichever is later,
 164 the consumer provides written rescission notice and returns any
 165 funds already provided under the contract to the litigation
 166 financier.

167 (2) The consumer's written acknowledgement of whether an
 168 attorney represents him or her in the civil action or claim that
 169 is the subject of the contract.

170 (3) A statement indicating that, in the event the proceeds
 171 of the subject civil action or claim are paid into a settlement
 172 fund or trust, the litigation financier must notify the fund or
 173 trust administrator of any outstanding financial obligations
 174 arising from the contract.

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175 Section 5. Section 559.955, Florida Statutes, is created to
176 read:

177 559.955 Prohibited conduct.—A litigation financier may not
178 do any of the following:

179 (1) Pay or offer to pay a commission, a referral fee, or
180 other consideration to any person or entity, including an
181 attorney, a law firm, or a health care practitioner, for
182 referring a consumer to a litigation financier.

183 (2) Accept a commission, a referral fee, a rebate, or other
184 consideration from any person or entity, including an attorney,
185 a law firm, or a health care practitioner.

186 (3) Advertise false or misleading information about its
187 products or services.

188 (4) Refer a consumer to a specific attorney, law firm, or
189 health care practitioner, except that, if a consumer lacks legal
190 representation, the litigation financier may refer the consumer
191 to an attorney referral service operated by a county or state
192 bar association.

193 (5) Fail to promptly supply a copy of all complete
194 litigation financing contracts to the consumer.

195 (6) Attempt to obtain a waiver of any remedy, including,
196 but not limited to, compensatory, statutory, or punitive
197 damages, which the consumer might otherwise have in the subject
198 civil action or claim.

199 (7) Attempt to effect arbitration or waiver of a consumer's
200 right to a jury trial in the subject civil action or claim.

201 (8) Offer or provide legal advice to the consumer regarding
202 the litigation financing contract or the subject civil action or
203 claim.

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204 (9) Assign a litigation financing contract in whole or in
205 part.

206 (10) Report to a consumer credit reporting agency if
207 insufficient funds remain from the net proceeds of the subject
208 civil action or claim to repay the litigation financier.

209 (11) Direct, or make any decisions with respect to, the
210 conduct of the subject civil action or claim or any settlement
211 thereof.

212 (12) Enter into a litigation financing contract with a
213 consumer incorporating the consumer's obligations to the
214 litigation financier under an existing litigation financing
215 contract.

216 (13) Knowingly enter into a litigation financing contract
217 with a consumer already under a litigation financing contract
218 with another litigation financier without first paying the
219 entire funded amount and all charges owed under the existing
220 contract, unless the consumer consents to a contemporaneous
221 financing arrangement in writing.

222 Section 6. Section 559.956, Florida Statutes, is created to
223 read:

224 559.956 Required disclosures.—

225 (1) A litigation financing contract must contain all of the
226 following disclosures on the front page of the contract in at
227 least 12-point boldfaced type:

228 (a) Notice of the consumer's right to a completely filled
229 in contract.

230 (b) A statement that the litigation financier has no right
231 to and will not make any decisions or attempt to influence the
232 consumer or his or her attorney about the conduct of the civil

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action or claim subject to the contract and that the right to make such decisions remains solely with the consumer.

(c) The total funded amount provided to the consumer.

(d) An itemized list of all fees and charges payable by the consumer.

(e) The annual percentage rate of return.

(f) The total amount due from the consumer in 6-month intervals for 3 years, including all charges and fees.

(g) A statement that the consumer will owe no charges or fees other than those described in the disclosures.

(h) The cumulative amount due from the consumer for all litigation financing contracts if the consumer seeks multiple contracts and makes repayment any time after contract execution.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all fees and charges owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(2) A litigation financing contract must also contain the following disclosure on the front page of the contract in at least 18-point uppercase and boldfaced type:

CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT

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EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

(3) A litigation financing contract must contain the following disclosure immediately above the consumer's signature line in 18-point uppercase and boldfaced type:

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

Section 7. Section 559.957, Florida Statutes, is created to read:

559.957 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to receive an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation financier's lien, except for any of the following:

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291 (a) Attorney, insurance carrier, or health care
 292 practitioner liens or liens based upon subrogation interests or
 293 reimbursement rights related to the subject civil action or
 294 claim.

295 (b) Child support, Medicare, tax, or any other statutory or
 296 governmental lien.

297 Section 8. Section 559.958, Florida Statutes, is created to
 298 read:

299 559.958 Interest, fees, charges, and penalties.—
 300 (1) A litigation financier may not directly or indirectly
 301 charge, contract for, or receive an interest rate of greater
 302 than 30 percent of the funded amount per annum. In determining
 303 compliance with the statutory maximum interest rate, the
 304 computations used must be simple interest and not add-on
 305 interest or any other computation.

306 (2) The maximum annual percentage rate of finance charge
 307 which may be contracted for and received by a litigation
 308 financier is 12 times the maximum monthly rate, and the maximum
 309 monthly rate must be computed on the basis of one-twelfth of the
 310 annual rate for each full month. The maximum daily rate must be
 311 computed on the basis of the maximum monthly rate divided by the
 312 number of days in the month.

313 (3) Interest may only accrue until a court enters a final
 314 order or a settlement agreement is executed in the civil action
 315 or claim subject to the litigation financing contract, whichever
 316 is earlier, but in no case may interest accrue for a period
 317 exceeding 3 years from the date the consumer receives the funds
 318 from the litigation financier. The total interest amount
 319 assessed must be calculated based on the actual number of days

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320 for which interest accrued.

321 (4) A litigation financier may not directly or indirectly
 322 charge, contract for, or receive any charges or fees the
 323 combined total of which exceeds \$500 with regard to a single
 324 civil action or claim, regardless of the number of litigation
 325 financing contracts the consumer enters into with the litigation
 326 financier respecting the civil action or claim.

327 (5) A litigation financier may not directly or indirectly
 328 charge, contract for, or receive any interest, charges, or fees
 329 for rescission or cancellation of a litigation financing
 330 contract under s. 559.954(1).

331 Section 9. Section 559.959, Florida Statutes, is created to
 332 read:

333 559.959 Litigation financing contracts; discovery.—Except
 334 as otherwise ordered by the court, a party to any civil action
 335 or claim, without awaiting a discovery request, shall provide to
 336 the other parties any contract under which a litigation
 337 financier has a contingent right to receive compensation sourced
 338 from potential proceeds of the civil action or claim.

339 Section 10. Section 559.961, Florida Statutes, is created
 340 to read:

341 559.961 Effect of communication on privilege.—
 342 Communications between a consumer's attorney and a litigation
 343 financier as it pertains to a litigation financing contract do
 344 not limit, waive, or abrogate the scope or nature of any
 345 statutory or common-law privilege, including the work-product
 346 doctrine and the attorney-client privilege.

347 Section 11. Section 559.962, Florida Statutes, is created
 348 to read:

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349 559.962 Violation; enforcement.-

350 (1) A violation of this part is an unfair or deceptive
351 trade act or practice under part II of chapter 501.

352 (2) This section may not be construed to limit:

353 (a) The enforcing authority's exercise of powers or
354 performance of duties that the enforcing authority is otherwise
355 legally authorized or required to exercise or perform.

356 (b) The rights and remedies available to the state or a
357 person under any other law.

358 Section 12. This act shall take effect July 1, 2020.

Consumer Legal Funding 101

Also Known As.....

**Everything you wanted to know
about Consumer Legal Funding
but were afraid to ask.**

Eric Schuller
President
Alliance for Responsible Consumer Legal Funding



What is Consumer Legal Funding?

- Consumer Legal funding is a free market, financial solution that can assist consumers who have typically been in an accident, suffered a loss of income, and have a pending legal claim.
- Individuals can sell a small amount of their recovery to generate typically about \$2,000 in immediate proceeds.
- Consumer Legal funding helps families meet their obligations, avoid public assistance, and recover.

Why is there a need for Consumers Consumer Legal Funding?

- According to Forbes, 78% of workers are living paycheck to paycheck. That statistic encapsulates more than just hourly workers.
- Investopedia states that 25% of American families making \$150,000 or more a year live paycheck to paycheck.
- If a consumer has immediate financial obligation, such as facing eviction or repossession, the consumer may feel financial pressure to accept the initial offer rather than an amount that makes them whole.

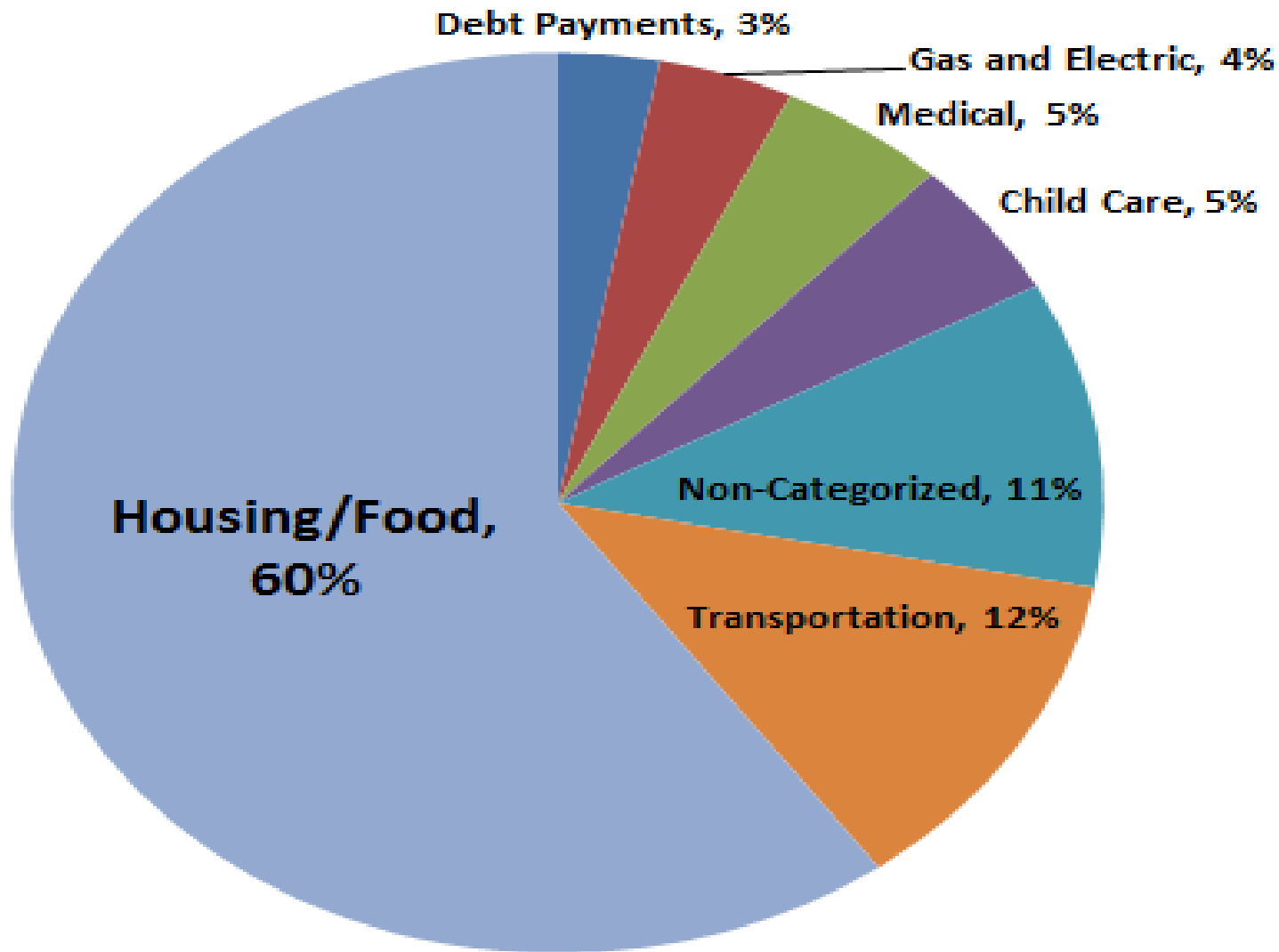
Who accesses it and why?

- People who have an existing legal claim and are represented by an attorney can apply.
- Consumer Legal funding is a valuable choice for families trying to regain financial stability and meet their obligations while they pursue the fair value of their claim.

What are the benefits over a loan?

- Consumer Legal funding best resembles an asset purchase because the individual sells a small, fixed dollar amount of the potential future settlement for a competitive bid today.
- Legal funding also operates differently than other products, like loans.
 - **NO** Payments
 - **NO** Credit Check
 - **NO** Debt Created
 - **NO** Risk to Consumer's Credit
 - **NO** Collections if the Consumer Loses the Case
 - **NO** Defined maturity date
- If the individual loses the case and receives no recovery, then he or she keeps the funds provided by the legal funding provider, with **NO** strings attached. The provider absorbs that loss and assumes all the risk.

What is the money used for?



* Based on consumer feedback

What the money is NOT used for?

- Paying Attorneys fees
- Expert witnesses
- Fees associated with the pursuing the legal claim

Factors in determining if a consumer receives a funding

- **Valid Legal Claim**
- **Represented by an Attorney**
- **The Legal Claim has a possibility of being successful**

Factors **NOT** used to determine if a consumer receives consumer legal funding

- Consumers Credit Score
- Consumers Employment Status or History
- Consumers Banking Information
- If they own or rent their home
- If they own a car
- Any other tangible collateral



HOW CONSUMER LEGAL FUNDING WORKS

**The
Process**

How Consumer Legal Funding Works

1. Consumer Contact

The consumer contacts a consumer legal funding company to seek funding on a pending claim.



2. Verification

The company verifies that the consumer is represented by an attorney and the pending legal claim is legitimate.



3. Case Review

With the consumer's permission, the company reviews the potential value of the claim with the consumer's attorney. The consumer legal funding company then makes an independent funding determination. A funding is typically 5%-10% of the expected value of a claim.



4. Purchase Agreement

The consumer legal funding company sends a Purchase Agreement, with clear and concise terms, to the consumer and his/her attorney for review and approval. Both the consumer and the attorney must sign off on the Purchase Agreement.



5. Funding

After providing final approval, the company disperses the funds directly to the consumer for personal use and not for litigation purposes.

National Consumer Demographics

Consumers Who Used Legal Funding in 2015

Household Type	52%	Have children in the household
Gender	50%	Male
	40%	Female
	10%	No Response
Marital Status	41%	Married
	44%	Single
	15%	No Response
Age	47	Is the average age of a consumer
Ethnicity	37%	Caucasian
	43%	African American
	11%	Hispanic
	9%	No Response
Household Income	16%	\$100,000+ Annual Family Income
	7%	\$75-100,000 Annual Family Income
	14%	\$50-75,000 Annual Family Income
	27%	\$25-50,000 Annual Family Income
	36%	< \$25,000 Annual Family Income
Level of Education	33%	High School Graduates
	29%	Some College
	8%	College Degree
	5%	Graduate Degree
	25%	No Response
Homeowner Status	43%	Are Homeowners
	\$130,970 Avg. Estimated Home Value	

Misconceptions on Consumer Legal Funding

- It fuels frivolous lawsuits
- It increases settlements
- Drags out cases
- Funders become an interested party in a lawsuit and take control



Eric Schuller
President

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WHITE PAPER: Litigation Financing Consumer Protection

I. Summary

Currently unregulated in Florida, litigation financing loans to consumers have been going on in Florida for many years. Specifically, loans are made by for profit entities to plaintiffs in civil actions with payment of the debt made at the conclusion of the legal action out of the proceeds from the action. These loans are offered at an extremely high rate of interest charged to the consumer based on the argument of the lender that because the loans are non-recourse, the lender charges high rates to account for the risk of the loan. In fact, these loans are closely underwritten and screened resulting in a low default rate, belying the argument that these are high risk loans calling for a high rate of interest. To the extent the loans are helpful to consumers, they should be regulated and provided at the lowest rate possible to consumers.

II. Scheme

Consumer Litigation Financing is set up to operate similar to Florida's Deferred Presentment Transactions, commonly referred to as payday loans. The payday lending industry's position on payday loans is these are high risk loans necessitating a high rate of return – a fiction that their own data reporting debunks.

The Florida payday lending scheme by its statutory creation is not defined as a loan. As such, it is not even listed as an exception to Florida's criminal usury provision.¹ The payday lending industry's underwriting is nonexistent in terms of determining the borrower's ability to repay the loan, credit histories are not sought, and there is no reporting to credit bureaus to enable the borrower to build a positive credit history. What limited underwriting that is done is meant to protect the lender and not the borrower. The lump sum payment of a payday loan within 30 days of receiving the loan, generally through an Automated Clearing House (ACH) transaction, virtually insures payment of the loan. The resulting default rate on these loans is therefore very low as reported by industry to the Office of Financial Regulation.²

The Consumer Litigation Financing industry seeks a similar distinction, arguing these are not loans since they are non-recourse, and therefore are not in violation of Florida's usury law. The designation as a non-recourse loan should not alone allow the lender to evade the protections afforded borrowers of loans. Many loans that are collateralized are non-recourse – certain car title and real property loans – but still are deemed loans providing the consumer protections such as usury limits. The non-recourse nature of Consumer Litigation loans is the argument used to allow for a predatory rate of interest. Similar to payday loans, however, the data available on performance of these loans shows the default rate to be low. These loans are closely underwritten to protect the lender.³

¹ Florida Statutes 687.12

² Florida Trends in Deferred Presentment, State of Florida Deferred Presentment Program Through June 2018.

³ "An Empirical Investigation of Third Party Consumer Litigant Funding," by Ronen Avraham and Anthony Sebok, *Cornell Law Review*, Vol. 104:1133, 2019.

III. Pending Legislation

SB 1828 provides welcome statutory structure for Consumer Litigation Financing in Florida. The bill creates a framework for the loans, requiring registration of lenders, includes a right of rescission, creates a list of prohibited practices, places a limitation on the interest, and provides specific contractual declarations so the consumer has better information about the cost of the loan.

The most crucial protection for consumers is to limit the rate of interest charged. These loans should be based on the tiered structure provided in both Chapter 516 and Chapter 537: loans up to \$3000 carry a rate of 30%; loans in excess of \$3000 and under \$4000 carry a rate of 24%; loans in excess of \$4000 carry a rate of 18%.⁴ Maintaining the extremely high rate of 30% per annum *regardless of the amount of the loan* creates a predatory rate structure. It is expected that industry, like the payday lending industry, will claim this amount is not adequate; but data currently available shows industry closely underwrites these loans and has a high rate of return on its investment. In tandem with the high rate of interest allowed for these loans is the extremely high fee of \$500, a stunning amount for this type of consumer finance loan. It appears, however, by definition, that the fee cannot be included in the amount for calculating interest.

Section 9 of the bill requires that the consumer's attorney provide all litigants the consumer's loan contract. This is a violation of the consumer's right to keep confidential their own financial arrangements and should be removed from the bill. Simply because the consumer

⁴ Placing these lenders fully within Chapter 516 and the licensing and registration of Office of Financial Regulation would be the best way to provide full protection for consumers.

has chosen to obtain a loan using the settlement proceeds as collateral is no reason this information should be shared.

Finally, it is crucial that the bill include mandatory data collection from industry of these loans. The bill should provide for OFR to receive data about the number of applications for these loans, number of loans approved, number of loans per borrower, basis for denial of the loan, rates of returns on the loans, self-reported basis consumer provides for obtaining the loans, and the physical location of the borrower, all aggregated and anonymized to protect consumers' identity. Additionally, OFR should maintain and provide data on registrants that fail to comply and those whose registrations are revoked.

IV. Conclusion

Loans allegedly intended to benefit consumers fail to do so if they lack basic consumer protections. That consumers may access and get caught in complex and confusing lending products that ultimately prove to be to their financial detriment is no reason to allow the lending to continue. "Behavioral economics teaches us that sophisticated market players respond to the demand generated by consumers that are imperfectly rational due to various cognitive biases. As a general matter, sophisticated sellers will seek to decrease the perceived price for the consumers without really decreasing the actual price. As scholars have long noted, this interaction between market forces and consumers' imperfect rationality often results in contracts that defer costs to the future and that are more complex than necessary. Indeed, that is exactly what we observe in third party litigant funding."⁵ If Consumer Finance Litigation loans

⁵ Avraham and Sebok study, at 1172.

are to be statutorily allowed in Florida, it is imperative that the consumer is fully protected from the “sophisticated market players.”

January 26, 2020

CourtSmart Tag Report

Room: KN 412
Caption: Banking and Insurance

Case No.:
Judge:

Type:

Started: 2/11/2020 2:08:10 PM

Ends: 2/11/2020 3:57:26 PM

Length: 01:49:17

2:08:08 PM Chair Broxson called meeting to order
2:08:15 PM Chair Broxson talking
2:08:15 PM Sheri call roll
2:08:32 PM Chair Broxson is speaking
2:08:45 PM Chair Broxson advises that SB 924 is TP
2:08:59 PM Senator Diaz is presenting SB 1618
2:09:28 PM Chair Broxson asked if there are any questions
2:09:39 PM Chair Broxson asked if there is any appearance cards
2:09:54 PM Chair Broxson asked if there is any debate
2:10:01 PM Senator Diaz waives close
2:10:03 PM Sheri calls roll on SB 1618
2:10:15 PM Chair Broxson say show SB 1618 passes favorably
2:10:26 PM Chair Broxson states we are going to Senator Brandes and SB 1334
2:10:36 PM Chair Broxson asks Senator Brandes to explain the strike all amendment
2:10:44 PM Senator Brandes is explaining strike all amendment 632742
2:12:50 PM Chair Broxson advises going to the amendment to the amendment
2:12:59 PM Senator Rouson is presenting amendment barcode 527860
2:14:00 PM Chair Broxson asks if there are any questions on the amendment 527860
2:14:18 PM Paul Handerhan of FAIR speaks
2:16:47 PM Chair Broxson asks if there are any questions
2:16:53 PM Chair Broxson asks if there is any debate
2:16:59 PM Senator Rouson states he wishes to withdraw amendment 527860
2:17:08 PM Chair Broxson show amemdment 527860 withdrawn
2:17:20 PM Senator Rouson also wants to withdraw amendment 527424
2:17:35 PM Chair Broxson we are now on barcode 386996 by Senator Brandes
2:17:47 PM Senator Brandes explains the amendment
2:18:22 PM Chair Broxson ask if there are any questions
2:18:29 PM Senator Lee has a question
2:18:40 PM Sent Brandes answers
2:18:40 PM Senator Lee with question and Senator Brandes answers
2:20:36 PM Senator Lee asks question
2:20:57 PM Senator Brandes answers
2:21:23 PM Senato Lee another question
2:21:30 PM Senator Brandes answers
2:21:37 PM Chair Broxson with question
2:21:52 PM Senator Brandes answers
2:23:20 PM Chair Broxson talking
2:23:23 PM Senator Brandes talking
2:23:30 PM Chair Broxson asks if there are any other questions
2:23:36 PM Chair Broxson asks if there is any debate
2:23:54 PM Chair Broxson seeing no debate Sen. Brandes you can close on amendment
2:24:08 PM Senator Brandes close on barcode 386996
2:24:30 PM Chair Broxson take vote on amendent
2:24:43 PM Chair Broxson states amendment is approved
2:24:48 PM Chair Broxson states take up late filed amendment 452858 by Sen Brandes
2:25:03 PM Senator Brandes explain late file amendment
2:25:35 PM Chair Broxson speaking about late filed amendment
2:25:54 PM Chair Broxson asks if there are any questions on that amendment
2:25:59 PM Senator Rouson with a question
2:26:05 PM Senator Brandes answers
2:26:09 PM Senator Rouson with question
2:26:12 PM Sen Brandes answers

2:26:23 PM Chair Broxson ask if there are any other questions
2:26:29 PM Chair Broxson says we are going to listen to public testimony
2:26:35 PM Fred Cunningham of FJA is speaking
2:31:25 PM Senator Brandes has a question
2:31:55 PM Mr Cunningham answers
2:33:03 PM Senator Brandes with a follow up
2:33:35 PM Mr Cunningham answers
2:34:23 PM Sen Brandes makes comment
2:35:27 PM Mr Cunningham responds
2:38:14 PM Chair Broxson has a follow up
2:38:31 PM Mr Cunningham answers
2:39:13 PM Sen Brandes with follow up
2:39:20 PM Mr Cunningham answers
2:39:33 PM Chair Broxson has a question
2:40:21 PM Mr Cunningham answers
2:41:41 PM Chair Broxson thanks him
2:41:58 PM Dale Swope is speaking
2:48:40 PM Sen Brandes with a question
2:48:58 PM Mr Swope answers
2:51:19 PM Chair Broxson thanks him for speaking
2:51:26 PM Kathy Maus is speaking
2:59:47 PM Sen Rouson with question
3:00:00 PM Ms Maus answers
3:01:26 PM Sen Brandes with a question
3:03:06 PM Chair Broxson calls Richard Young
3:03:27 PM Mr Young speaks
3:08:10 PM Chair Broxson thanks him
3:08:16 PM Chair Broxson we are now in debate on 542858
3:08:44 PM Chair Broxson we are now in debate
3:08:44 PM Chair Broxson No debate
3:08:55 PM Sen Brandes speaking
3:10:08 PM Chair Broxson on amendment
3:10:20 PM Chair Broxson amendment approved
3:10:41 PM Chair Broxson now on delete all amendment
3:11:05 PM Hillary Cassel is speaking
3:13:32 PM Steve Geller is speaking
3:16:17 PM Joy Ryan waives in support
3:16:32 PM Chair Broxson asks if there is any deabte
3:16:45 PM Chair Broxson asks Sen Brandes to close on amendment
3:16:53 PM Sen Brandes closes on barcode 632742
3:19:25 PM Chair Broxson vote on 632742
3:19:43 PM Chair Broxson says show amendment adopted
3:19:56 PM Chair Broxson we are back on amended bill
3:19:58 PM Chair Broxson says there are no appearance cards
3:20:04 PM Sen Lee has debate
3:22:16 PM Sen Brandes with debate
3:23:23 PM Chair Broxson advised to show SB 1334 TP
3:23:43 PM Sen Albritton present SB 792
3:24:52 PM Chair Broxson asks to present amendment 175922
3:25:03 PM Sen Albritton speaking about amendment
3:25:28 PM Chair Broxson asks if there are any questions
3:25:37 PM Chair Broxson states Anita Berry waives in support
3:25:59 PM Sen Albritton waives close
3:26:04 PM Chair Broxson says to show that amendment adopted
3:26:08 PM Chair Broxson we are now on bill as amended
3:26:24 PM Sen Lee with a question
3:26:57 PM Sen Albritton answers
3:27:45 PM Chair Broxson asks if there are any other questions
3:27:51 PM Chair Broxson recognizes Burt Reed
3:27:57 PM Burt Reed is speaking
3:30:58 PM Chair Broxson calls Min Tian
3:31:27 PM Min Tian speaking

3:33:39 PM Senator Lee with a question
3:34:05 PM Min Tian answers
3:34:42 PM Senator Lee with a question
3:35:23 PM Min Tian answers
3:35:40 PM Chair Broxson calls David Bibbey
3:35:58 PM Mr Bibbey speaking
3:38:46 PM Chair Broxson thanks him
3:38:52 PM Chair Broxson state we are now in debate
3:38:55 PM Sen Lee with debate
3:40:49 PM Sen Perry with debate
3:41:19 PM Sen Brandes in debate
3:41:53 PM Sen Rouson with debate
3:42:58 PM Chair Broxson in debate
3:43:11 PM Sen Albritton closes on bill
3:45:37 PM Sheri call roll
3:45:58 PM Chair Broxson states to show bill reported favorably
3:46:09 PM Chair show bill reported favorable
3:46:10 PM Chair Broxson we are now going to Senator Baxley and SB 380
3:46:16 PM Sen Baxley present bill
3:46:54 PM Chair Broxson says we are going to delete all amendment
3:47:14 PM Sen Baxley talking on amendment barcode 190298
3:48:01 PM Chair Broxson asks if there are any questions
3:48:08 PM Chair Broxson lets go to appearance cards
3:48:09 PM Kennt Pratt waive in support
3:48:21 PM Sen Baxley waives close on amendment
3:48:26 PM Chair Broxson states to show amendment adopted
3:48:36 PM Kenneth Pratt waives in support of bill
3:48:48 PM Ashley Kalifeh waives in support
3:48:55 PM Chair Broxson we are in debate
3:48:58 PM Sen Thurston in debate
3:49:16 PM Chair Broxson speaking
3:49:38 PM Chair Broxson asks if there is any other debate
3:49:41 PM Sen Baxley waives close on bill
3:49:46 PM Sheri call roll
3:50:01 PM Chair Broxson states show SB 380 reported favorably
3:50:08 PM Chair Broxson talking
3:50:10 PM Chair Broxson we are going to take up SB 1556
3:50:17 PM Sen Bean is presenting the bill
3:50:40 PM Chair Broxson lets go to delete all amendment
3:50:45 PM Sen Bean presents amendment
3:50:58 PM Chair Broxson asks if there are any question
3:51:01 PM Chair Broxson states there are no appearance cards on amendment
3:51:05 PM Chair Broxson we are in debate
3:51:08 PM Senator Bean waives close
3:51:13 PM Chair Broxson advised to show the amendment adopted
3:51:17 PM Chair Broxson asks if there are any questions
3:51:27 PM Lynette Mitchell waives in support
3:51:36 PM Ron Watson waives in support
3:51:48 PM Kirk Hall waives in support
3:51:52 PM Chair Broxson states no debate
3:51:55 PM Sen Bean waives close
3:51:59 PM Sher call roll
3:52:04 PM Chair Broxson show bill reported favorably
3:52:20 PM Chair Broxson asks Sen Perry to present SB 478
3:52:37 PM Sen Perry presenting amendment barcode 493334
3:53:13 PM Chair Broxson asks that we TP bill and here it at next meeting
3:53:27 PM Sent Lee - SB1464
3:55:28 PM Chair Broxson asks any questions
3:55:38 PM Dale Calhoun waive in support
3:55:44 PM Chair Broxson asks if there is any debate
3:55:48 PM Sen Lee waive close on amendment
3:55:53 PM Chair Broxson adv show amendment is adopted

3:55:58 PM Chair Broxson states we are on bill as amended
3:56:02 PM Chair Broxson asks if there are any questions
3:56:08 PM Cory Guzzo waives in support
3:56:16 PM Chair Broxson adv there is no debate
3:56:18 PM no debate
3:56:21 PM Senator Lee closes on bill
3:56:29 PM Sheri call roll
3:56:42 PM Chair Broxson states to show SB 1464 reported favorably
3:56:50 PM Chair Broxson is speaking
3:56:57 PM Sen Perry motion yes vote on SB 1618
3:57:10 PM
3:57:10 PM
3:57:11 PM
3:57:11 PM
3:57:11 PM
3:57:11 PM
3:57:13 PM Chair Broxson advised show meeting adjourned