Tab 1	**SB 530** by **Steube**; (Compare to CS/H 00877) Health Insurance

187710	D	S	RCS	BI, Steube	Delete everything after	03/27 06:18 PM
171194	AA	S	RCS	BI, Steube	Delete L.11 - 15:	03/27 06:18 PM

Tab 2	**SB 594** by **Garcia**; (Similar to H 00347) Consumer Finance

872886	D	S	RCS	BI, Garcia	Delete everything after	03/27 06:18 PM

Tab 3	**SB 800** by **Broxson (CO-INTRODUCERS) Mayfield**; (Similar to CS/H 01191) Medication Synchronization

445314	D	S	RCS	BI, Broxson	Delete everything after	03/27 06:18 PM

Tab 4	**SB 850** by **Rouson**; (Similar to CS/H 00421) Public Housing Authority Insurance

412698	D	S	RCS	BI, Rouson	Delete everything after	03/27 06:18 PM

Tab 5	**SB 872** by **Rouson**; (Similar to H 00595) Consumer Finance Loans

554840	D	S	RCS	BI, Rouson	Delete everything after	03/27 06:18 PM

Tab 6	**SB 1078** by **Garcia**; (Similar to H 00769) International Financial Institutions

875648	D	S	RCS	BI, Garcia	Delete everything after	03/27 06:18 PM

Tab 7	**SB 1080** by **Garcia**; (Similar to H 00771) Public Records/International Trust Entities and Limited Service Affiliates

Tab 8	**SB 1298** by **Garcia**; (Similar to H 01081) Mortgage Loans

395062	D	S	RCS	BI, Garcia	Delete everything after	03/27 06:18 PM

Tab 9	**SB 1482** by **Garcia**; (Similar to H 00885) Transactions with Foreign Financial Institutions

Tab 10	**SB 1600** by **Young (CO-INTRODUCERS) Broxson**; (Similar to H 01205) Viatical Settlement Contracts

767012	D	S	RCS	BI, Young	Delete everything after	03/27 06:18 PM
~~420836~~	AA	S	WD	BI, Farmer	Delete L.260:	03/27 06:18 PM

Tab 11	**SB 1620** by **Powell**; (Similar to CS/H 01347) Deceptive and Unfair Trade Practices

~~506574~~	A	S	WD	BI, Farmer	Delete L.18 - 23:	03/27 06:18 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 27, 2017
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Flores, Chair; Senator Steube, Vice Chair; Senators Bracy, Braynon, Farmer, Gainer, Garcia, Mayfield, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 530** Steube (Compare H 877)	Health Insurance; Requiring a utilization review entity or health insurer to make current prior authorization requirements, restrictions, and forms accessible in a specified manner; specifying requirements for a utilization review entity or health insurer that implements a new prior authorization requirement or that amends an existing requirement or restriction; requiring a plan to publish on the plan's website and provide to an insured a written procedure for requesting a protocol exception, etc. BI 03/27/2017 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
2	**SB 594** Garcia (Similar H 347)	Consumer Finance; Authorizing a licensee to make specified loans under certain conditions; revising provisions relating to certain other charges for consumer loans; revising installment requirements for consumer loans, etc. BI 03/27/2017 Fav/CS AGG AP RC	Fav/CS Yeas 8 Nays 1
3	**SB 800** Broxson (Identical H 1191)	Medication Synchronization; Prohibiting, under certain circumstances, certain health insurance policies and health maintenance contracts, respectively, from denying coverage for partial supplies of medication dispensed by network pharmacies; requiring such policies and contracts to authorize and apply a prorated daily cost-sharing rate to certain prescriptions under certain circumstances; prohibiting such policies and contracts from using payment structures incorporating prorated dispensing fees, etc. BI 03/27/2017 Fav/CS HP AP	Fav/CS Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 850** Rouson (Similar CS/H 421)	Public Housing Authority Insurance; Authorizing a certain legal entity in which a public housing authority holds an ownership interest or participates in its governance to form a specified self-insurance fund with other such entities or public housing authorities, etc. BI 03/27/2017 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
5	**SB 872** Rouson (Similar H 595)	Consumer Finance Loans; Establishing the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; prohibiting a person from certain activities relating to program loans unless the person obtains a pilot program license from the office; providing requirements and limitations for program loans; requiring arrangements between a program licensee and a referral partner to be specified in a written agreement; requiring the office to examine program licensees at specified intervals beginning on a specified date, etc. BI 03/27/2017 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 1
6	**SB 1078** Garcia (Similar H 769, Compare CS/H 435, CS/H 437, H 771, CS/S 736, CS/S 738, Linked S 1080)	International Financial Institutions; Revising requirements for confidential books and records of financial institutions that must be made available for inspection and examination; authorizing a limited service affiliate to engage in specified activities; providing that an international trust entity's limited service affiliate is not required, in response to a subpoena, to produce certain books or records under specified circumstances, etc. BI 03/27/2017 Fav/CS AP RC	Fav/CS Yeas 9 Nays 0
7	**SB 1080** Garcia (Similar H 771, Compare CS/H 435, CS/H 437, H 769, CS/S 736, CS/S 738, Linked S 1078)	Public Records/International Trust Entities and Limited Service Affiliates; Providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to international trust entities and limited service affiliates; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 03/27/2017 Temporarily Postponed GO RC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1298** Garcia (Similar H 1081)	Mortgage Loans; Requiring the Financial Services Commission to define the term “hold himself or herself out to the public as being in the mortgage lending business” by rule, etc. BI 03/27/2017 Fav/CS CM RC	Fav/CS Yeas 9 Nays 0
9	**SB 1482** Garcia (Similar H 885)	Transactions with Foreign Financial Institutions; Requiring financial institutions maintaining correspondent or payable-through accounts with certain foreign financial institutions to report and certify specified information to the Office of Financial Regulation, etc. BI 03/27/2017 Favorable CM RC	Favorable Yeas 9 Nays 0
10	**SB 1600** Young (Similar H 1205)	Viatical Settlement Contracts; Providing additional prohibited acts related to viatical settlement contracts; extending the period in which viatical settlement contracts are void and unenforceable; providing that specified acts and transactions relating to stranger-originated life insurance practices are void and unenforceable; authorizing a life insurer to contest policies obtained through such practices, etc. BI 03/27/2017 Fav/CS AP RC	Fav/CS Yeas 8 Nays 1
11	**SB 1620** Powell (Similar CS/H 1347)	Deceptive and Unfair Trade Practices; Specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies, etc. BI 03/27/2017 Favorable CM RC	Favorable Yeas 8 Nays 1
	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:	CS/SB 530
INTRODUCER:	Banking and Insurance Committee and Senator Steube
SUBJECT:	Health Insurance
DATE:	March 27, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 530 revises provisions of the Insurance Code relating to prior authorization and step therapy or fail first protocols. The bill creates an expedited, standard process for the approval or denial of prior authorizations and protocol exceptions, which provides greater transparency for consumers and providers regarding policies and procedures.

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a health care service under the plan. Step therapy or fail first protocols for medical treatment or prescription drugs coverage require an insured or enrollee to try a certain drug or treatment, before receiving coverage for another drug or medical treatment. However, timely access to health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have conditions with the potential to cause death, disability, or serious discomfort unless treated with the most appropriate medical care.

The bill:

- Requires a health insurer (which means a health insurer, health maintenance organization (HMO), or Medicaid managed care plan), or pharmacy benefit manager (PBM) on behalf of a health insurer to authorize or deny a prior authorization request or a protocol exception request or appeal of a denial in nonurgent care situation within 72 hours after receipt of a prior authorization form or protocol exception request. In urgent circumstances, such approval or denial is required within 24 hours.

- Provides greater transparency for consumers by requiring health insurers or PBMs to provide public access on its website to any current prior authorization requirements, restrictions, and forms on its website and in written or electronic form upon request. If a health insurer, or PBM intends to amend or implement a new prior authorization requirement or restriction, such entity must update the website 60 days prior to the effective date of the new requirement or restriction. Notification of the change must be provided to all insureds or enrollees using the affected service and to all contract providers who provide the affected services at least 60 days before the effective date.
- Requires a health insurer to grant a protocol exception request if certain conditions are met.
- Provides that if the health insurer authorizes the protocol exception request, the health insurer must specify the approved medical procedure, course of treatment, or prescription drug benefits.
- Requires that if the health insurer denies the protocol exception request, the health insurer must provide specified information, including the procedure to appeal the determination.

The fiscal impact on the Medicaid program is indeterminate. The State Group Insurance program indicates that the two fully-insured HMOs would incur an indeterminate negative impact. The provisions of the bill would not have a fiscal impact on the state's self-funded insurance plans.

II. Present Situation:

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[1] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[2] As part of the certification process used by the agency, 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.[3]

The Florida Insurance Code requires health insurers and HMOs to provide an outline of coverage or other information describing the benefits, coverages, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.[4] Further, each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.[5]

Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state to contain one or more of the following procedures or provisions to contain health insurance costs or cost increases:

- Coinsurance.

[1] Section 20.121(3)(a), F.S.
[2] Section 641.21(1), F.S.
[3] Section 641.495, F.S.
[4] Section 627.642, F.S.
[5] Section 641.31(4), F.S.

- Deductible amounts.
- Utilization review.
- Audits of provider bills to verify that services and supplies billed were furnished and that proper charges were made.
- Scheduled benefits.
- Benefits for preadmission testing.
- Any lawful measure or combination of measures for which the insurer provides to the office information demonstrating that the measure or combination of measures is reasonably expected to have an effect toward containing health insurance costs or cost increases.

Pursuant to s. 627.42392, F.S., any health insurer (health insurer, HMO, Medicaid managed care plan) or pharmacy benefit manager, on behalf of the health insurer, that does not use an online prior authorization form must use a standardized prior authorization form adopted by the Financial Services Commission to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form must include all clinical documentation necessary for the health insurer to make a decision.

Florida's Statewide Medicaid Managed Care[6]

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.[7] The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The agency contracts with managed care plans to provide services to eligible enrollees.[8]

Managed Care Covered Services

The benefit package offered by the MMA plans is comprehensive and covers all Medicaid state plan benefits (with very limited exceptions). This includes all medically necessary services for children. Most Florida Medicaid enrollees who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The agency maintains coverage policies for most Florida Medicaid services, which are incorporated by reference into Rule 59G-4, F.A.C. Florida Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid state plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees.

Section 409.91195, F.S., establishes the Pharmaceutical and Therapeutics (P&T) committee within the agency for the development of a Florida Medicaid preferred drug list (PDL). The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the agency's Medicaid PDL,

[6] Agency for Health Care Administration, Analysis of SB 530 (Feb. 22, 2017) (on file with Senate Committee on Banking and Insurance).
[7] Part III of ch. 409, F.S., governs the Medicaid program.
[8] A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program; be a health insurer, an exclusive provider organization or a HMO authorized under ch. 624, 627, or 641, F.S., respectively, or a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. (s. 409.962, F.S.)

such that the PDL provides for medically appropriate drug therapies for Florida Medicaid recipients and an array of choices for prescribers within each therapeutic class. The agency also manages the federally required Medicaid Drug Utilization Board, which meets quarterly, develops, and reviews clinical prior authorization criteria, including step-therapy protocols for drugs that are not on the Medicaid PDL.

Florida Medicaid managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the agency's PDL and otherwise covered by Medicaid.[9] As such, the Florida Medicaid managed care plans have not implemented their own plan-specific formulary or PDL. The Florida Medicaid managed care plan's prior authorization criteria/protocols related to prescribed drugs cannot be more restrictive than the criteria established by the agency.

Prior Authorization Requirements

Florida Medicaid managed care plans may implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Florida Medicaid managed care plans are required to ensure that service authorization decisions are based on objective evidenced-based criteria; utilization management procedures are applied consistently; and all decisions to deny or limit a requested service are made by health care providers who have the appropriate clinical expertise in treating the enrollee's condition. The Florida Medicaid managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field; consider the needs of the enrollees; are adopted in consultation with providers; and are reviewed and updated periodically, as appropriate.[10]

Florida Medicaid managed care plans must establish and maintain a utilization management system to monitor utilization of services, including an automated service authorization system for denials, service limitations and reductions of authorization. Section 627.42392, F.S., requires the use of a standard prior authorization form by health insurers. A health insurer that does not provide an electronic prior authorization process for use by its providers, is required to use the prior authorization form adopted by the Financial Services Commission for authorization of procedures, treatments, or prescription drugs. Currently, Medicaid managed care plans are required by contract to have electronic authorization processes, therefore they are exempt from this provision.

The SMMC contract requires managed care plans to authorize or deny a standard request for prior authorization for services other than prescribed drugs within 7 days, and authorize or deny an expedited request within 48 hours of receiving the request. Within 24 hours after receipt of a request, a managed care plan must respond to a request for prior authorization. The timeframe for standard authorization decisions can be extended up to 7 additional days if the enrollee or the

[9] See Agency for Health Care Administration Pharmacy Policy available at http://ahca.myflorida.com/Medicaid/Policy_and_Quality/Policy/pharmacy_policy/index.shtml (last viewed Mar. 19, 2017).
[10] These guidelines are consistent with requirements found in federal and state regulations (See 42 CFR s. 438.236(b)). All service authorization decisions made by the managed care plans must be consistent with the State's Medicaid medical necessity definition (Rule 59G-1.010, F.A.C).

provider requests an extension or the managed care plan justifies the need for additional information and describes how the extension is in the enrollee's interest.

Enrollee Materials and Services

Managed care plans are contractually required to notify enrollees via the enrollee handbook of any procedures for obtaining required services and authorization requirements, including any services available without prior authorization. All enrollee communications, including written materials, spoken scripts, and websites, must be at or near the fourth grade reading level. Managed care plans are required by contract to issue a provider handbook to all providers that includes prior authorization and referral procedures, including required forms. Managed care plans are required to keep all provider handbooks and bulletins up to date and in compliance with state and federal laws. The managed care plans must notify its enrollees in writing of any changes to covered services or service authorization protocols at least 30 days in advance of the change.

The managed care plan must send a written notice of adverse benefit determination to the enrollee to inform the enrollee about a decision to deny, reduce, suspend, or terminate a requested service and provide directions on how the enrollee may ask for a plan appeal to dispute the managed care plan's adverse benefit determination. The enrollee has 60 days after the plan's adverse benefit determination to ask for a plan appeal. For decisions that are appealed, the managed care plan must have a second health care professional who was neither involved in any previous level of review or decision-making, nor a subordinate of any such individual. The managed care plan then has 30 days from the date of the enrollee's request to make a final decision. The managed care plan has 72 hours to respond to the enrollee or his or her authorized representative's request for an expedited plan appeal. The enrollee must complete the plan appeal process before asking for a Medicaid fair hearing.

Florida' State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S.

Contractually, health plans and contracted third party administrators are required to review urgent or emergency prior authorization requests within 24 hours of receipt and within 14 calendar days of initial receipt for routine requests. Current industry standards for a such a utilization review change notices to plan participants/enrollees is 30 days.[11]

[11] Department of Management Services, *Analysis of SB 530* (Mar. 23, 2017) (on file with Senate Banking and Insurance Committee).

Federal Patient Protection and Affordable Care Act

Health Insurance Reforms

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.[12] The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits,[13] and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (QHPs) to provide ten categories of essential health benefits (EHB), which includes prescription drugs.[14] The federal Health Insurance Marketplace must certify such plans of an insurer or HMO.[15] The federal deadline for insurers and HMOs to submit 2018 rates and forms to the Florida Office of Insurance Regulation is May 3, 2017.[16,17]

Prescription Drug Coverage

For purposes of complying with the federal EHBs for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Plans must have a Pharmacy and Therapeutics Committee design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. The PPACA also requires plans to implement an internal appeals and independent external review process if an insured is denied coverage of a drug on the formulary.[18]

Plans are required to publish an up-to-date and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in

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[12] The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.
[13] 42 U.S.C. s.18022.
[14] See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed Feb. 13, 2017) for Florida's benchmark plan.
[15] Center for Consumer Information & Insurance Oversight, *Qualified Health Plans,* https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html (last viewed Feb. 13, 2017).
[16] Office of Insurance Regulation, *Guidance to Insurers,* available at http://www.floir.com/sitedocuments/PPACANoticetoIndustry201802032017.pdf (last viewed Mar. 19, 2017).
[17] President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,* https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed: Mar. 19, 2017).
[18] 45 C.F.R. s. 147.136.

a manner that is easily accessible to insureds, prospective insureds, the state, and the public.[19] Restrictions include prior authorization, step therapy, quantity limits and access restrictions. [20]

Cost Containment Measures Used by Insurers and HMOs

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain medical treatments or drugs on their formulary. Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under a plan. In some cases, plans require an insured to use a step therapy protocol for drugs or a medical treatment, which requires the insured to try one drug or medical procedure first to treat the medical condition before they will cover another drug or procedure for that condition.

III. Effect of Proposed Changes:

Section 1 revises s. 627.42392, F.S., relating to prior authorization by a health insurer. A health insurer means an authorized health insurer offering major medical or similar comprehensive coverage, a Medicaid managed care plan, or an HMO. The section provides a definition of the term, "urgent care situation," which has the same meaning as in s. 627.42393, F.S. (see section 2, below).

A health insurer or a PBM on behalf of a health insurer is required to provide any current prior authorization requirements, restrictions, and forms on a publicly accessible website and in written or electronic format upon request. The requirements must be described in clear and easily understandable language. Further, the bill requires any clinical criteria to be described in language easily understandable by a provider.

If a health insurer or a PBM on behalf of a health insurer intends to amend or implement new prior authorization requirements or restrictions, health insurer or PBM must:

- Ensure that the new or amended requirements or restrictions have been available on the respective website at least 60 days before the effective date of the changes. This requirement does not apply to expansion of coverage.
- Provide notice to policyholders and providers who are affected by the changes at least 60 days before the effective date. Such notice may be delivered electronically or by other methods mutually agreed upon by the insured or provider.

These notice requirements do not apply to expansion of coverage.

Health insurers or PBMs on behalf of health insurers must approve or deny prior authorization requests in urgent and nonurgent care circumstances within 24 hours and 72 hours, respectively, after receipt of the prior authorization form. Notice must be given to the patient and the treating provider of the patient.

[19] 45 C.F.R. s. 156.122(d).
[20] According to CMS, this formulary drug list website link should be the same direct formulary drug list link for obtaining information on prescription drug coverage in the Summary of Benefits Coverage, in accordance with 45 CFR s. 147.200(a)(2).

Section 2 creates s. 627.42393, F.S., relating to step therapy or fail first protocols.The bill defines the following terms:

- "Fail first protocol," means a written protocol that specifies the order in which a certain medical procedure, prescription drugs or course of treatment must be used to treat an insured's condition.
- "Health insurer" has the same meaning as provided in s. 627.42392, F.S. (see section 1, above).
- "Preceding prescription drug or medical treatment," means a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer's fail first protocol as a condition of coverage under a health insurance policy or HMO contract to treat an insured's condition.
- "Protocol exception" means a determination by a health insurer that a fail first protocol is not medically appropriate or indicated for treatment of an insured's condition; and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating provider for the insured's condition.
- "Urgent care situation" means an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would seriously jeopardize the insured's life or health or ability to regain maximum function or subject the patient to severe pain that cannot be managed adequately.

A health insurer is required to publish on its website and provide to a written process to the insured and provider to request a protocol exception. The procedure must include the following:

- A description of the manner in which an insured may request a protocol exception.
- The manner and timeframe in which a health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.
- The conditions in which the protocol exception request must be granted.

The health insurer must authorize or deny a protocol exception request or respond to an appeal of a health insurer's authorization or denial of a request within 24 hours after receipt in an urgent care situation; or within 72 hours after receipt in a nonurgent care situation. The health insurer must provide a detailed written explanation of the reason for the denial, and the procedure to appeal the health insurer's determination.

A health insurer must grant a protocol exception request if:

- A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;
- A preceding prescription drug is expected to be ineffective based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;
- The insured previously received a preceding prescription drug or another prescription drug or medical treatment that is in the same pharmacologic class or that has the same mechanism of action as a preceding prescription drug, respectively, and such drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or

- The bill provides that a preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of such drug or treatment is expected to
  - Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;
  - Worsen the medical condition of the insured that exists simultaneously but independently with the condition under treatment; or
  - Decrease the ability of the insured to achieve or maintain his or her ability to perform daily activities.

The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Section 3 provides that this act is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

The bill revises provisions affecting persons who have or may have a contract with an insurer or HMO. In *Pomponio v. Claridge of Pompano Condominium, Inc*.,[21] the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating "[t]he severity of the impairment measures the height of the hurdle the state legislation must clear."

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

[21] *Pompano v. Claridge of Pompanio Condominium, Inc.,* 378 So.2d 774 (Fla. 1979).

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.

In *United States Fidelity & Guaranty Co. v. Department of Insurance,*[22] the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry, the complaining party had entered, had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic. If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill may give health care providers greater flexibility in prescribing medications to meet the unique medical needs of their patients and reduce the administrative burden associated with the prior authorization process and the current step therapy or fail first therapy protocols.

Insurers and HMOs may experience an indeterminate increase in costs associated with changes in the step therapy protocols provided in the bill. These cost increases are likely to pass through to the purchasers of health insurance, such as individuals and employers.

The provisions of the bill would not apply to self-insured health plans since plans are preempted from state regulation under the Employee Retirement Income Security Act of 1974.

[22] *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So.2d 1355 (Fla. 1984).

C. Government Sector Impact:

Division of State Group Insurance/DMS[23]

The fiscal impact of the bill is unknown. However, the bill would negatively impact the division's fully insured HMO vendors, Capital Health Plan (CHP) and Florida Health Care Plans (FHCP). The initial estimated fiscal impact for CHP would be $450,000 annually. The FHCP was unable to provide a fiscal impact estimate. The provisions of the bill would not affect the state's self-funded insurance plans.

The requirement of a 60-day notice for utilization review changes may prevent timely changes when external or internal factors facilitate an urgent need for the change. The 60-day notice requirement could discourage utilization review changes all together, many of which are made to maintain or increase quality. Other changes are made to assist in the elimination of fraud, abuse and overuse of certain prescription drugs and medical treatments.

Medicaid[24]

According to the agency, CS/SB 530 will have an indeterminate fiscal impact on the agency. The bill will require the agency to amend the SMMC contracts to modify the prior authorization requirements and the utilization review timeframes. The agency will use current agency resources to amend the contract. The bill will significantly affect the business (staffing, systems, etc.) and clinical operations of the Medicaid managed care plans. The bill requires the plans to shorten the time to review authorizations, which will increase the administrative costs.

The agency notes that the situations specified in the bill, for which a plan would be required to authorize a request for a "protocol exception," should already be contemplated in the plans' clinical/evidence based authorization criteria under the SMMC program and are factors addressed in the application of the State's Medicaid medical necessity definition. All Medicaid managed care plans must use the State's Medicaid medical necessity definition in their approval and denial of services. As such, it is unclear of the benefit achieved from applying the requirements related to the "protocol exception" to managed care plans furnishing services under the SMMC program, other than to add administrative requirements on the plans in an effort to expedite authorization decisions. The timely response standards for protocol exceptions will require the plans to increase their authorization staff and will result in an increase in administrative expenses. These increased costs will need to be reflected in the SMMC capitation rates as administrative expenses.

[23] Department of Management Services, *Senate Bill 530 Analysis* (Mar. 23, 2017) (on file with Senate Committee on Banking and Insurance).
[24] Agency for Health Care Administration, *Senate Bill 530 Analysis* (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

Terms

The provisions of section 1 of the bill apply to health insurers and pharmacy benefit managers on behalf of health insurers. The OIR regulates health insurers; however, PBMs are not licensed or regulated by the OIR. It is unclear whether the health insurer is responsible for the actions of the PBM. The OIR analysis of the bill expresses concern regarding enforcing PBM compliance with this bill.[25]

Notice of Prior Authorization Changes

The bill requires health insurers or a PBM to provide at least 60 days' prior notice to insureds and physicians prior to implementing new requirements or restrictions to the prior authorization process. However, the bill does not allow for exceptions in circumstances where a drug or procedure is found to be hazardous or could result in harm to an insured.

VII. Related Issues:

Effective Date

According to the OIR, the filing submission deadline for PPACA-compliant form and rate filings in the individual and small group market is May 3, 2017. This deadline is applicable for products sold on and off the exchange. However, the effective date of the bill is July 1, 2017. Many plans operate on a calendar year basis.

VIII. Statutes Affected:

This bill substantially amends section 627.4292 of the Florida Statutes.

This bill creates section 627.4293 of the Florida Statutes.

IX. Additional Information:

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

Banking and Insurance Committee on March 27, 2015:
The CS:

- Revises definitions.
- Removes applicability of the provisions of the bill to utilization review entities.
- Revises procedures for prior authorization and fail first protocols.
- Shortens response time for health insurers to authorize or deny a prior authorization request or a fail first protocol exception request for nonurgent care situations from 3 business days to 72 hours.

[25] Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis of SB 530* (February 2, 2017)(on file with the Senate Committee on Banking and Insurance).

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

187710

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.42392, Florida Statutes, is amended to read:

627.42392 Prior authorization.—

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

(a) "Health insurer" means an authorized insurer offering an individual or group insurance policy that provides major

187710

medical or similar comprehensive coverage or a health maintenance organization as defined in s. 641.19 ~~health insurance as defined in s. 624.603, a managed care plan as defined in s. 409.962(9), or a health maintenance organization as defined in s. 641.19(12)~~.

(b) "Urgent care situation" has the same meaning as in s. 627.42393.

(2) Notwithstanding any other provision of law, effective January 1, 2017, or six (6) months after the effective date of the rule adopting the prior authorization form, whichever is later, a health insurer, or a pharmacy benefits manager on behalf of the health insurer, which does not provide an electronic prior authorization process for use by its contracted providers, shall only use the prior authorization form that has been approved by the Financial Services Commission for granting a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form may not exceed two pages in length, excluding any instructions or guiding documentation, and must include all clinical documentation necessary for the health insurer to make a decision. At a minimum, the form must include: (1) sufficient patient information to identify the member, date of birth, full name, and Health Plan ID number; (2) provider name, address and phone number; (3) the medical procedure, course of treatment, or prescription drug benefit being requested, including the medical reason therefor, and all services tried and failed; (4) any laboratory documentation required; and (5) an attestation that all information provided is true and accurate. The form, whether in electronic or paper format, may not require information that

is not necessary for the determination of medical necessity of, or coverage for, the requested medical procedure, course of treatment, or prescription drug.

(3) The Financial Services Commission in consultation with the Agency for Health Care Administration shall adopt by rule guidelines for all prior authorization forms which ensure the general uniformity of such forms.

(4) Electronic prior authorization approvals do not preclude benefit verification or medical review by the insurer under either the medical or pharmacy benefits.

(5) A health insurer or a pharmacy benefits manager on behalf of the health insurer must provide the following information in writing or in an electronic format upon request, and on a publicly accessible Internet website:

(a) Detailed descriptions of requirements and restrictions to obtain prior authorization for coverage of a medical procedure, course of treatment, or prescription drug in clear, easily understandable language. Clinical criteria must be described in language easily understandable by a health care provider.

(b) Prior authorization forms.

(6) A health insurer or a pharmacy benefits manager on behalf of the health insurer may not implement any new requirements or restrictions or make changes to existing requirements or restrictions to obtain prior authorization unless:

(a) The changes have been available on a publicly accessible Internet website at least 60 days before the implementation of the changes.

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(b) Policyholders and health care providers who are affected by the new requirements and restrictions or changes to the requirements and restrictions are provided with a written notice of the changes at least 60 days before the changes are implemented. Such notice may be delivered electronically or by other means as agreed to by the insured or health care provider.

This subsection does not apply to expansion of health care services coverage.

(7) A health insurer or a pharmacy benefits manager on behalf of the health insurer must authorize or deny a prior authorization request and notify the patient and the patient's treating health care provider of the decision within:

(a) Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

(b) Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

Section 2. Section 627.42393, Florida Statutes, is created to read:

627.42393 Fail-first protocols.—

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

(a) "Fail-first protocol" means a written protocol that specifies the order in which a certain medical procedure, course of treatment, or prescription drug must be used to treat an insured's condition.

(b) "Health insurer" has the same meaning as provided in s. 627.42392.

(c) "Preceding prescription drug or medical treatment" means a medical procedure, course of treatment, or prescription

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drug that must be used pursuant to a health insurer's fail-first protocol as a condition of coverage under a health insurance policy or a health maintenance contract to treat an insured's condition.

(d) "Protocol exception" means a determination by a health insurer that a fail-first protocol is not medically appropriate or indicated for treatment of an insured's condition and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating health care provider for the insured's condition.

(e) "Urgent care situation" means an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured's treating physician, would:

1. Seriously jeopardize the insured's life, health, or ability to regain maximum function; or

2. Subject the insured to severe pain that cannot be adequately managed.

(2) A health insurer must publish on its website, and provide to an insured in writing, a procedure for an insured and health care provider to request a protocol exception. The procedure must include:

(a) A description of the manner in which an insured or health care provider may request a protocol exception.

(b) The manner and timeframe in which the health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or

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denial of a request.

(c) The conditions in which the protocol exception request must be granted.

(3)(a) The health insurer must authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request within:

1. Seventy-two hours of obtaining a completed prior authorization form for nonurgent care situations.

2. Twenty-four hours of obtaining a completed prior authorization form for urgent care situations.

(b) An authorization of the request must specify the approved medical procedure, course of treatment, or prescription drug benefits.

(c) A denial of the request must include a detailed, written explanation of the reason for the denial, the clinical rationale that supports the denial, and the procedure to appeal the health insurer's determination.

(4) A health insurer must grant a protocol exception request if:

(a) A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;

(b) A preceding prescription drug is expected to be ineffective, based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;

(c) The insured has previously received a preceding prescription drug or medical treatment that is in the same pharmacologic class or has the same mechanism of action, and

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such drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or

(d) A preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of such drug or treatment is expected to:

1. Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;

2. Worsen an insured's medical condition that exists simultaneously but independently with the condition under treatment; or

3. Decrease the insured's ability to achieve or maintain his or her ability to perform daily activities.

(5) The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Section 3. This act shall take effect July 1, 2017.

========== 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 insurer authorization; amending s. 627.42392, F.S.; revising and providing definitions; revising criteria for prior authorization forms; requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization in a specified manner; prohibiting such insurers and

187710

pharmacy benefits managers from implementing or making changes to requirements or restrictions to obtain prior authorization, except under certain circumstances; providing applicability; requiring such insurers or pharmacy benefits managers to authorize or deny prior authorization requests and provide certain notices within specified timeframes; creating s. 627.42393, F.S.; providing definitions; requiring health insurers to publish on their websites and provide in writing to insureds a specified procedure to obtain protocol exceptions; specifying timeframes in which health insurers must authorize or deny protocol exception requests and respond to an appeal to a health insurer's authorization or denial of a request; requiring authorizations or denials to specify certain information; providing circumstances in which health insurers must grant a protocol exception request; authorizing health insurers to request documentation in support of a protocol exception request; providing an effective date.

171194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Steube) recommended the following:

Senate Amendment to Amendment (187710)

Delete lines 11 - 15
and insert:
medical or similar comprehensive coverage ~~health insurance as defined in s. 624.603~~, a managed care plan as defined in s. 409.962(10) ~~s. 409.962(9)~~, or a health maintenance organization as defined in s. 641.19(12).

By Senator Steube

23-00630-17 2017530__

A bill to be entitled

An act relating to health insurance; amending s. 627.42392, F.S.; defining terms; providing that a prior authorization form may not require certain information; requiring a utilization review entity or health insurer to make current prior authorization requirements, restrictions, and forms accessible in a specified manner; providing requirements for describing certain requirements and criteria; specifying requirements for a utilization review entity or health insurer that implements a new prior authorization requirement or that amends an existing requirement or restriction; specifying timeframes that a utilization review entity or health insurer must authorize or deny a prior authorization request and notify the patient and treating health care provider of the determination under certain circumstances; making technical changes; creating s. 627.42393, F.S.; defining terms; requiring a plan to publish on the plan's website and provide to an insured a written procedure for requesting a protocol exception; specifying requirements for such procedure; providing an effective date.

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

Section 1. Section 627.42392, Florida Statutes, is amended to read:

627.42392 Prior authorization.—

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

(a) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a managed care plan

as defined in s. 409.962(10) ~~s. 409.962(9)~~, or a health maintenance organization as defined in s. 641.19(12).

(b) "Urgent health care service" means a health care service that if subject to the time period for making a nonexpedited prior authorization, such time period without the service, in the opinion of a physician with knowledge of the patient's medical condition, could:

1. Seriously jeopardize the life or health of the patient;

2. Seriously jeopardize the patient's ability to regain maximum function; or

3. Subject the patient to severe pain that cannot be adequately managed.

(c) "Utilization review entity" means an entity that performs prior authorization for a health insurer.

(2) Notwithstanding any other provision of law, effective January 1, 2017, or 6 ~~six (6)~~ months after the effective date of the rule adopting the prior authorization form, whichever is later, a health insurer, or a pharmacy benefits manager on behalf of the health insurer, which does not provide an electronic prior authorization process for use by its contracted providers, may ~~shall~~ only use the prior authorization form that has been approved by the Financial Services Commission for granting a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. Such form may not exceed two pages in length, excluding any instructions or guiding documentation, and must include all clinical documentation necessary for the health insurer to make a decision. At a minimum, the form must include~~: (1)~~ sufficient patient information to identify the member, date of birth, full

name, and Health Plan ID number; ~~(2)~~ provider name, address and phone number; ~~(3)~~ the medical procedure, course of treatment, or prescription drug benefit being requested, including the medical reason therefor, and all services tried and failed; ~~(4)~~ any laboratory documentation required; and ~~(5)~~ an attestation that all information provided is true and accurate.

(3) The Financial Services Commission in consultation with the Agency for Health Care Administration shall adopt by rule guidelines for all prior authorization forms which ensure the general uniformity of such forms.

(4) Electronic prior authorization approvals do not preclude benefit verification or medical review by the insurer under either the medical or pharmacy benefits.

(5) A paper or electronic prior authorization form may not require information that is not needed to facilitate a determination of the medical necessity of or coverage for the requested medical procedure, course of treatment, or prescription drug benefit.

(6) A utilization review entity or health insurer must make any current prior authorization requirements, restrictions, and forms readily accessible on its website and in written or electronic form upon request for beneficiaries, health care providers, and the general public. The requirements must be described in detail in clear and easily understandable language. Clinical criteria must be described in language easily understandable by a health care provider.

(7) If a utilization review entity or health insurer intends to implement a new prior authorization requirement or restriction or to amend an existing requirement or restriction,

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

the utilization review entity or health insurer must:

(a) Ensure that the new or amended requirement or restriction is not implemented unless the utilization review entity's or health insurer's website has been updated to reflect the new or amended requirement or restriction at least 60 days before its implementation. This paragraph does not apply to the expansion of coverage for new health care services.

(b) Provide to beneficiaries who are currently using the affected health care service and to all contracted health care physicians who provide the affected health care service written notice of the new or amended requirement or restriction at least 60 days before the requirement or restriction is implemented. Such notice may be delivered electronically or by other means as agreed to by the receiving entity.

(8) If a utilization review entity or health insurer requires prior authorization of a health care service in nonurgent circumstances, the plan must authorize or deny the prior authorization request and notify the patient and the patient's treating health care provider of the determination within 3 business days after obtaining all necessary information to make the determination. If a utilization review entity or health insurer requires prior authorization for an urgent health care service, the utilization review entity or health insurer must authorize or deny the prior authorization request and notify the patient and the patient's treating health care provider of the determination within 24 hours after obtaining all necessary information to make the determination.

Section 2. Section 627.42393, Florida Statutes, is created to read:

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

627.42393 Fail first protocols.—

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

(a) "Fail first protocol" means a protocol that specifies the order in which certain prescription drugs or medical treatments must be used to treat an insured's condition.

(b) "Plan" means an authorized insurer offering health insurance as defined in s. 624.603, a managed care plan as defined in s. 409.962(10), or a health maintenance organization as defined in s. 641.19(12).

(c) "Preceding prescription drug or medical treatment" means a prescription drug or medical treatment that according to a fail first protocol, must be used first to treat an insured's condition and then must be determined, as a result of such treatment, to be inappropriate to treat the insured's condition before a succeeding treatment with another prescription drug or medical treatment is covered.

(d) "Protocol exception" means a plan's determination, based on a review of a request for the determination and any supporting documentation, that:

1. A fail first protocol is not medically appropriate or indicated for treatment of a particular insured's condition; and

2. The plan will not require the insured's use of a preceding prescription drug or medical treatment under the fail first protocol and will provide immediate coverage for another prescription drug or medical treatment that is prescribed or recommended for the insured.

(e) "Urgent care situation" means an injury or condition of an insured which, if medical care or treatment is not provided earlier than the time generally considered by the medical

profession to be reasonable for a nonurgent situation, could:

1. Seriously jeopardize the insured's life or health, based on a prudent layperson's judgment;

2. Seriously jeopardize the insured's ability to regain maximum function, based on a prudent layperson's judgment; or

3. Subject the insured to severe pain that cannot be adequately managed, based on the insured's treating health care provider's judgment.

(2) A plan shall publish on the plan's website and provide in writing to an insured a procedure for requesting a protocol exception. The procedure must provide all of the following provisions:

(a) A description of the manner in which an insured may request a protocol exception.

(b) That the plan must make a determination concerning a protocol exception request or an appeal of a denial of a protocol exception request:

1. Within 24 hours after receiving the request or appeal in an urgent care situation; or

2. Within 3 business days after receiving the request or appeal in a nonurgent care situation.

(c) That a protocol exception will be granted if any of the following applies:

1. A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured.

2. A preceding prescription drug is expected to be ineffective based on both the known clinical characteristics of the insured and the known characteristics of the preceding

prescription drug or medical treatment as found in sound clinical evidence.

3. The insured previously received a preceding prescription drug or another prescription drug that is in the same pharmacologic class or that has the same mechanism of action as a preceding prescription drug, and the prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event.

4. Based on clinical appropriateness, a preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of the preceding prescription drug or medical treatment is expected to:

a. Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;

b. Worsen a comorbid condition of the insured; or

c. Decrease the insured's ability to achieve or maintain reasonable functional ability in performing daily activities.

(d) That when a protocol exception is granted, the plan must notify the insured and the insured's health care provider of the authorization for coverage of the prescription drug or medical treatment that is the subject of the protocol exception.

(e) That if a protocol exception request or an appeal of a denied protocol exception request results in a denial of the protocol exception, the plan must provide to the insured and treating health care provider notice of the denial, including a detailed written explanation of the reason for the denial and the clinical rationale that supports the denial.

(f) That the plan may request a copy of relevant documentation from the insured's medical record in support of a

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

protocol exception.

Section 3. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

530
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 S Monroe Street Suite 200
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email Aimee.DiazLyon@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BioFlorida, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

530
Bill Number (if applicable)

Topic Fall Fbt

Amendment Barcode (if applicable)

Name Peggy J. Symms

Job Title ADVOCate

Address 1410 Chris Ave
Street

DeLand FL 32724
City *State* *Zip*

Phone 407 687-7619

Email Peggysymms2@gmail.com

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

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

Representing mentally ill people

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

5/27/17
Meeting Date

530
Bill Number (if applicable)

Topic Bill 530

Amendment Barcode (if applicable)

Name Maribel Lockwood

Job Title M.D Radiologist

Address 1486 Saint Charles Pl
Street

Phone (850) 216-3683

Tallahassee, FL 32308
City *State* *Zip*

Email mlockwood@radassociates.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Capital Medical Society

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

530
Bill Number (if applicable)

Topic Fall Fest

Amendment Barcode (if applicable)

Name JERI FRANCOEUR

Job Title BOARD

Address 1 SHARON TER
Street

Phone 386-295-1554

ORMOND BEACH, FL 32174
City *State* *Zip*

Email jhfrancoeur@gmail.com

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

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

Representing FLORIDA BREAST CANCER FOUNDATION

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-27
Meeting Date

530
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Step Therapy

Name Matt Jordan

Job Title GRD

Address 1922 Dellwood Dr
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850-514-2801

Email Matt.Jordan@cancer.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing American Cancer Society Cancer Action Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

Meeting Date	Bill Number (if applicable)
	530

Topic Health Insurance

Amendment Barcode (if applicable)

Name Wendy Tronconso

Job Title Vice President & General Counsel

Address 200 W. College Ave
Street

Phone 850-386-2904

Tallahassee FL 32301
City *State* *Zip*

Email Wendy@FAHP.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

530
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 S Monroe Street Suite 200
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email Aimee.DiazLyon@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The AIDS Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 594
INTRODUCER:	Banking and Insurance Committee and Senator Garcia
SUBJECT:	Consumer Finance
DATE:	March 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**FAV/CS**
2.			AGG	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 594 allows a licensee under ch. 516, F.S., to make a consumer finance loan of less than $5,000 with a maximum annual interest rate of 36 percent per year. Such loans are subject to additional restrictions and underwriting standards. The current maximum allowable interest rates for such loans are:

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

The bill also allows the repayment of any loan under ch. 516, F.S., to be paid in equal biweekly or monthly installments.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of TILA,[1] is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[2] Regulation Z, which implements TILA, requires the calculation and disclosure of the

[1] 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.
[2] 15 U.S.C. s. 1601(a).

Annual Percentage Rate (APR) for consumer loans.[3] Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.[4]

State Regulation of Consumer Lending

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

Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[7]" The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

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

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

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[3] 15 U.S.C. s. 1604-1606.
[4] 12 C.F.R. s. 1026.4.
[5] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[6] These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.
[7] Section 516.01(2), F.S.
[8] Section 516.031(1), F.S.
[9] Section 516.031(2), F.S.
[10] *Id.*
[11] Section 516.031(3), F.S.

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

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

III. Effect of Proposed Changes:

The bill allows for an interest rate of no more than 36 percent per annum to be applied to consumer finance loans with a principal amount less than $5,000. Such loans must:

- Provide written notice to the borrower that the borrower may rescind the loan by returning the full principal amount borrowed within 2 business days after the loan was made.
- Prohibit the lender from taking any security interest on the loan.
- Provide that the loan term is a minimum of 120 days and a maximum of 37 months.
- Require simple interest be fixed for the life of the loan and be computed on the original principal amount.

Consumer finance lenders are prohibited from inducing a borrower from taking out more than one loan. Refinancing the loan is prohibited unless 60 percent of the original loan's principal is not in default.

Before issuing a loan the lender must determine if the borrower's residual income allows them to afford the loan payment while still being able to afford basic living expenses. Residual income is verified by payroll receipts, tax returns, bank statements, benefit letters, or other reliable third party means, less debt payments and basic living expenses. The lender must also disclose to the borrower information regarding the OFR's consumer credit counseling services.

The consumer finance lender must report each borrower's full payment performance under the loan to at least one consumer reporting agency.

The bill also allows the repayment of any loan under ch. 516, F.S., to be paid in equal biweekly or monthly installments.

The bill restricts the lender from requiring repayment by one or more electronic funds transfers or predated checks. The lender also may not attempt more than two consecutive electronic funds

[12] Section 516.36, F.S.

transfers for payment when the account in which the payment withdrawal had been approved by the borrower indicates there are insufficient funds. The bill allows an insufficient funds fee of $20 to be applied to electronic funds transfers. Currently, a lender is allowed to charge a $15 delinquency fee if more than 10 days past due on a payment.[13] However, due to the added bi-weekly payment schedule allowed, the bill prohibits a lender from collecting more than one delinquency fee per month regardless if the borrower was delinquent more than once during the month.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Borrowers could be subject to higher interest rates than currently allowed.

The OFR provided the below chart comparing a $2,500 and $5,000 loan under current law versus the change in interest rate proposed in the bill.[14]

Law	Principal Amount	Term	Interest Rate	Finance Charge	Difference	Payment	Difference
Current Law	$2,500	24 Months	30%	$854.83	$186.65	$139.78	$7.97
SB 594	$2,500	24 Months	36%	$1,041.48		$147.75	
Current Law	$5,000	24 Months	Approx 28.42%	$1,612.48	$473.15	$275.52	$19.72
SB 594	$5,000	24 Months	36%	$2,085.63		$295.24	

[13] Section 516.031(3)(a)9., F.S.
[14] Email received by the Office on March 27, 2017 (on file with the Senate Committee on Banking and Insurance).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.031, 516.36.

IX. Additional Information:

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

CS by Banking and Insurance on March 27, 2017:
The CS:

- Allows a borrower to return the full principal amount borrowed and rescind the agreement within 2 business days of receiving the loan.
- Reduces the maximum loan amount from $10,000 to $5,000 for loans that allow interest of up to 36 percent.
- Sets the maximum terms for such loans at no more than 37 months.
- Clarifies a lender cannot offer any other loan when issuing a 36 percent interest loan.
- Removes the debt to income threshold for offering such loans of no more than 50 percent and replaces it with an evaluation of basic living expenses compared to verified residual income.
- Allows one delinquency charge of $15 per month, even if the borrower is delinquent more than one time during the month.
- Makes technical changes when referencing federal regulations.

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	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge,

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

(a) Except as provided in paragraph (b), the maximum interest rate shall be 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. The original principal amount as used in this paragraph ~~section~~ is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the federal Consumer Financial Protection Bureau ~~Board of Governors of the Federal Reserve System~~. In determining compliance with the statutory maximum interest and finance charges set forth in this subsection ~~herein~~, the computations used must ~~shall~~ be simple interest and not add-on interest or any other computations.

(b) A licensee may make a loan in a principal amount less than $5,000 and charge, contract for, and receive interest charges and other charges authorized by this chapter, subject to the following:

1. A borrower may rescind the loan by notifying the

<u>licensee of such intent, and returning to the licensee the full principal amount of the loan advanced to the borrower, as well as any payments made for ancillary products, within 2 business days after the date the loan is made. The licensee must disclose such right in writing to the borrower before the loan is made.</u>

<u>2. A licensee may not take any security interest on the loan.</u>

<u>3. The term of the loan may not be less than 120 days or more than 37 months.</u>

<u>4. The maximum annual interest rate of the loan shall be 36 percent per annum, computed on the original principal amount of the loan. The interest rate of the loan calculated as of the date the loan is made must be fixed for the life of the loan. The original principal amount of the loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the federal Consumer Financial Protection Bureau. In determining compliance with the statutory maximum interest rate in this paragraph, the computations used must be simple interest and may not be add-on interest or any other computations.</u>

<u>5. A licensee may not induce or permit any person to become obligated to the licensee, directly or contingently, or both, under more than one loan with the licensee made under this subsection at the same time.</u>

<u>6. A licensee may not refinance a loan made under this paragraph with another loan made under this paragraph, unless the borrower has repaid at least 60 percent of the principal amount of his or her outstanding loan and his or her outstanding loan is not in default. For purposes of this paragraph, the term</u>

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"refinance" means the replacement or revision of an existing loan contract with a borrower that results in an extension of additional principal to that borrower.

7. A licensee shall make a determination of a borrower's ability to repay a loan made under this paragraph by determining that the borrower's residual income will be sufficient for the consumer to make the scheduled payments when due under the loan and meet basic living expenses during the term of the loan. The borrower's residual income must be calculated using net income, verified by payroll receipts, tax returns, bank statements, benefit letters, or other reliable third party means, less debt payments and basic living expenses. Basic living expenses, including housing and utility costs, may be estimated using any reasonable means or database.

8. The licensee must report each borrower's full payment performance under the loan, including positive payment performance, to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in s. 603(p) of the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p), upon the licensee's acceptance as a data furnisher by that consumer reporting agency.

9. Before making the loan, the licensee must disclose in writing to the borrower information about the office's consumer credit counseling services available under s. 516.32.

10. A licensee shall make available to the borrower by electronic or physical means, at the time that a payment is made by the borrower, a plain and complete receipt of payment.

11.a. A licensee may not initiate a payment transfer from a borrower's bank account in connection with collecting an amount

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due under the loan after the licensee has attempted to initiate the payment transfer two consecutive times and each attempt resulted in a return indicating that the borrower's bank account lacked sufficient funds. A licensee may collect only one insufficient funds fee for each payment transfer that is dishonored, regardless of whether the payment transfer was initiated and dishonored a second time. A licensee may not condition the making of a loan on the borrower's repayment by one or more electronic funds transfers or predated checks.

b. For purposes of this paragraph, the term "payment transfer" means a debit or funds withdrawal and includes, but is not limited to, an electronic funds transfer as defined in the federal Electronic Funds Transfer Act and Regulation E, 12 C.F.R. part 1005, of the federal Consumer Financial Protection Bureau, or a paper check processed through a funds-transfer system, as defined in s. 670.105, or through the Automated Clearing House (ACH) network ~~If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed~~.

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges provided in this section, further or other charges or amount for any examination, service, commission, or other thing

or otherwise may not be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge of up to $15 for each payment in default for at least 10 days if the charge is agreed upon, in writing, between the parties before imposing the charge. No more than one delinquency charge may be imposed for each payment in default. A maximum delinquency charge of $15 may be imposed for loans repayable in monthly installments. For loans repayable in installments due less than monthly, the maximum of all delinquency charges imposed during a calendar month may not exceed $15.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days after the discovery of such error.

(b) Notwithstanding ~~the provisions of~~ paragraph (a), any lender of money who receives a check, draft, electronic funds transfer as defined in the federal Electronic Funds Transfer Act and Regulation E of the federal Consumer Financial Protection Bureau, negotiable order of withdrawal, or like instrument or transfer drawn on a bank or other depository institution, which instrument or transfer is given by a borrower as full or partial repayment of a loan, may, if such instrument or transfer is not paid or is dishonored by such institution, make and collect from the borrower an insufficient funds fee ~~a bad check charge~~ of not more than the greater of $20 or an amount equal to the actual fee charged ~~charge made~~ to the lender by the depository

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institution for the return of the unpaid or dishonored instrument or transfer.

Section 2. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to consumer finance; amending s. 516.031, F.S.; authorizing a licensee under the Florida Consumer Finance Act to charge, contract for, and receive a specified interest rate on certain loans; authorizing such licensee to make certain loans subject to certain conditions; defining the term "payment transfer"; specifying limitations for delinquency charges; revising a provision authorizing insufficient funds fees under certain circumstances; providing an effective date.

By Senator Garcia

36-00436A-17 2017594__

A bill to be entitled

An act relating to consumer finance; amending s. 516.031, F.S.; authorizing a licensee to make specified loans under certain conditions; revising provisions relating to certain other charges for consumer loans; amending s. 516.36, F.S.; revising installment requirements for consumer loans; providing an effective date.

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

Section 1. Subsection (1) and paragraph (b) of subsection (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(a) Except as provided in paragraph (b), the maximum interest rate shall be 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

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

36-00436A-17 2017594__

amount exceeding $4,000 and up to $25,000. The original principal amount as used in this paragraph ~~section~~ is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the federal Consumer Financial Protection Bureau ~~Board of Governors of the Federal Reserve System~~. In determining compliance with the statutory maximum interest and finance charges set forth in this subsection ~~herein~~, the computations used must ~~shall~~ be simple interest and not add-on interest or any other computations.

(b) A licensee may make a loan in a principal amount less than $10,000, and charge, contract for, and receive interest charges and other charges authorized by this chapter, subject to the following:

1. A borrower may rescind the loan by notifying the licensee of such intent, and returning to the licensee the full principal amount of the loan advanced to the borrower within 1 business day after the date the loan is made. The licensee must disclose such right in writing to the borrower before the loan is made.

2. A licensee may not take any security interest on the loan.

3. The term of the loan may not be less than 120 days.

4. The maximum annual interest rate of the loan shall be 36 percent per annum, computed on the original principal amount of the loan. The interest rate of the loan calculated as of the date the loan is made must be fixed for the life of the loan. The original principal amount of the loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the federal Consumer Financial Protection

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

Bureau. In determining compliance with the statutory maximum interest rate in this paragraph, the computations used must be simple interest and may not be add-on interest or any other computations.

5. A licensee may not induce or permit any person to become obligated to the licensee, directly or contingently, or both, under more than one loan with the licensee made under this paragraph at the same time.

6. A licensee may not refinance a loan made under this paragraph with another loan made under this paragraph, unless the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her loan and his or her outstanding loan is not in default. For purposes of this paragraph, the term "refinance" means the replacement or revision of an existing loan contract with a borrower which results in an extension of additional principal to that borrower.

7. The licensee must underwrite each loan to determine a borrower's ability and willingness to repay the loan pursuant to the loan terms, and may not make a loan if it determines, through its underwriting, that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the licensee, exceed 50 percent of the borrower's gross monthly income. The licensee must seek information and documentation relating to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower

and not available for independent verification by the licensee. The licensee must verify such information and documentation using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or using other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations. The licensee must also verify the borrower's income upon which the licensee relies to determine the borrower's debt-to-income ratio using reliable evidence of the borrower's actual income.

8. The licensee must report each borrower's full payment performance under the loan, including positive payment performance, to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in s. 603(p) of the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p), upon the licensee's acceptance as a data furnisher by that consumer reporting agency.

9. Before making the loan, the licensee must disclose in writing to the borrower information about the office's consumer credit counseling services available under s. 516.32.

10.a. A licensee may not initiate a payment transfer from a borrower's bank account in connection with collecting an amount due under the loan after the licensee has attempted to initiate the payment transfer two consecutive times and each attempt resulted in a return indicating that the borrower's bank account lacked sufficient funds. A licensee may collect only one insufficient funds fee for each payment transfer that is dishonored, regardless of whether the payment transfer was initiated and dishonored a second time. A licensee may not

condition the making of a loan on the borrower's repayment by one or more electronic funds transfers or predated checks.

b. For purposes of this paragraph, the term "payment transfer" means a debit or funds withdrawal and includes, but is not limited to, an electronic funds transfer as defined in the federal Electronic Funds Transfer Act and Regulation E of the federal Consumer Financial Protection Bureau, or a paper check processed through a funds-transfer system, as defined in s. 670.105, or through the Automated Clearing House (ACH) network. ~~If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.~~

(3) OTHER CHARGES.—

(b) Notwithstanding ~~the provisions of~~ paragraph (a), any lender of money who receives a check, draft, electronic funds transfer as defined in the federal Electronic Funds Transfer Act and Regulation E of the federal Consumer Financial Protection Bureau, negotiable order of withdrawal, or like instrument or transfer drawn on a bank or other depository institution, which instrument or transfer is given by a borrower as full or partial repayment of a loan, may, if such instrument or transfer is not paid or is dishonored by such institution, make and collect from the borrower an insufficient funds fee ~~a bad check charge~~ of not more than the greater of $20 or an amount equal to the actual

fee charged ~~charge made~~ to the lender by the depository institution for the return of the unpaid or dishonored instrument or transfer.

Section 2. Section 516.36, Florida Statutes, is amended to read:

516.36 ~~Monthly~~ Installment requirement.—Every loan made pursuant to this chapter shall be repaid in approximately equal, periodic ~~monthly~~ installments, except that the amount of the final installment may be less than the amount of the prior installments. Installments must be paid biweekly or monthly ~~as nearly equal as mathematically practicable~~. This section shall not apply to lines of credit.

Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.27
Meeting Date

594
Bill Number (if applicable)

Topic Consumer finance

Amendment Barcode (if applicable)

Name Raul Vazquez

Job Title CEO, Oportun

Address PO Box 4085
Street

San Francisco CA
City *State* *Zip*

Phone 1 866 488 6090

Email Raul.vazquez@oportun.com
ezra.garrett@oportun.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Oportun

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 594
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

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Street

Tall FL 32301
City *State* *Zip*

Phone 850 224-6387

Email dobarker@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Finance

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne BLVD, #106
Street

Miami FL 33137
City *State* *Zip*

Phone 850-509-2085

Email arthur@floridalegal.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Legal Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

594
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Finance

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee, FL 32303
City *State* *Zip*

Phone 850 556-3121

Email alicevickers@flacp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Alliance for Consumer Protection

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/SB 800
INTRODUCER:	Banking and Insurance Committee and Senators Broxson and Mayfield
SUBJECT:	Medication Synchronization
DATE:	March 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			HP	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 800 establishes coverage and payment requirements relating to medication synchronization. Medication synchronization is a process where a pharmacist coordinates or synchronizes refills for a patient who is taking multiple covered prescriptions, allowing them to be filled on the same day each month. Partial fills for less than the standard refill amount are often required in order to align all patient medications to the same refill date. Medication synchronization can be used as a tool to increase medication adherence.

The bill requires health insurers and health maintenance organizations (HMOs) that provide prescription drug coverage to offer insureds or members the option to align the refill dates of their prescription drugs through a network pharmacy at least once during the plan year. Controlled substances, prescription drugs dispensed in an unbreakable package, or a multidose unit of a prescription may not be partially filled for the purpose of aligning refill dates.

The bill requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy unless otherwise agreed to by the plan and the network pharmacy. The health insurer or HMO must prorate cost-sharing obligations of the insured for each partial refill of a covered prescription drug dispensed to align refill dates.

The fiscal impact of the bill on the Division of State Group Insurance is indeterminate.

II. Present Situation:

Federal Health Care and Access to Prescription Drugs

Medicare Part D

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003[1] established a voluntary, outpatient, prescription drug benefit under Medicare Part D, effective January 1, 2006. Medicare Part D provides coverage through private prescription drug plans (PDPs) that offer only drug coverage, or through Medicare Advantage (MA) prescription drug plans (MA-PDs) that offer coverage as part of broader, managed care plans. The Centers for Medicare and Medicaid Services currently requires health plans administering Medicare Part D plans to prorate copayments associated with refill synchronization.[2]

Patient Protection and Affordable Care Act

On March 23, 2010, the federal Patient Protection and Affordable Care Act (PPACA) was signed into law.[3] The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits,[4] cost-sharing limits, rating and underwriting standards, and appeals of adverse benefit determinations.[5]

The PPACA requires issuers (insurers and HMOs) of qualified health plans (QHPs) to provide 10 categories of essential health benefits (EHB), which includes prescription drugs.[6] To be certified as a QHP, the insurer must also submit an application, follow established limits on cost sharing, and be certified by the federal Health Insurance Marketplace.[7] The deadline for insurers and HMOs to submit 2018 rates and forms to the OIR is May 3, 2017.

The QHPs must provide access to prescription drug benefits. An individual or small group health plan[8] providing QHPs must allow enrollees to obtain prescription drug benefits at in-network retail pharmacies, unless a drug is subject to restricted distribution by the U.S. Food and Drug Administration; or a drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.

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[1] Pub. L. No. 108-173.
[2] See https://www.medicare.gov/part-d/costs/copayment-coinsurance/drug-plan-copayments.html (last visited Mar. 21, 2017).
[3] The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.
[4] 42 U.S.C. s.18022.
[5] President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed Mar. 19, 2017).
[6] See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last visited Feb. 13, 2017) for Florida's benchmark plan.
[7] Center for Consumer Information & Insurance Oversight, *Qualified Health Plans*, https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html (last viewed Feb. 13, 2017).
[8] The Patient Protection and Affordable Care Act (Pub. L. 111–148). This regulation would not apply to large group plans, self-insured plans, transitional plans, or grandfathered plans.

A health plan may charge enrollees a different cost-sharing amount for obtaining a covered drug at a retail pharmacy, but all cost sharing will count towards the plan's annual limitation on cost sharing under 45 CFR 156.135. The health plans retain the flexibility to charge a lower cost-sharing amount when obtaining the drug at an in-network retail pharmacy. While this provision requires coverage of a drug at a network, retail pharmacy, for plans that do not have a network, the enrollee may go to any pharmacy to access his prescription drug benefit. In those situations, those plans would be deemed in compliance with this standard.

The issuers need only provide enrollees with the option to access drugs that are not exempted under 45 CFR s. 156.122(e), at a network retail pharmacy. The federal Department of Health and Human Services (HHS) notes that there are instances in which obtaining a drug through a mail-order pharmacy may not be a viable option, such as when an individual does not have a stable living environment and does not have a permanent address, or when a retail pharmacy option better ensures that consumers can access their EHB prescription drug benefit on short notice.[9]

According to the HHS final rules, certain drugs have a Risk Evaluation and Mitigation Strategy (REMS) that includes Elements to Assure Safe Use that may require that pharmacies, practitioners, or health care settings that dispense the drug be specially certified and that may limit access to the drugs to certain health care settings.[10] If the health plan finds it necessary to restrict access to a drug for either of the reasons listed above, it must indicate this restricted access on the formulary drug list that plans must make publicly available under 45 CFR s. 156.122(d).

Medication Synchronization

Medication synchronization is a tool that can improve adherence when patients are on a regular medication regimen. Medication synchronization can also reduce the administrative burden on patients who take multiple medications by reducing the number of refill dates. A retail or mail order pharmacy would coordinate all of a patient's prescription medications so that the drugs have the same refill date each month. The pharmacist initially performs a comprehensive review of the patient's medication regimen to determine the appropriateness of each therapy.

A partial fill can be required to align the patient's medications to a single refill date. Currently, some plans may not provide coverage for a refill for less than a 30-day supply. Patients may be required to pay a full month's copayment or coinsurance for a month's supply of medications. In some cases, pharmacies trying to submit a claim for adjusted quantities, will receive a "refill too soon" rejection, and the plan will deny coverage altogether, resulting in the patient paying out of pocket to cover the cost for the amount of medication needed to align their refills. Contingent on the plan, some plans will allow a limited number of overrides per year for special circumstances, such as a vacation supply, replacement of lost medication, or medication synchronization. In regards to dispensing fees, some plans will prorate the dispensing fee payment to the pharmacy that reflects a partial refill of a prescription.

[9] Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 FR 10820, 10821 (Feb. 27, 2015).
[10] FDA requires a Risk Evaluation and Mitigation Strategies (REMS) for certain drugs to ensure that the benefits of a drug or biological product outweigh its risks. The FDA's list of currently approved REMS is available at: http://www.accessdata.fda.gov/scripts/cder/rems/index.cfm (last viewed Mar. 20, 2017).

Staff conducted a limited survey of states [11] that found that approximately 20 states have enacted medication synchronization legislation.[12] Some states place restriction on the types of drugs that may be eligible for synchronization. For example, Ohio requires that the medication must be the following criteria:

- Cannot have quantity limits, dose optimization criteria, or other requirements that would be violated if synchronized;
- Not have special handling or sourcing needs, as determined by the policy, contract, or agreement, that require a single, designated pharmacy to fill or refill the prescription;
- Be formulated so that the quantity or amount dispensed can be effectively divided in order to achieve synchronization;
- Not be a schedule II controlled substance, opiate, or benzodiazepine.[13]

Likewise, Kentucky law provides that a synchronized medication may not be a Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.[14] Nevada law states that the synchronization provisions do not apply to unit-of-use packaging for which synchronization is not practicable or to a controlled substance.[15] In Maine, prescriptions for solid oral doses of antibiotics and solid oral doses that are dispensed in their original container as indicated in the federal Food and Drug Administration prescribing information or are customarily dispensed in their original packaging to assist a patient with compliance are excluded from the medication synchronization requirements.[16]

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[17] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must obtain a Health Care Provider Certificate from the agency.[18]

Florida's State Group Health Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program under a cafeteria plan.[19] To administer the state group health insurance program, the DMS

[11] See National Conference of State Legislators database available at http://www.ncsl.org/research/health/prescription-drug-statenet-database.aspx (last viewed Mar. 21, 2017).
[12] See http://www.ncpanet.org/newsroom/ncpa's-blog---the-dose/2015/06/18/states-take-the-lead-in-making-med-synchronization-easier (last viewed Mar. 21, 2017).
[13] See 2015 Ohio Act at https://custom.statenet.com/public/resources.cgi?id=ID:bill:OH2015000H116&ciq=ncsldc3&client_md=af8c8e805f456317976bcd68b3cfee7e&mode=current_text (last viewed Mar. 21, 2017).
[14] See KRS 304.17A-165.
[15] Chapter 689A.330 of NRS.
[16] See http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0284&item=3&snum=127 (last viewed Mar. 21, 2017).
[17] Section 20.121(3)(a), F.S.
[18] Section 641.21(1), F.S.
[19] 26 U.S.C. s. 125.

contracts with third party administrators for self-insured health plans, insured health maintenance organizations (HMOs), and a pharmacy benefits manager (PBM), CaremarkPCS Health, L.L.C. (CVS/Caremark) for the state employees' self-insured prescription drug program.[20]

III. Effect of Proposed Changes:

Sections 1 and 2 require health insurers and health maintenance organizations (HMOs) that provide prescription drug coverage to offer insureds or members the option to align the refill dates of their prescription drugs through a network pharmacy at least once in a plan year. Controlled substances, prescription drugs dispensed in an unbreakable package, or a multidose unit may not be partially filled for the purpose of aligning refill dates.

The bill requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy unless otherwise agreed to by the plan and the network pharmacy. The health insurer or HMO must prorate cost-sharing obligations of the insured for each partial refill of a covered prescription drug dispensed to align refill dates.

The provisions of these sections apply to policies or contracts issued on or after January 1, 2018.

Section 3 provides that this act takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of medication synchronization may improve medication adherence for patients, particularly patients with chronic conditions who are on multiple-medication regimens.

[20] Section 110.12315, F.S.

According to DMS, for a preferred provider organization enrollee filling maintenance medications at a retail pharmacy, any partial fill would count as one of their three 30-day fills at retail before being required to use 90-day retail or 90-day mail order.[21] Insurers and HMOs may incur additional costs associated with full dispensing fees associated with partial refills of covered drugs.

C. Government Sector Impact:

Local governments may experience an indeterminate increase in pharmacy dispensing fees if they are required to pay full dispensing fees for partial refills.

DMS/Division of State Group Insurance

Currently, the program does not allow for the synchronization of medication, if that synchronization requires an early refill. The fiscal impact on the program is unknown.[22]

VI. Technical Deficiencies:

According to DMS, amendments to s. 110.12315, F.S., would be necessary to incorporate provisions regarding prorated member cost sharing.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates section 627.64196 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance: on March 27, 2017:
The CS:

- Requires health insurers and HMOs that provide covered prescription drugs to offer insureds or members the option to use medication synchronization at least once in a plan year at a network pharmacy.
- Requires such health insurer and HMO to implement a process for dispensing drugs for the purpose of aligning the refill dates of such drugs.
- Requires health insurers and HMOs to pay a full dispensing fee to the network pharmacy for each partial refill of a covered drug dispensed to align refill dates,

[21] Department of Management Services, *2017 Agency Legislative Bill Analysis of SB 800* (Mar. 16, 2017) (on file with Banking and Insurance Committee).
[22] Id.

unless otherwise agreed to by the plan and the network pharmacy at the time of the insured or member requests medication synchronization.

- Excludes certain prescription drugs from being partially filled for the purpose of aligning refill drugs.
- Applies to policies or contracts renewed or entered into on or after January 1, 2018.

B. Amendments:

None.

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

445314

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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. Section 627.64196, Florida Statutes, is created to read:

627.64196 Medication synchronization.—A health insurer issuing or delivering in this state an individual or a group health insurance policy that provides prescription drug coverage shall offer medication synchronization to allow an insured to

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align at least once in a plan year the refill dates for prescription drugs covered by the policy. The insurer shall implement a process for dispensing prescription drugs to an insured for the purpose of aligning the refill dates of such drugs, and such medication synchronization may be available only through a network pharmacy. A controlled substance, a prescription drug dispensed in an unbreakable package, or a multidose unit of a prescription drug may not be partially filled for the purpose of aligning refill dates. The insurer shall pay a full dispensing fee to the network pharmacy for each partial refill of a covered prescription drug dispensed to align refill dates, unless otherwise agreed to by the plan and the network pharmacy at the time an insured requests medication synchronization. The insurer shall prorate the cost-sharing obligations of the insured for each partial refill of a covered prescription drug dispensed to align refill dates. This section applies to policies renewed or entered into on or after January 1, 2018.

Section 2. Subsection (44) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(44) A health maintenance organization issuing or delivering in this state a health maintenance contract that provides prescription drug coverage shall offer medication synchronization to allow a subscriber to align at least once in a plan year the refill dates for prescription drugs covered by the health maintenance contract. The health maintenance organization shall implement a process for dispensing prescription drugs to a subscriber for the purpose of aligning

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the refill dates of such drugs, and such medication synchronization may be available only through a network pharmacy. A controlled substance, a prescription drug dispensed in an unbreakable package, or a multidose unit of a prescription drug may not be partially filled for the purpose of aligning refill dates. The health maintenance organization shall pay a full dispensing fee to the network pharmacy for each partial refill of a covered prescription drug dispensed to align refill dates, unless otherwise agreed to by the plan and the network pharmacy at the time a subscriber requests medication synchronization. The health maintenance organization shall prorate the cost-sharing obligations of the subscriber for each partial refill of a covered prescription drug dispensed to align refill dates. This subsection applies to policies renewed or entered into on or after January 1, 2018.

Section 3. This act shall take effect January 1, 2018.

================ 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 medication synchronization; creating s. 627.64196, F.S., and amending s. 641.31, F.S.; requiring health insurers and health maintenance organizations, respectively, which issue or deliver certain policies or contracts to offer medication synchronization to allow insureds and subscribers to align refill dates for certain drugs at least once in


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a plan year; requiring such insurers and health maintenance organizations to implement a process for aligning such dates; authorizing medical synchronization only through a network pharmacy; providing exceptions from partial filling for the purpose of aligning refill dates; requiring such insurers and health maintenance organizations to pay, except under certain circumstances, the full dispensing fee for a partial refill to align refill dates; requiring such insurers and health maintenance organizations to prorate certain cost-sharing obligations; providing applicability; providing an effective date.

By Senator Broxson

1-01138A-17 2017800__

A bill to be entitled

An act relating to medication synchronization; creating s. 627.64196, F.S., and amending s. 641.31, F.S.; prohibiting, under certain circumstances, certain health insurance policies and health maintenance contracts, respectively, from denying coverage for partial supplies of medication dispensed by network pharmacies; requiring such policies and contracts to authorize and apply a prorated daily cost-sharing rate to certain prescriptions under certain circumstances; requiring such policies and contracts to allow network pharmacies to override denial codes under certain circumstances; prohibiting such policies and contracts from using payment structures incorporating prorated dispensing fees; providing requirements for dispensing fees for partially filled or refilled prescriptions; providing an effective date.

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

Section 1. Section 627.64196, Florida Statutes, is created to read:

627.64196 Requirements for the partial fill or refill of prescriptions for medication synchronization purposes.—

(1) An individual or group health insurance policy providing prescription drug coverage in this state may not deny coverage for a partial supply of medication dispensed by a network pharmacy and must authorize and apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for the partial supply if:

(a) The prescribing practitioner or pharmacist determines

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

1-01138A-17 2017800__

the fill or refill to be in the best interest of the insured; and

(b) The insured requests or agrees to a partial supply for the purpose of synchronizing his or her medications.

(2) An individual or group health insurance policy:

(a) Must allow, for the purposes of medication synchronization, a network pharmacy to override any denial code indicating that a prescription is being refilled too soon.

(b) May not use payment structures incorporating prorated dispensing fees. Dispensing fees for partially filled or refilled prescriptions must be paid in full for each prescription dispensed, regardless of any prorated copay for the beneficiary or fee paid for alignment services.

Section 2. Subsection (44) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(44)(a) A health maintenance contract providing prescription drug coverage in this state may not deny coverage for the dispensing of a partial supply of medication by a network pharmacy and must authorize and apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for the partial supply if:

1. The prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the subscriber; and

2. The subscriber requests or agrees to a partial supply for the purpose of synchronizing his or her medications.

(b) A health maintenance contract:

1. Must allow, for the purposes of medication

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

synchronization, a network pharmacy to override any denial code indicating that a prescription is being refilled too soon.

2. May not use payment structures incorporating prorated dispensing fees. Dispensing fees for partially filled or refilled prescriptions must be paid in full for each prescription dispensed, regardless of any prorated copay for the beneficiary or fee paid for alignment services.

Section 3. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SOP
Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Feby Curva, Ph.D.

Job Title Partner, Curva & Associates LLC

Address 1212 Piedmont Dr.
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Tallahassee FL 32312
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Email feby.curva@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Budd Bell Clearinghouse on Human Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 802
Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W College Ave, Ste 304
Street

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City *State* *Zip*

Email dorbarker@aarp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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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)

3/27/17
Meeting Date

800
Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Stephen Winn

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/16
Meeting Date

800
Bill Number (if applicable)

Topic Medication Sync

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

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City *State* *Zip*

Phone

Email Melissa@FRF.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

800
Bill Number (if applicable)

Topic Medicaid Synchronization

Amendment Barcode (if applicable)

Name Rebecca Roman

Job Title

Address 203 S. Adams St.
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Tallahassee FL 32301
City *State* *Zip*

Phone 7279160605

Email rebecca@adamsstadvocates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Pharmacy Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/27/17
Meeting Date

800
Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 S Monroe Street Suite 200
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email Aimee.DiazLyon@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Lung Association in Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-27-17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB600

Meeting Date *Bill Number (if applicable)*

Topic Medication Synchronization *Amendment Barcode (if applicable)*

Name Joy Ryan

Job Title

Address 325 W. College Ave Phone 425-4000

Street

Tally Email joy@morganlawfirm.com

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

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

Representing America's Health Insurance Plans

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/27/17
Meeting Date

800
Bill Number (if applicable)

Topic Medication Synchronization

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 S Monroe Street Suite 200
Street

Phone 850-205-9000

Tallahassee FL 32301
City *State* *Zip*

Email Aimee.DiazLyon@MHDFirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Academy of Family Physicians

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27
Meeting Date

800
Bill Number (if applicable)

Topic Support SB 800 by Broxson

Amendment Barcode (if applicable)

Name Sally West

Job Title Walgreens

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Tallahassee FL 32309
City *State* *Zip*

Phone (224) 723-2650

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Walgreens

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 800
Bill Number (if applicable)

Topic Medical Synchronization

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Gadsden St
Street

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Email lawgonz@earthlink.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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 850
INTRODUCER:	Banking and Insurance Committee and Senator Rouson
SUBJECT:	Public Housing Authority Insurance
DATE:	March 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 850 allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

Section 626.46226, F.S., governs public housing authority self-insurance funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:

- Has annual premiums over $5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than $350,000, per loss, in retained risk;
- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months of the end of the fiscal year;
- Is governed by a body of public housing authority commissioners;
- Is administered by licensed knowledgeable people or business entities with required experience;

- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

II. Present Situation:

Florida's role in housing and urban development is outlined in part I of ch. 421, F.S., (Housing Authorities Law), ch. 422, F.S., (Housing Cooperation Law), and ch. 423, F.S., (Tax Exemption of Housing Authorities). Section 421.02, F.S., finds that there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford. To provide such accommodations, housing authorities may acquire property to be used for, or in connection with, housing projects. Public money may only be spent to acquire private property for exclusively public uses and purposes, and the purposes must be determined to be governmental functions of public concern.

Current law provides for the creation of special district, city, county, and regional housing authorities. The determination of the need for a city or county housing authority may be made by the governing body of the city or county or upon the filing of a petition signed by 25 residents.[1] A regional housing authority may be created by two or more contiguous counties if a regional entity would be a more economically or administratively efficient unit.[2] The powers of each authority are vested in the commissioners and action may be taken upon a majority vote of the commissioners.[3] Among other things, housing authorities have the power to:

- Acquire, lease, and operate housing projects;
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project;
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project;
- Invest funds held in reserves or sinking funds;
- Organize and create for-profit corporations, not-for-profit corporations, limited liability companies, and other similar business entities in order to acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects.[4]

Section 421.21, F.S., empowers a housing authority to borrow money or accept grants or other financial assistance from the federal government for housing projects. This section also allows a housing authority to take over or lease or manage any housing project or undertaking constructed or owned by the federal government. In addition, an authority is authorized to do any and all things necessary or desirable to secure the aid or cooperation of the federal government for any housing project by the housing authority. Because the federal government has exhibited an interest in shifting more resources from ownership of public housing projects to offering tenants assistance with their rental costs through the Rental Assistance Demonstration Program, it is

[1] ss. 421.04, 421.05, 421.27, F.S.
[2] s. 421.28, F.S.
[3] s. 421.06, F.S.
[4] s. 421.08, F.S.

anticipated that public housing authorities will organize business entities to facilitate local ownership of public housing projects.[5]

Public Housing Authority Self-Insurance Funds

As an alternative to obtaining insurance from a licensed insurance company, state law allows certain persons to form and obtain insurance coverage from a self-insurance fund. In general, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company. Various types of self-insurance funds may be established, with varying degrees of state regulation. For certain self-insurance funds, the law requires approval and licensure by the Office of Insurance Regulation (OIR), subject to regulatory requirements that are less restrictive than for insurance companies, but which are intended to provide adequate protections against insolvency and unfair trade practices. For other funds, however, there is little or no regulatory oversight by OIR if certain criteria are met.

Types of self-insurance funds include:
- Commercial self-insurance funds;[6]
- Group self-insurance funds;[7]
- Local government self-insurance funds;[8]
- Self-insured public utilities;[9]
- Public housing authorities self-insurance funds;[10]
- Independent educational institution self-insurance funds;[11]
- Corporation not for profit self-insurance funds;[12]
- Electric cooperative self-insurance fund;[13] and
- Hospital alliances.[14]

Section 624.46226, F.S., governs public housing authority trust funds. It provides that any two or more public housing authorities may form a self-insurance fund, if the fund:
- Has annual premiums over $5 million;
- Uses a qualified actuary who develops actuarially sound rates, and certifies to OIR annually that the rates are not excessive, inadequate, or unfairly discriminatory;
- Establishes a reserve for losses and loss adjustment expenses that the qualified actuary determines are adequate;
- Maintains an excess insurance and reserve evaluation program, which obtains excess insurance from an admitted insurer or a surplus lines insurer and has no more than $350,000 per loss, in retained risk;

[5] Information on the federal RAD program can be found at https://portal.hud.gov/hudportal/HUD?src=/RAD (last accessed March 22, 2017).
[6] s. 624.462, F.S.
[7] s. 624.4621, F.S.
[8] s. 624.4622, F.S.
[9] s. 624.46225, F.S.
[10] s. 624.46226, F.S.
[11] s. 624.4623, F.S.
[12] s. 624.4625, F.S.
[13] s. 624.4626, F.S.
[14] s. 395.106, F.S.

- Annually submits audited financial statements to OIR, which are audited by an independent certified public accountant within 6 months of the end of the fiscal year;
- Is governed by a body of public housing authority commissioners;
- Is administered by licensed knowledgeable people or business entities with required experience;
- Provides OIR with copies of its member contracts; and
- Annually files a board certification to OIR that the requirements of s. 624.46226, F.S., are being met.

If the self-insurance fund meets these requirements, then they are not considered insurers for purposes of the insurance guaranty associations or subject to the provision of the group self-insurance fund law and are relieved of any workers' compensation reporting requirement that is unique to group self insurance funds. Public housing authority self-insurance funds that fail to meet the stated requirements must operate under the more extensive regulations of the Commercial Self-Insurance Fund Act.

Other benefits of operating as a public housing authority self-insurance fund include:
- Reduced premium taxes.
- Exemption from the Florida Insurance Guaranty Association Assessment, the Florida Hurricane Catastrophe Fund assessment, and various insurance risk apportionment plans.
- Authority to purchase reinsurance.

The Florida Public Housing Authority Self Insurance Fund is the only self-insurance fund operating under s. 624.46226, F.S.[15]

Under current law, entities organized by a public housing authority pursuant to s. 421.08(8), F.S., cannot purchase insurance through a public housing authority self-insurance fund because participation in such funds is limited to public housing authorities.

III. Effect of Proposed Changes:

The bill allows a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), F.S., to join a self-insurance fund formed under s. 624.46226, F.S., in which the public housing authority participates. The entity may join the self-insurance fund solely to insure risks related to public housing.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[15] https://www.fphasif.com/ (last accessed March 22, 2017).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.46226 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 27, 2017:
The CS clarifies that the entity formed pursuant to s. 421.08(8), F.S., may only participate in the self-insurance fund to insure risks related to public housing.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (7) of section 624.46226, Florida Statutes, are amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in

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chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(a) Has annual normal premiums in excess of $5 million.

(b) Uses a qualified actuary to determine rates using accepted actuarial principles and annually submits to the office a certification by the actuary that the rates are actuarially sound and are not inadequate, as defined in s. 627.062.

(c) Uses a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submits to the office a certification by the actuary that the loss and loss adjustment expense reserves are adequate. If the actuary determines that reserves are not adequate, the fund shall file with the office a remedial plan for increasing the reserves or otherwise addressing the financial condition of the fund, subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(d) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers.

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2. Retain a per-loss occurrence that does not exceed $350,000.

(e) Submits to the office annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year.

(f) Has a governing body which is comprised entirely of commissioners of public housing authorities that are members of the public housing authority self-insurance fund or persons appointed by the commissioners of public housing authorities that are members of the public housing authority self-insurance fund.

(g) Uses knowledgeable persons or business entities to administer or service the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas. Such persons must meet all applicable requirements of law for state licensure and must have at least 5 years' experience with commercial self-insurance funds formed under s. 624.462, self-insurance funds formed under s. 624.4622, or domestic insurers.

(h) Submits to the office copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund.

(i) Annually submits to the office a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public

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housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

(7) Reinsurance companies complying with s. 624.610 may issue coverage directly to a public housing authority or an entity organized by a public housing authority under s. 421.08(8) if such public housing authority or entity self-insures ~~self-insuring~~ its liabilities under this section. A public housing authority purchasing reinsurance or an entity that is organized by a public housing authority under s. 421.08(8) and that is purchasing reinsurance shall be considered an insurer for the sole purpose of entering into such reinsurance contracts. Contracts of reinsurance issued to public housing authorities self-insuring under this section or to entities that are organized by public housing authorities under s. 421.08(8) and that are self-insuring under this section shall receive the same tax treatment as reinsurance contracts issued to insurance companies. However, the purchase of reinsurance coverage by a public housing authority self-insuring under this section or by an entity that is organized by a public housing authority under s. 421.08(8) and that is self-insuring under this section shall not be construed as authorization to otherwise act as an insurer.

Section 2. This act shall take effect July 1, 2017.

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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 public housing authority insurance; amending s. 624.46226, F.S.; authorizing certain business entities to join, solely for a specified purpose, self-insurance funds participated in by public housing authorities who hold ownership interests in or who participate in governing such entities; authorizing reinsurance companies to issue coverage directly to certain self-insuring entities organized by a public housing authority under certain circumstances; specifying that such entities are considered insurers under certain circumstances; requiring that reinsurance contracts issued to such entities receive the same tax treatment as contracts issued to insurance companies; revising construction; providing an effective date.

By Senator Rouson

19-01324-17 2017850__

A bill to be entitled

An act relating to public housing authority insurance; amending s. 624.46226, F.S.; authorizing a certain legal entity in which a public housing authority holds an ownership interest or participates in its governance to form a specified self-insurance fund with other such entities or public housing authorities; providing an effective date.

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

Section 1. Subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421, or a for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8), may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(a) Has annual normal premiums in excess of $5 million.

(b) Uses a qualified actuary to determine rates using accepted actuarial principles and annually submits to the office a certification by the actuary that the rates are actuarially

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

19-01324-17 2017850__

sound and are not inadequate, as defined in s. 627.062.

(c) Uses a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submits to the office a certification by the actuary that the loss and loss adjustment expense reserves are adequate. If the actuary determines that reserves are not adequate, the fund shall file with the office a remedial plan for increasing the reserves or otherwise addressing the financial condition of the fund, subject to a determination by the office that the fund will operate on an actuarially sound basis and the fund does not pose a significant risk of insolvency.

(d) Maintains a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, this program must:

1. Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers.

2. Retain a per-loss occurrence that does not exceed $350,000.

(e) Submits to the office annually an audited fiscal year-end financial statement by an independent certified public accountant within 6 months after the end of the fiscal year.

(f) Has a governing body which is comprised entirely of commissioners of public housing authorities that are members of the public housing authority self-insurance fund or persons appointed by the commissioners of public housing authorities that are members of the public housing authority self-insurance fund.

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

(g) Uses knowledgeable persons or business entities to administer or service the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas. Such persons must meet all applicable requirements of law for state licensure and must have at least 5 years' experience with commercial self-insurance funds formed under s. 624.462, self-insurance funds formed under s. 624.4622, or domestic insurers.

(h) Submits to the office copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund.

(i) Annually submits to the office a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

Section 2. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

850
Bill Number (if applicable)

412698
Amendment Barcode (if applicable)

Topic Public Housing Authorities

Name Mike Rogers

Job Title

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Phone 850-566-2560

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida public housing Authority Self Insurance Fund

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/SB 872
INTRODUCER:	Banking and Insurance Committee and Senator Rouson
SUBJECT:	Consumer Finance Loans
DATE:	March 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**FAV/CS**
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 872 establishes the Access to Responsible Credit Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation (OFR) is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans of at least $300 and no more than $3,000, at a maximum fixed interest rate of 36 percent.
- A program licensee may also charge the borrower an origination fee of 6 percent of the principal amount of the program loan exclusive of the origination fee or $75, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a minimum term of 120 days and may not have a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 35 percent of the borrower's gross monthly income.
- The OFR is required to examine licensees at least once every 24 months.
- A program licensee may use a referral partner to perform marketing, servicing, and other services on behalf of the program licensee. The compensation for a referral partner is capped

at $60 per program loan, on average, assessed annually, and $2 for each payment received by the referral partner on behalf of the program licensee.
- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., and must submit a pilot program application and $1,000 fee.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:
- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.

II. Present Situation:

Federal Truth in Lending Act (TILA)

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

State Regulation of Consumer Lending

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

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

Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[7]" The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

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

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

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

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

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[13] The pilot program covers consumer loans of $250-$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small

[7] Section 516.01(2), F.S.
[8] Section 516.031(1), F.S.
[9] Section 516.031(2), F.S.
[10] *Id.*
[11] Section 516.031(3), F.S.
[12] Section 516.36, F.S.
[13] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 27, 2017).

dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[14] The new pilot program covers consumer loans of $300-$2,500 and allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[15]

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

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

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

[14] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 27, 2017).
[15] Id.
[16] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited March 27, 2017).

III. Effect of Proposed Changes:

Access to Responsible Credit Pilot Program (Section 1)

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least $300 and up to a maximum of $3,000 at an interest rate not to exceed 36 percent. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent per annum, with no minimum or maximum loan term.

Definitions (Section 2)

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

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

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

Program Licensees

Persons seeking participation under the program as a lender must obtain a pilot program license from the OFR. Pilot program licensees are required to be licensed to make consumer finance loans under ch. 516, F.S., not be subject of any insolvency proceedings, have a deficiency at the time of the person's application and not be the subject of an enforcement action in another state, territory or jurisdiction. Applicants are required to pay a $1,000 nonrefundable application fee and an application with the OFR. The biennial renewal fee is $1,000. The legislation provides for the establishment of application forms by rule.

Each branch office of a program licensee must be licensed. The program licensee must submit an application and an initial nonfundable fee of $30 per program branch office. The biennial renewal fee for each branch office is $30.

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

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

that the OFR must "withdraw" approval for pilot program participation from a program licensee if the applicant fails to become a data furnisher by a consumer-reporting agency within 6 months of commencing lending under the pilot program.

Referral Partners

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

A referral partner may engage in the following activities:

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

Any program payments received by a referral partner must be applied to the program loan and be deemed received by the program licensee at the time the referral partner receives the payment. When payment is made, a referral partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if a referral partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. A referral partner must maintain records related to disbursements and payments for 2 years, or for 1 month following a regular examination by the OFR, whichever is later.

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

questions about the loan program. A program licensee must ensure that consummation of the program loan does not occur until after two-way communication between the applicant and program licensee. The legislation provides a definition for the term "two-way communication."

The bill allows a program licensee to compensate a referral partner. Compensation paid to a referral partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must meet the following requirements:

- Compensation may not be paid to a referral partner until the program loan is consummated.
- Compensation may not be paid to a referral partner based upon the principal amount of the program loan.
- The total compensation paid to a referral partner over the life of a program loan may not exceed the sum of the origination fee and interest charges paid by the borrower in connection with that program loan.
- Subject to certain limitations, the total compensation paid by a program licensee to a referral partner may not exceed the sum of $60 per program loan, on average; and $2 per payment received by the referral partner on behalf of the program licensee for the duration of the loan.

The bill prohibits a referral partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee; and
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower.

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

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

- A program loan must:
  - Be unsecured;
  - Have a minimum term of 120 days, except it may not have a prepayment penalty;
  - Be repayable in substantially equal weekly, biweekly, or monthly installments;
  - Include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and returning the principal advanced by the end of the business day after the program loan was consummated.
  - Not exceed an interest rate of 36 percent, which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day.
- A program licensee must provide a receipt for payments made.

When refinancing a program loan, the principal amount may not include more than 60 days' unpaid interest accrued on the previous program loan. Additionally, a program licensee is prohibited from refinancing a program loan unless the borrower is current on the outstanding program loan at the time the borrower submits an application to refinance.

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceed 35 percent of the borrower's gross monthly income.

Fees. The bill allows a program licensee to contract for and receive an origination fee once within 12 months, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or $75, whichever is less.

The bill imposes current law fees for insufficient funds of $20, and a delinquency charge of $15 for each payment in default greater than 10 days.[18] Only one delinquency fee may be imposed per delinquent payment, and no more than two delinquency fees may be imposed during a period of 30 consecutive days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Consumer Disclosures. The bill requires a program licensee must provide the following written disclosures to a borrower:

- The amount, date, and maturity date of the program loan.
- The name and address of the borrower and of the program licensee.
- The interest rate charged.
- The monthly installment payment amount.
- The delinquency charge amount.
- A specified statement relating to a borrower's ability to reduce the interest amount by repaying the loan early.
- A statement describing the borrower's right of rescission.

Additionally the bill allows the disclosures to be completed in any language the loan is negotiated in but requires a program licensee to pay for any translation costs incurred by the OFR when issuing loans in languages other than English.

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or invite the borrower to attend a free credit education program or free seminar offered by an independent third party.

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

[18] Section 516.01(3), F.S.

procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 6)

The legislation requires a program licensee or referral partner must maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the OFR. The OFR is required to examine each program licensee at least once every 24 months. Costs of examination are borne by the program licensee.

Reporting Requirements (Sections 4, 5, and 7)

Program Licensee. The bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history. (Section 4)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with a referral partner. Such information includes the referral partner's identifying information, and a provision that allows the OFR to request any other information. (Section 5)

OFR Program Report. A program licensee is required to file, on or before March 15 of each year, a report with the OFR in a manner prescribed by rule. The bill directs the OFR to post a report on its website by January 1, 2020, summarizing the results of the program. The report must include information on licensed program participants, the loans themselves, and borrowers. Such information includes but is not limited to, the number of licensed participants in the program, the number and total amount of program loans made, the average size of the increased credit score, and information on delinquency charges assessed.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on December 31, 2022, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act is effective July 1, 2018.

In their bill analysis the OFR provided the below chart comparing a $1,100 and $300 loan under current law versus the change in interest rate and fees proposed in the bill.[19]

[19] Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.)

Law	Principal Amount	Term (Days)	Interest Rate	Finance Charge	Fees	APR	Total	Difference
Current	$1,100	480	30% per year	$433.97	$0.00	30.00%	$1,533.97	
Proposed	$1,100	480	36% per year plus 6% of loan amount	$520.77	$66.00	40.56%	$1,686.77	$152.79
Current	$300	120	30% per year	$29.59	$0.00	30.00%	$329.59	
Proposed	$300	120	36% per year plus 6% of loan amount	$35.51	$18.00	54.25%	$353.51	$23.92

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Persons that want to participate in the Access to Responsible Credit Pilot Loan Program (program) would be required to obtain a consumer finance license as well as a program license. The bill provides for a $1,000 application fee and $1,000 biennial renewal fee for program licensees in addition to a $30 branch application and $30 renewal fee. Furthermore, the bill provides for a $30 referral partner fee for each referral partner filed with the OFR. The bill also provides rulemaking authority to establish costs for examinations of program licensees.

In allowing weekly and bi-weekly payment schedules, the bill allows two delinquency chargers could be assessed per 30 day period, current law only allows one delinquency charge per 30 day period.

B. Private Sector Impact:

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

C. Government Sector Impact:

Office of Financial Regulation resources will be required to process applications; process complaints; examine records of program licensees and referral partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. The state of California currently has eight program licensees. Assuming a comparable number of businesses apply to become a program licensee, the Division of Consumer Finance believes it can absorb the workload associated with the above-mentioned tasks.

However, implementation of the bill will require updates to the OFR's licensing and examination software as well as information technology support and increased data storage to integrate applications by program licensees. The bill would likely require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost the agency approximately $125,000.[20]

The OFR has indicated that they are currently in the process of redesigning their online portal, the redesign is set to conclude in fall of 2017. Staff has requested an effective date July 1, 2018, to allow for time to input the new system changes required by the bill.[21]

VI. Technical Deficiencies:

Line 262 should clarify the 36 percent interest is per annum.

Lines 678-679 should begin on January 1, 2019.

VII. Related Issues:

The legislation allows the OFR to examine the records of licensees and referral partners but makes no mention as to whether such records become public record once examined by the OFR. Pursuant to ch. 119, F.S., records held by an agency are public records, unless expressly exempted. There are currently no public records exemptions for ch. 516, F.S.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.40, 516.41, 516.42, 516.43, 516.44, 516.45 and 516.46.

[20] Office of Financial Regulation, Senate Bill 872 Bill Analysis (Feb. 22, 2017) (on file with the Senate Committee on Banking and Insurance.)
[21] *Id.*

IX. Additional Information:

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

CS by Banking and Insurance on March 27, 2017:
The CS:

- Defines a program branch office license.
- Clarifies an applicant cannot be subject to any disciplinary actions in another state, territory or jurisdiction.
- Changes digital application to electronic.
- Removes contradicting language regarding an applicant's need to be licensed under ch. 516, F.S.
- Removes the ability for an applicant to apply for two licenses at the same time.
- Removes semi-monthly as a payment term.
- Requires a program licensee to pay for any translation costs incurred by the office when issuing loans in languages other than English.
- Limits origination fees by a lender to no more than one per 12 months.
- Restores the current $20 limit on an insufficient funds fee, changes the limit on a delinquency fee to $15, and restores current delinquency timeframe to more than 10 days.
- Clarifies the section pertaining to certain rights that cannot be negotiable within a loan.
- Requires a program licensee or referral partner must maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the office.
- Changes the effective date to July 1, 2018.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 516.40, Florida Statutes, is created to read:

516.40 Access to Responsible Credit Pilot Program.—

(1) There is established within the Office of Financial Regulation the Access to Responsible Credit Pilot Program.

(2) The Legislature finds that demand for responsible

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consumer finance loans in principal amounts of at least $300 and no more than $3,000 exceeds the supply of these loans. As a first step toward addressing this gap, the Access to Responsible Credit Pilot Program would allow more Floridians to obtain responsible consumer finance loans of at least $300 and no more than $3,000. The pilot program is also intended to assist consumers in building their credit and has additional consumer protections for these loans which exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions for ss. 516.40-516.46.—As used in ss. 516.40-516.46, the term:

(1) "Consumer reporting agency" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(2) "Credit score" has the same meaning as in s. 609(f)(2)(A) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(3) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. s. 1022.41(c).

(4) "Pilot program" or "program" means the Access to Responsible Credit Pilot Program.

(5) "Pilot program license" means a license issued under ss. 516.40-516.46 authorizing a program licensee to make and collect program loans.

(6) "Program branch office" means a location, other than a program licensee's or referral partner's principal place of business:

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(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee's name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced; or

(c) At which program loans are originated, negotiated, funded, or serviced by a program licensee.

(7) "Program branch office license" means a license issued to a program licensee for each program branch office in the state.

(8) "Program licensee" means a person who is licensed to make and collect program loans under this chapter and who is approved by the office to participate in the program.

(9) "Program loan" means a consumer finance loan with a principal amount of at least $300 and no more than $3,000 originated pursuant to ss. 516.40-516.44, excluding the amount of the origination fee authorized under s. 516.43(3).

(10) "Referral partner" means an entity that, at the referral partner's physical location for business or through other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. A referral partner is not a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(11) "Refinance program loan" means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

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Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements; fees.—

(1) A person may not advertise, offer, or make a program loan or impose any charges or fees pursuant to s. 516.43 unless the person first obtains a pilot program license from the office.

(2)(a) In order to participate in the program, a person must meet the following criteria:

1. Be licensed to make consumer finance loans under s. 516.05.

2. Not be the subject of any insolvency proceeding.

3. Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office or any other state, territory, or jurisdiction.

4. Not have a deficiency at the time of the person's application.

5. Pay a nonrefundable application fee of $1,000 to the office at the time of making the application, pursuant to rule of the commission.

(b) A program applicant shall file with the office an electronic application, in a form and manner prescribed by commission rule, which contains all of the following information with respect to the applicant:

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

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2. The applicant's main address.

3. The telephone number and e-mail address of the applicant.

4. The address of any program branch office.

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

6. The applicant's license number under this chapter.

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

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

9. The signature and certification of a control person of the applicant.

(3) Except as otherwise provided in ss. 516.40-516.46, a program licensee is subject to all of the laws and rules governing consumer finance loans under this chapter.

(4) A program licensee shall pay a nonrefundable biennial renewal fee of $1,000 pursuant to commission rule.

(5) Notwithstanding s. 516.05(3), only one pilot program license is required for a person to make program loans under ss. 516.40-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through referral partners, or through an electronic access point through which a prospective borrower may directly access the website of the program licensee.

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

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(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee submitted a completed electronic application for a program branch office license in a form prescribed by commission rule and paid an initial nonrefundable program branch office license fee of $30 per branch office as prescribed by rule of the commission. Application fees may not be prorated for partial years of licensure. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form and the required fees. The application for a program branch office license must contain the following information:

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

(b) The applicant’s main address.

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

(d) The address of each program branch office.

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

(f) The applicant’s license number under this chapter.

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

(8) A program branch office license must be renewed biennially at the time of renewing the program license under subsection (4). A nonrefundable branch renewal fee of $30 per program branch office, by commission rule, must be submitted at the time of renewal.

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

516.43 Requirements for program loans.—

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

(a) A program loan must be unsecured.

(b) A program loan must have a minimum term of 120 days, but it may not impose a prepayment penalty.

(c) A program loan must be repayable by the borrower in substantially equal weekly, biweekly, or monthly installments.

(d) A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the interest rate charged on a program loan to the borrower may not exceed 36 percent. The interest rate must be fixed for the life of the program loan and must accrue on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day.

(f) The program licensee shall reduce the rate on each subsequent program loan to the same borrower by a minimum of one-twelfth of 1 percent per month, if all of the following conditions are met:

1. The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid.

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

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

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

1. The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan in accordance with s. 516.031(5);

2. The borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan;

3. The borrower is current on his or her outstanding program loan;

4. The program licensee has underwritten the new program loan in accordance with subsection (7); and

5. The borrower has not previously refinanced the outstanding program loan.

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

1. The name of the borrower.

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

3. The total payment amount received.

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4. The date of payment.

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

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

7. The type of payment made by the borrower.

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

(2) WRITTEN DISCLOSURES.—

(a) A program licensee shall provide those disclosures required of all licensees in s. 516.15.

(b) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided in English or in the language in which the loan is negotiated. A program licensee shall pay for any translation costs incurred by the office.

(3) ORIGINATION FEES.—

(a) Notwithstanding s. 516.031, a program licensee may contract for and receive a nonrefundable origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the

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program loan and may not exceed 6 percent of the principal amount of the program loan made to the borrower, exclusive of the lesser of the origination fee or $75.

(b) A program licensee may not charge a borrower an origination fee more than once in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—Notwithstanding s. 516.031, a program licensee approved by the office to participate in the program may:

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

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of no more than $15 for each payment in default for at least 10 days, if the charge is agreed upon in writing between the parties before imposing the charge. A delinquency fee imposed by a program licensee is subject to all of the following restrictions:

1. No more than one delinquency fee may be imposed per delinquent payment.

2. No more than two delinquency fees may be imposed during a period of 30 consecutive days.

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

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

(a) Direct the borrower to the consumer credit counseling

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services offered by an independent third party; or

(b) Provide a credit education program or materials to the borrower. A borrower is not required to participate in any of these education programs or seminars. A credit education program or seminar offered pursuant to this subsection must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. As used in this section, the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

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

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

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee shall underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 35

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percent of the borrower's gross monthly income.

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

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

(c) The program licensee shall also verify the borrower's income in determining the debt-to-income ratio using information from:

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

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

(8) PROVISIONS ON WAIVERS.—

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

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan,

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including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, any court, or other governmental entity.

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

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

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

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

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

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

516.44 Referral partners.—

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(1) REFERRAL PARTNER AGREEMENT.—All arrangements between a program licensee and a referral partner must be specified in a written referral partner agreement between the parties. The agreement must contain a provision that the referral partner agrees to comply with this section and all rules adopted under this section regarding the activities of referral partners, and that the office has access to the referral partner's books and records pertaining to the referral partner's operations under the agreement with the program licensee in accordance with s. 516.45(4).

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

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

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. A referral partner may discuss the information with a prospective borrower in general terms.

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

(d) Entering information provided by the prospective

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borrower on a preprinted or an electronic application form or in a preformatted computer database.

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

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

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

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

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

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

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

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

(a) A loan payment made by a borrower to a referral partner under paragraph (2)(j) must be applied to the borrower's program

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loan and is deemed received by the program licensee as of the date the payment is received by the referral partner.

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

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

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

(4) PROHIBITED ACTIVITIES.—A referral partner may not engage in any of the following activities:

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

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

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

(d) Offering information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the referral partner may then offer

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information pertaining to that borrower to another program licensee with whom it has a referral partner agreement.

(e) Requiring a borrower to pay any fees or charges to the referral partner or to any other person in connection with a program loan other than those permitted under ss. 516.40-516.46.

(5) DISCLOSURE NOTICE AND COMMUNICATION.—

(a) At the time the referral partner receives or processes an application for a program loan, the referral partner shall provide the following statement to the applicant on behalf of the program licensee, in no smaller than 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

Your loan application has been referred to us by ...(name of referral partner).... We may pay a fee to ...(name of referral partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of referral partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

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

(6) COMPENSATION.—

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

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

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

2. Compensation may not be paid to a referral partner based upon the principal amount of the program loan.

3. Compensation may not be directly or indirectly passed on to a borrower through a fee or other compensation, or a portion of a fee or other compensation, charged to a borrower.

4. Subject to the limitations specified in subparagraphs 1., 2., and 3., the total compensation paid by a program licensee to a referral partner for the services specified in subsection (2) may not exceed the sum of:

a. Sixty dollars per program loan, on average, assessed annually, whether paid at the time of consummation, through installments, or in a manner otherwise agreed upon by the

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program licensee and the referral partner; and

b. Two dollars per payment received by the referral partner on behalf of the program licensee for the duration of the program loan, if the referral partner receives borrower loan payments on the program licensee's behalf in accordance with subsection (3).

5. The referral partner's location for services and other information required by subsection (7) must be reported to the office.

(c) A program licensee or a referral partner may not pass on to a borrower, whether directly or indirectly, any additional cost or other charge for compensation paid to a referral partner under this program.

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

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

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

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

(d) A statement by the program licensee that it has

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conducted due diligence with respect to the referral partner and has confirmed that none of the following applies:

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

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

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

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

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

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

As used in this paragraph, the term "affiliated party" means a director, an officer, a responsible person, an employee, or a

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foreign affiliate of a referral partner; or a person who has a controlling interest in a referral partner.

(e) Any other information requested by the office subject to the limitations specified in s. 516.45(4).

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

(9) RESPONSIBILITY FOR ACTS OF A REFERRAL PARTNER.—A program licensee is responsible for any act of its referral partner if the program licensee should have known of the act or if the program licensee had actual knowledge that the act is a violation of this chapter and allowed it to continue. Such responsibility is limited to conduct engaged in by the referral partner pursuant to the authority granted to it by the program licensee under the contract between the referral partner and the program licensee.

(10) REFERRAL PARTNER FEE.—The program licensee shall pay to the office at the time it files a referral partner notice with the office a one-time, nonrefundable fee of $30 for each referral partner, as prescribed by commission rule.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations; disciplinary actions.—

(1) Notwithstanding any other law, commencing on January 1, 2018, the office shall examine each program licensee that is accepted into the program in accordance with this chapter at

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least once every 24 months.

(2) Notwithstanding subsection (1), the office may waive one or more branch office examinations if the office finds that such examinations are not necessary for the protection of the public due to the centralized operations of the program licensee or other factors acceptable to the office.

(3) The examined program licensee shall pay for the cost of an examination to the office, pursuant to commission rule, and the office may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the office may use the estimated average hourly cost for all persons performing examinations of program licensees or other persons subject to ss. 516.40-516.46 for the fiscal year.

(4) A program licensee or referral partner shall maintain, preserve, and keep available for examination all books, accounts, or other documents required by this chapter, any rule or order adopted under this chapter, or any agreement entered into with the office.

(5) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. A program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its referral partners.

(6) The office may take any of the following actions against a referral partner who violates s. 516.44:

(a) Disqualify the referral partner from performing services under this chapter;

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(b) Bar the referral partner from performing services at one or more specific locations of the referral partner;

(c) Terminate a written agreement between a referral partner and a program licensee;

(d) Impose an administrative fine not to exceed $1,000 for each such act of the referral partner; and

(e) Prohibit program licensees from using the referral partner, if the office deems it to be in the public interest.

Section 7. Section 516.46, Florida Statutes, is created to read:

516.46 Annual reports; reports by the office.—

(1) Beginning in 2019, on or before March 15 of each year, a program licensee shall file a report with the office on each of the items specified in subsection (2), on a form and in a manner as prescribed by commission rule, which contains aggregated or anonymized data without reference to any borrower's nonpublic personal information or any proprietary or trade secret information of the program licensee.

(2) On or before January 1, 2020, the office shall post a report on its website summarizing the use of the program based on the information contained in reports filed by each program licensee under subsection (1). The report must state the information in the aggregate so as not to identify data by specific program licensee and must specify the period to which the report corresponds. The report must include, but not be limited to, the following for that period:

(a) The number of entities that applied to participate in the program.

(b) The number of entities accepted to participate in the

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program.

(c) The office's reasons for rejecting applications for participation, if applicable. This information must be provided in a manner that does not identify the entity or entities rejected.

(d) The number of program loan applications received by program licensees participating in the program, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(e) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(f) Of the borrowers who obtained more than one program loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(g) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(h) The number of borrowers who obtained program loans for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the program loan was obtained:

1. Pay medical expenses.

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2. Pay for vehicle repair or a vehicle purchase.

3. Pay bills.

4. Consolidate debt.

5. Build or repair credit history.

6. Pay other expenses.

(i) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(j) With respect to refinance program loans, the report must specifically include the following information:

1. The number and percentage of borrowers who applied for a refinance program loan.

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

(k) The number and type of referral partners used by program licensees.

(l) The number and percentage of borrowers who obtained one or more program loans on which delinquency charges were assessed, the total amount of delinquency charges assessed, and the average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

(m) The performance of program loans under the program as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days, and the distribution of principal loan amounts corresponding to those delinquencies.

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2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days, and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more, and the distribution of principal loan amounts corresponding to those delinquencies.

(n) The number and types of violations of ss. 516.40-516.46 by referral partners which were documented by the office.

(o) The number and types of violations of ss. 516.40-516.46 by program licensees which were documented by the office.

(p) The number of times that the office disqualified a referral partner from performing services, barred a referral partner from performing services at one or more specific locations of the referral partner, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.

(q) The number of complaints received by the office about a program licensee or a referral partner and the nature of those complaints.

Section 8. Sections 516.40-516.46, Florida Statutes, are repealed on December 31, 2022, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. This act shall take effect July 1, 2018.

================ 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

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and insert:

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.40, F.S.; establishing the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative findings and intent; creating s. 516.41, F.S.; defining terms; creating s. 516.42, F.S.; prohibiting a person from certain activities relating to program loans unless the person obtains a pilot program license from the office; providing criteria for participation in the pilot program; specifying application requirements and fees; providing for construction; specifying a renewal fee; providing that only one pilot program license is required for a person to make program loans; requiring that branch offices of a program licensee be licensed; specifying requirements and a fee for applications for a program branch office license; requiring program branch office licenses to be renewed biennially and specifying a branch office renewal fee; creating s. 516.43, F.S.; providing requirements for and limitations on program loans; requiring a program licensee to provide specified disclosures; authorizing licensees to provide certain documents in the language in which the loan was negotiated; requiring a program licensee to pay for certain translation costs incurred by the office; authorizing a program licensee to contract for and receive a specified nonrefundable origination fee from a borrower on a program loan;

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authorizing a program licensee to collect specified insufficient funds fees and delinquency charges; requiring a program licensee to provide specified credit education to a borrower before disbursing program loan proceeds; requiring a program licensee to report borrowers' payment performance to at least one specified consumer reporting agency and provide borrowers with the names of such agencies; prohibiting the office from approving a person for the program before the person is accepted as a data furnisher by a consumer reporting agency; requiring a program licensee to underwrite each program loan; prohibiting a program licensee from making a program loan under certain circumstances; providing required and authorized procedures for a program licensee to determine a borrower's ability and willingness to repay the program loan; prohibiting a program licensee from requiring certain waivers from a borrower or from certain acts against a borrower who refuses certain waivers; providing for applicability and construction; creating s. 516.44, F.S.; requiring arrangements between a program licensee and a referral partner to be specified in a written agreement; providing requirements for such agreement; specifying authorized services for referral partners; providing requirements for a referral partner who accepts loan payments from a borrower; providing for construction; prohibiting specified activities by a referral partner; requiring a referral partner to provide a specified notice to an

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applicant for a program loan and certain assistance to the applicant under certain circumstances; specifying requirements, limitations, and prohibitions for the compensation of a referral partner by a program licensee; requiring a program licensee to provide a specified notice to the office after entering into a contract with a referral partner; requiring a referral partner to provide written notice to the program licensee of certain information within a specified time; specifying the program licensee's responsibility for acts of its referral partner; requiring a program licensee to pay a specified fee to the office to file a referral partner notice; requiring rulemaking by the Financial Services Commission; creating s. 516.45, F.S.; requiring the office to examine program licensees at specified intervals beginning on a specified date; providing an exception; requiring program licensees to pay the cost of examinations; authorizing the office to maintain an action for recovery of the cost; authorizing a method to determine the cost of examinations; providing a recordkeeping requirement for program licensees and referral partners; providing that a program licensee is subject to certain disciplinary action for certain violations; authorizing the office to take certain disciplinary actions; requiring rulemaking by the commission; creating s. 516.46, F.S.; requiring a program licensee to file a specified annual report with the office beginning on a certain date; requiring

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the office to post a report to its website summarizing the use of the program by a certain date; specifying information to be contained in the office's report; providing for conditional future repeal of the program; providing an effective date.

By Senator Rouson

19-00598A-17 2017872__

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.40, F.S.; establishing the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative findings and intent; creating s. 516.41, F.S.; defining terms; creating s. 516.42, F.S.; prohibiting a person from certain activities relating to program loans unless the person obtains a pilot program license from the office; providing criteria for participation in the pilot program; specifying application requirements and fees; providing for construction; specifying a renewal fee; requiring that branch offices of a program licensee be licensed; specifying requirements and a fee for applications for a program branch office license; specifying a branch office renewal fee; requiring the Financial Services Commission to adopt rules; creating s. 516.43, F.S.; providing requirements and limitations for program loans; authorizing certain documents to be provided in the language in which the loan was negotiated; requiring a program licensee to provide specified disclosures; authorizing a program licensee to contract for and receive a specified nonrefundable origination fee from a borrower on a program loan; authorizing a program licensee to collect specified insufficient funds fees and delinquency charges; requiring a program licensee to provide specified credit education to a borrower before disbursing program loan proceeds; requiring a program licensee to report borrowers' payment performance to at least one specified consumer reporting agency and provide borrowers with the names

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of such agencies; prohibiting the office from approving a person for the program before the person is accepted as a data furnisher by a consumer reporting agency; requiring a program licensee to underwrite each program loan; prohibiting a program licensee from making a program loan under certain circumstances; providing required and authorized procedures for a program licensee to determine a borrower's ability and willingness to repay the program loan; prohibiting a program licensee from requiring certain waivers from a borrower or from certain acts against a borrower who refuses certain waivers; providing requirements for authorized waivers; providing for applicability and construction; creating s. 516.44, F.S.; requiring arrangements between a program licensee and a referral partner to be specified in a written agreement; providing requirements for such agreement; specifying authorized services for referral partners; providing requirements for a referral partner who accepts loan payments from a borrower; providing for construction; prohibiting specified activities by a referral partner; requiring a referral partner to provide a specified notice to an applicant for a program loan and certain assistance to the applicant under certain circumstances; specifying requirements, limitations, and prohibitions for the compensation of a referral partner by a program licensee; requiring a program licensee to provide a specified notice to the office after entering into a

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contract with a referral partner; requiring a referral partner to provide written notice to the program licensee of certain information within a specified time; specifying the program licensee's responsibility for acts of its referral partner; requiring a program licensee to pay a specified fee to the office to file a referral partner notice; requiring rulemaking by the commission; creating s. 516.45, F.S.; requiring the office to examine program licensees at specified intervals beginning on a specified date; providing an exception; requiring program licensees to pay the cost of examinations; authorizing the office to maintain an action for recovery of the cost; authorizing a method to determine the cost of examinations; limiting the scope of investigations into program licensees or referral partners; providing that a program licensee is subject to certain disciplinary action for certain violations; authorizing the office to take certain disciplinary actions; requiring rulemaking by the commission; creating s. 516.46, F.S.; requiring a program licensee to file a specified annual report with the office beginning on a certain date; requiring the office to post a report to its website summarizing the use of the program by a certain date; specifying information to be contained in the office's report; providing for conditional future repeal of the program; providing an effective date.

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

Section 1. Section 516.40, Florida Statutes, is created to read:

516.40 Access to Responsible Credit Pilot Program.—

(1) There is established within the Office of Financial Regulation the Access to Responsible Credit Pilot Program.

(2) The Legislature finds that demand for responsible consumer finance loans in principal amounts of at least $300 and no more than $3,000 exceeds the supply of these loans. As a first step toward addressing this gap, the Access to Responsible Credit Pilot Program would allow more Floridians to obtain responsible consumer finance loans of at least $300 and no more than $3,000. The pilot program is also intended to assist consumers in building their credit and has additional consumer protections for these loans which exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions for ss. 516.40-516.46.—As used in ss. 516.40-516.46, the term:

(1) "Consumer reporting agency" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(2) "Credit score" has the same meaning as in s. 609(f)(2)(A) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(3) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. s. 1022.41(c).

(4) "Pilot program" or "program" means the Access to

Responsible Credit Pilot Program.

(5) "Pilot program license" means a license issued under ss. 516.40-516.46 authorizing a program licensee to make and collect program loans.

(6) "Program branch office license" means a location, other than a program licensee's or referral partner's principal place of business:

(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee's name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced; or

(c) At which program loans are originated, negotiated, funded, or serviced by a program licensee.

(7) "Program licensee" means a person who is licensed to make and collect program loans under this chapter and who is approved by the office to participate in the program.

(8) "Program loan" means a consumer finance loan with a principal amount of at least $300 and no more than $3,000 originated pursuant to ss. 516.40-516.44, excluding the amount of the origination fee authorized under s. 516.43(3).

(9) "Referral partner" means an entity that, at the referral partner's physical location for business or through other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. A referral partner is not a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(10) "Refinance program loan" means a program loan that

extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements; fees.—

(1) A person may not advertise, offer, or make a program loan or impose any charges or fees pursuant to s. 516.43 unless the person first obtains a pilot program license from the office.

(2)(a) In order to participate in the program, a person must meet the following criteria:

1. Be licensed to make consumer finance loans under s. 516.05.

2. Not be the subject of any insolvency proceeding.

3. Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office or any financial regulatory agency in this state.

4. Not have a deficiency at the time of the person's application.

5. Pay a nonrefundable application fee of $1,000 to the office at the time of making the application, pursuant to rule of the commission.

(b) A program applicant shall file with the office a digital application, in a form and manner prescribed by

commission rule, which contains all of the following information with respect to the applicant:

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

2. The applicant's main address.

3. The telephone number and e-mail address of the applicant.

4. The address of any program branch office.

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

6. The applicant's license number, if the applicant is licensed under this chapter.

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

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

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

(3) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications to the office, in a form and manner specified in this chapter:

(a) An application and fee pursuant to s. 516.03 for licensure to make consumer finance loans; and

(b) An application and fee for admission to the program in accordance with subsection (2).

(4) Except as otherwise provided in ss. 516.40-516.46, a program licensee is subject to all of the laws and rules governing consumer finance loans under this chapter.

(5) A program licensee shall pay a nonrefundable biennial renewal fee of $1,000 pursuant to commission rule.

(6) Notwithstanding s. 516.05(3), only one pilot program license is required for a person to make program loans under ss. 516.40-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through referral partners, or through an electronic access point through which a prospective borrower may directly access the website of the program licensee.

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

(8) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee submitted a completed electronic application for a program branch office license in a form prescribed by commission rule and paid an initial nonrefundable program branch office license fee of $30 per branch office as prescribed by rule of the commission. Application fees may not be prorated for partial years of licensure. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form and the required fees. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name the

applicant operates under.

(b) The applicant's main address.

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

(d) The address of each program branch office.

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

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

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

(9) A program branch office license must be renewed biennially at the time of renewing the program license under subsection (5). A nonrefundable branch renewal fee of $30 per program branch office, by commission rule, must be submitted at the time of renewal.

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

516.43 Requirements for program loans.—

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

(a) A program loan must be unsecured.

(b) A program loan must have a minimum term of 120 days, but it may not impose a prepayment penalty.

(c) A program loan must be repayable by the borrower in substantially equal weekly, biweekly, semimonthly, or monthly installments.

(d) A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the

principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the interest rate charged on a program loan to the borrower may not exceed 36 percent. The interest rate must be fixed for the life of the program loan and must accrue on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day.

(f) The program licensee shall reduce the rate on each subsequent program loan to the same borrower by a minimum of one-twelfth of 1 percent per month, if all of the following conditions are met:

1. The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid.

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

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

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

1. The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan in accordance with s. 516.031(5);

2. The borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan;

3. The borrower is current on his or her outstanding program loan;

4. The program licensee has underwritten the new program loan in accordance with subsection (7); and

5. The borrower has not previously refinanced the outstanding program loan.

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

1. The name of the borrower.

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

3. The total payment amount received.

4. The date of payment.

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

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

7. The type of payment made by the borrower.

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

(2) WRITTEN DISCLOSURES.—

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

(b) A program licensee shall provide those disclosures required of all licensees in s. 516.15.

(3) ORIGINATION FEES.—

(a) Notwithstanding s. 516.031, a program licensee may contract for and receive a nonrefundable origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed 6 percent of the principal amount of the program loan made to the borrower, exclusive of the lesser of the origination fee or $75.

(b) A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—Notwithstanding s. 516.031, a program licensee approved by the office to participate in the program may:

(a) Require payment from a borrower of no more than $25 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of no more than $14 for each payment in default for at least 7 days, if the charge is agreed upon in writing between the parties before imposing the charge.

A delinquency fee imposed by a program licensee is subject to all of the following restrictions:

1. No more than one delinquency fee may be imposed per delinquent payment.

2. No more than two delinquency fees may be imposed during a period of 30 consecutive days.

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

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

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

(b) Provide a credit education program or materials to the borrower. A borrower is not required to participate in any of these education programs or seminars. A credit education program or seminar offered pursuant to this subsection must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. As used in this section, the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning as in s. 603(p) of the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(b) The office may not approve a person for the program

before the person has been accepted as a data furnisher by a consumer reporting agency.

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

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee shall underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 35 percent of the borrower's gross monthly income.

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

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

(c) The program licensee shall also verify the borrower's income in determining the debt-to-income ratio using information from:

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

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

(8) PROVISIONS ON WAIVERS.—

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

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

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

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

(b) A waiver by a borrower, other than one prohibited under paragraph (a), must be knowing, voluntary, in writing, and not expressly made a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary,

and not expressly made a condition of the contract with the borrower.

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

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

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

516.44 Referral partners.—

(1) REFERRAL PARTNER AGREEMENT.—All arrangements between a program licensee and a referral partner must be specified in a written referral partner agreement between the parties. The agreement must contain a provision that the referral partner agrees to comply with this section and all rules adopted under this section regarding the activities of referral partners, and that the office has access to the referral partner's books and records pertaining to the referral partner's operations under

the agreement with the program licensee in accordance with s. 516.45(4).

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

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

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. A referral partner may discuss the information with a prospective borrower in general terms.

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

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

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

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

(g) Communicating a response that is returned by the

program licensee's automated underwriting system to a borrower or a prospective borrower.

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

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

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

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

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

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

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

(c) A borrower who submits a loan payment to a referral

partner under this subsection is not liable for a failure or delay by the referral partner in transmitting the payment to the program licensee.

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

(4) PROHIBITED ACTIVITIES.—A referral partner may not engage in any of the following activities:

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

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

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

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

(e) Requiring a borrower to pay any fees or charges to the referral partner or to any other person in connection with a program loan other than those permitted under ss. 516.40-516.46.

(5) DISCLOSURE NOTICE AND COMMUNICATION.—

(a) At the time the referral partner receives or processes an application for a program loan, the referral partner shall

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provide the following statement to the applicant on behalf of the program licensee, in no smaller than 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

> Your loan application has been referred to us by ...(name of referral partner).... We may pay a fee to ...(name of referral partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of referral partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

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

(6) COMPENSATION.—

(a) The program licensee may compensate a referral partner

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in accordance with a written agreement and a compensation schedule that is mutually agreed to by the program licensee and the referral partner, subject to the requirements in paragraph (b).

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

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

2. Compensation may not be paid to a referral partner based upon the principal amount of the program loan.

3. Compensation may not be directly or indirectly passed on to a borrower through a fee or other compensation, or a portion of a fee or other compensation, charged to a borrower.

4. Subject to the limitations specified in subparagraphs 1., 2., and 3., the total compensation paid by a program licensee to a referral partner for the services specified in subsection (2) may not exceed the sum of:

a. Sixty dollars per program loan, on average, assessed annually, whether paid at the time of consummation, through installments, or in a manner otherwise agreed upon by the program licensee and the referral partner; and

b. Two dollars per payment received by the referral partner on behalf of the program licensee for the duration of the program loan, if the referral partner receives borrower loan payments on the program licensee's behalf in accordance with subsection (3).

5. The referral partner's location for services and other information required by subsection (7) must be reported to the

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office.

(c) A program licensee or a referral partner may not pass on to a borrower, whether directly or indirectly, any additional cost or other charge for compensation paid to a referral partner under this program.

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

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

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

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

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

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

2. The commencement of an administrative or judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of

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Columbia, any United States territory, or any foreign country in which the referral partner operates, plans to operate, or is licensed to operate.

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

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

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

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

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

(e) Any other information requested by the office subject to the limitations specified in s. 516.45(4).

(8) NOTICE OF CHANGES.—A referral partner must provide the program licensee with written notice, sent by registered mail, within 30 days after any changes are made to the information specified in paragraphs (7)(a)-(c) or within 30 days after the

occurrence or knowledge of any of the events specified in paragraph (7)(d), whichever is later.

(9) RESPONSIBILITY FOR ACTS OF A REFERRAL PARTNER.—A program licensee is responsible for any act of its referral partner if the program licensee should have known of the act or if the program licensee had actual knowledge that the act is a violation of this chapter and allowed it to continue. Such responsibility is limited to conduct engaged in by the referral partner pursuant to the authority granted to it by the program licensee under the contract between the referral partner and the program licensee.

(10) REFERRAL PARTNER FEE.—The program licensee shall pay to the office at the time it files a referral partner notice with the office a one-time, nonrefundable fee of $30 for each referral partner, as prescribed by commission rule.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations; disciplinary actions.—

(1) Notwithstanding any other law, commencing on January 1, 2018, the office shall examine each program licensee that is accepted into the program in accordance with this chapter at least once every 24 months.

(2) Notwithstanding subsection (1), the office may waive one or more branch office examinations if the office finds that such examinations are not necessary for the protection of the public due to the centralized operations of the program licensee or other factors acceptable to the office.

(3) The examined program licensee shall pay for the cost of an examination to the office, pursuant to commission rule, and

the office may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the office may use the estimated average hourly cost for all persons performing examinations of program licensees or other persons subject to ss. 516.40-516.46 for the fiscal year.

(4) The scope of any investigation or examination of a program licensee or referral partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

(5) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. A program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its referral partners.

(6) The office may take any of the following actions against a referral partner who violates s. 516.44:

(a) Disqualify the referral partner from performing services under this chapter;

(b) Bar the referral partner from performing services at one or more specific locations of the referral partner;

(c) Terminate a written agreement between a referral partner and a program licensee;

(d) Impose an administrative fine not to exceed $1,000 for each such act of the referral partner; and

(e) Prohibit program licensees from using the referral partner, if the office deems it to be in the public interest.

Section 7. Section 516.46, Florida Statutes, is created to

read:

516.46 Annual reports; reports by the office.—

(1) Beginning in 2019, on or before March 15 of each year, a program licensee shall file a report with the office on each of the items specified in subsection (2), on a form and in a manner as prescribed by commission rule, which contains aggregated or anonymized data without reference to any borrower's nonpublic personal information or any proprietary or trade secret information of the program licensee.

(2) On or before January 1, 2020, the office shall post a report on its website summarizing the use of the program based on the information contained in reports filed by each program licensee under subsection (1). The report must state the information in the aggregate so as not to identify data by specific program licensee and must specify the period to which the report corresponds. The report must include, but not be limited to, the following for that period:

(a) The number of entities that applied to participate in the program.

(b) The number of entities accepted to participate in the program.

(c) The office's reasons for rejecting applications for participation, if applicable. This information must be provided in a manner that does not identify the entity or entities rejected.

(d) The number of program loan applications received by program licensees participating in the program, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the

distribution of interest rates and principal amounts upon origination among those program loans.

(e) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(f) Of the borrowers who obtained more than one program loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(g) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(h) The number of borrowers who obtained program loans for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the program loan was obtained:

1. Pay medical expenses.

2. Pay for vehicle repair or a vehicle purchase.

3. Pay bills.

4. Consolidate debt.

5. Build or repair credit history.

6. Pay other expenses.

(i) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(j) With respect to refinance program loans, the report must specifically include the following information:

1. The number and percentage of borrowers who applied for a refinance program loan.

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

(k) The number and type of referral partners used by program licensees.

(l) The number and percentage of borrowers who obtained one or more program loans on which delinquency charges were assessed, the total amount of delinquency charges assessed, and the average delinquency charge assessed by dollar amount and as a percentage of the principal amount loaned.

(m) The performance of program loans under the program as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days, and the distribution of principal loan amounts corresponding to those delinquencies.

2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days, and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more, and the distribution of principal loan amounts corresponding to those delinquencies.

(n) The number and types of violations of ss. 516.40-516.46

by referral partners which were documented by the office.

(o) The number and types of violations of ss. 516.40-516.46 by program licensees which were documented by the office.

(p) The number of times that the office disqualified a referral partner from performing services, barred a referral partner from performing services at one or more specific locations of the referral partner, terminated a written agreement between a referral partner and a program licensee, or imposed an administrative penalty.

(q) The number of complaints received by the office about a program licensee or a referral partner and the nature of those complaints.

Section 8. Sections 516.40-516.46, Florida Statutes, are repealed on December 31, 2022, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

SB 872
Bill Number (if applicable)

Topic SB 872

Amendment Barcode (if applicable)

Name JAMES GUTIERREZ

Job Title CEO of INSIKT

Address 333 Bush St.
Street

San Francisco CA
City *State* *Zip*

Phone 650 303 6993

Email JAMES@INSIKT.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Insikt

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 872
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Dorine Barker

Job Title Associate State Director

Address 200 W. College Ave
Street

Tall FL 32301
City *State* *Zip*

Phone 850 228-6387

Email dobarker@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

872
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne BLVD, #106
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Legal Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

872
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Alice Vickers

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Alliance For Consumer Protection

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/SB 1078
INTRODUCER:	Banking and Insurance Committee and Senator Garcia
SUBJECT:	International Financial Institutions
DATE:	March 27, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1078 extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions. The Legislature imposed the moratorium during the 2016 legislative session. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

II. Present Situation:

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.[1] Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

[1] See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Mar. 24, 2017).

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes). [2]

International Banking Corporations

The OFR licenses and regulates international banking corporations[3] that transact business in Florida.[4] International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.[5] These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of "financial institution"[6] includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.[7] In addition, the OFR qualified six entities for the moratorium on the OFR's enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.[8]

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

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[2] Financial Institutions Codes include chs. 655, F.S., relating to financial institutions generally, 657, F.S., relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 , F.S., relating to associations, and 657, F.S., relating to savings banks.

[3] An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities used in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

[4] Sections 663.04 and 663.05, F.S.

[5] Section 663.06(1), F.S.

[6] Section 655.005(i), F.S.

[7] Office of Financial Regulation, *Financial Institution Search*, at https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx (last visited Mar. 24, 2017).

[8] The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;[9]
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of $20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.[10] Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches. International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.[11] An international branch has the same rights and privileges as a federally licensed international branch.[12]

International Representative Offices and International Administrative Offices. International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts. [13] In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.[14]

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[9] Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation's foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. *See* Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment.*

[10] Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

[11] Section 663.061, F.S.

[12] Section 663.064, F.S.

[13] Section 663.062, F.S.

[14] Section 663.063, F.S.

International Trust Company Representative Offices. An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.[15] An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.[16] An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).[17]

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

The moratorium on the enforcement of licensing requirements applies to any person who manages or controls or is employed by an organization or entity providing services to an ITE that engages in ITCRO activities that:

- Has been organized to conduct business in Florida before October 1, 2013;
- Has not been fined or sanctioned as a result of any complaint with the OFR or any other state or federal regulatory agency;
- Has not been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any local, state, foreign law enforcement or international agency within ten years before the effective date of the moratorium;
- Has not had any of its directors, executive directors, principal shareholders, or managers or employees arrested for, charged with, convicted of, or pled guilty or nolo contendere to,

[15] In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the $8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

[16] Section 663.01(9), F.S.

[17] Section 663.0625, F.S.

regardless of adjudication, any offense that is punishable by imprisonment for one year or more, or to any offense involving money laundering, tax evasion, fraud, or that is otherwise related to the operation of a financial institution within ten years before the effective date of this section;

- Does not provide any services to any ITE that is in in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country;
- Does not provide banking services or promote or sell investments or accept custody of assets;
- Does not act as a fiduciary, including but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts; and,
- Conducts those activities permissible for an ITCRO, as described in s. 663.0625, F.S.

III. Effect of Proposed Changes:

The bill extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions. The Legislature imposed the moratorium during the 2016 legislative session. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains provisions similar to those in CS/SB 736.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 663.01, 663.041

IX. Additional Information:

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

CS by Banking and Insurance on March 27, 2017:
The bill deletes the entirety of the filed bill and instead extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions.

B. Amendments:

None.

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

875648

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (10) of section 663.01, Florida Statutes, is amended to read:

663.01 Definitions.—As used in this part, the term:

(10) "International trust entity" means an international trust company, an international business, an international business organization, or an affiliated or subsidiary entity

875648

that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. This subsection expires July 1, 2018.

Section 2. Subsections (7) and (8) are added to section 663.041, Florida Statutes, to read:

663.041 Moratorium on the office's enforcement of licensing requirements for an international trust entity or related entities.—

(7) Notwithstanding this section, the moratorium in this section is extended through June 30, 2018, for an organization or entity that:

(a) Complied with the requirements of subsection (3) and subsequently qualified for the moratorium under this section; and

(b) Before July 1, 2017, provides the office a written notice of its intent to continue operations in this state.

(8) This section expires July 1, 2018.

Section 3. Section 3 of chapter 2016-192, Laws of Florida, is repealed.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to international financial institutions; amending s. 663.01, F.S.; extending the

expiration date of the term "international trust entity"; amending s. 663.041, F.S.; extending the expiration date of a moratorium on the Office of Financial Regulation's enforcement of licensing requirements for certain organizations or entities under certain circumstances; repealing s. 3 of chapter 2016-192, Laws of Florida, relating to the repeal of the definition of the term "international trust entity" and to the moratorium on the office's enforcement of certain licensing requirements; providing an effective date.

By Senator Garcia

36-00617-17 20171078__

A bill to be entitled

An act relating to international financial institutions; amending s. 655.005, F.S.; revising a definition; amending s. 655.059, F.S.; revising requirements for confidential books and records of financial institutions that must be made available for inspection and examination; revising examination requirements; revising a definition; providing applicability; amending s. 663.01, F.S.; revising a definition to conform to changes made by the act; providing a directive to the Division of Law Revision and Information; creating s. 663.530, F.S.; providing definitions; creating s. 663.531, F.S.; authorizing a limited service affiliate to engage in specified activities; prohibiting a limited service affiliate from engaging in specified activities; providing the Office of Financial Regulation with certain powers; providing applicability; creating s. 663.532, F.S.; providing limited service affiliate registration requirements; creating s. 663.533, F.S.; providing applicability of the financial institutions codes; creating s. 663.534, F.S.; providing registrant reporting requirements; creating s. 663.535, F.S.; providing limited service affiliate notice requirements; creating s. 663.536, F.S.; providing registrant recordkeeping requirements; creating s. 663.537, F.S.; authorizing the office to conduct an examination or investigation of a limited service affiliate; providing powers of the office; providing

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36-00617-17 20171078__

fee requirements; creating s. 663.538, F.S.; providing for the suspension, revocation, or voluntary surrender of registration; creating s. 663.539, F.S.; providing registration renewal requirements; creating s. 663.540, F.S.; providing that an international trust entity's limited service affiliate is not required, in response to a subpoena, to produce certain books or records under specified circumstances; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(i) "Financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

Section 2. Paragraph (d) of subsection (1) and paragraph

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(b) of subsection (2) of section 655.059, Florida Statutes, are amended to read:

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

(1) The books and records of a financial institution are confidential and shall be made available for inspection and examination only:

(d) With respect to an international banking corporation or international trust entity, to the home-country supervisor of the international banking corporation or international trust entity, provided:

1. The home-country supervisor provides advance notice to the office that the home-country supervisor intends to examine the Florida office of the international banking corporation or international trust entity. The examination may be conducted onsite or offsite and may include ongoing reporting by the principal Florida office of the international banking corporation or international trust entity to the home-country supervisor.

2. The home-country supervisor confirms to the office that the purpose of the examination is to ensure the safety and soundness of the international banking corporation or international trust entity.

3. The books and records pertaining to customer deposit, investment, ~~and~~ custodial, and trust accounts are not disclosed to the home-country supervisor.

4. At any time during the conduct of the examination, the office reserves the right to have an examiner present, ~~or to~~ participate jointly in the examination, or receive copies of all

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of the books and records provided to the home-country supervisor.

For purposes of this paragraph, "home-country supervisor" means the governmental entity in the international banking corporation's or international trust entity's home country with responsibility for the supervision and regulation of the safety and soundness of the international banking corporation or international trust entity;

(2)

(b) The books and records pertaining to the deposit accounts and loans of depositors, borrowers, members, trust customers including trust beneficiaries, and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and shall not be released except upon express authorization of the account holder or customer as to her or his own accounts, loans, trust, 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

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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, nothing in this subsection shall prohibit:

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

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

Section 3. Subsection (6) of section 663.01, Florida Statutes, is amended to read:

663.01 Definitions.—As used in this part, the term:

(6) "International banking corporation" means a banking corporation organized and licensed under the laws of a foreign country. The term "international banking corporation" includes, without limitation, a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating, including a corporation: the sole shareholders of which are one or more international banking corporations or

holding companies which own or control one or more international banking corporations which are authorized to carry on a banking business, or a central bank or government agency of a foreign country and any affiliate or division thereof; which has the power to receive deposits from the general public in the country where it is chartered and organized; and which is under the supervision of the central bank or other bank regulatory authority of such country. The term also includes ~~foreign trust companies, or any similar business entities, including, but not limited to,~~ foreign banks with fiduciary powers~~,~~ that conduct trust business as defined in the financial institutions codes.

Section 4. The Division of Law Revision and Information is directed to create part III of chapter 663, Florida Statutes, consisting of ss. 663.530-663.540, Florida Statutes, to be entitled "Limited Service Affiliates of International Trust Entities."

Section 5. Section 663.530, Florida Statutes, is created to read:

663.530 Definitions.—

(1) As used in this part:

(a) "Foreign country" means a country other than the United States and includes any colony, dependency, or possession of such country, notwithstanding any definitions in chapter 658, and any territory of the United States, including Guam, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

(b) "Home country regulator" means the supervisory authority or its equivalent, or other similarly sanctioned body, organization, governmental entity, or recognized authority that has similar responsibilities in a foreign country in which and

by whom an international trust entity is licensed, chartered, or has similar authorization to organize and operate.

(c) "International trust entity" means an international trust company or any international business, international business organization, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

(d) "Limited service affiliate" means a marketing and liaison office that engages in the permissible activities in s. 663.531 for the benefit of an international trust entity.

(e) "Nonresident" has the same meaning as provided in s. 663.01(11).

(f) "Professional" means an accountant, attorney, or other financial services and wealth planning professional who is licensed by a governing body or affiliated with a licensed, chartered, or similarly authorized entity.

(g) "Registrant" means a person or entity registered to perform the activities in s. 663.531 related to, or for the benefit of, an affiliated international trust entity.

(2) The definitions provided in s. 655.005 shall apply to this part, except a definition in conflict with or superseded or modified by the provisions of this section.

Section 6. Section 663.531, Florida Statutes, is created to read:

663.531 Permissible activities.—

(1) A limited service affiliate may engage in any of the following activities:

(a) Marketing and liaison services related to, or for the

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benefit of, an affiliated international trust entity if such services are directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity.

(b) Advertising and marketing at trade, industry, or professional events.

(c) Transmitting documents between an international trust entity and its current or prospective clients or a designee of such clients.

(d) Transmitting information relating to the trust or trust holdings of current clients between current clients, or their designees, and the international trust entity.

(2) A limited service affiliate may not engage in any of the following activities:

(a) Advertising and marketing services related to, or for the benefit of, the international trust entity if such services are directed at the general public.

(b) Acting as a fiduciary, including, but not limited to, accepting a fiduciary appointment, executing a fiduciary document that creates a fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

(c) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of an affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the international trust company representative office.

(d) Soliciting business within the state from the general public related to, or for the benefit of, an affiliated

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international trust entity.

(e) Adding a financial institution-affiliated party to the limited service affiliate without prior written notification to the office.

(f) Providing services for an international trust entity without complying with the requirements of s. 663.532.

(g) Conducting banking or trust business.

(3) The provisions of subsection (2) do not prevent the use of the Internet, provided that the posted information or communication:

(a) Includes the statement: "Fiduciary services described herein are not offered to the general public in the State of Florida. Such services are marketed by (insert name of limited service affiliate) exclusively to professionals and current or prospective non-U.S. resident clients of its affiliated international trust entities."

(b) Includes the notice required in s. 663.535.

(4) The office, in addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, may impose any remedy or penalty pursuant to s. 655.033, relating to cease and desist orders; s. 655.034, relating to injunctions; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; or s. 655.041, relating to administrative fines and enforcement, for a violation of subsection (2).

(5) This section does not subject a limited service affiliate to the financial institutions code with respect to business activities that do not otherwise require a license or registration under general law.

Section 7. Section 663.532, Florida Statutes, is created to read:

663.532 Registration.—

(1) To register as a limited service affiliate, a proposed registrant must file a written notice with the office, in the manner and on a form prescribed by the commission, with a nonrefundable registration fee of $2,500. Such notice must include:

(a) The name under which the proposed registrant will conduct business in this state.

(b) A copy of the articles of incorporation, articles of organization, or the equivalent, of the proposed registrant.

(c) The physical address at which the proposed registrant will conduct business.

(d) The mailing address of the proposed registrant.

(e) The name and biographical information of the executive officer or managing member of the proposed registrant, submitted on a separate form prescribed by the commission.

(f) The number of officers and employees of the proposed registrant's business.

(g) A detailed list and description of the activities the proposed registrant will conduct that must include:

1. The services and activities of the proposed registrant.

2. An explanation of how the services and activities of the proposed registrant serve the business purpose of each international trust entity.

3. An explanation of how the services and activities of the proposed registrant are distinguishable from those of the permissible activities of an international trust company

representative office.

(h) Disclosure of any instance in which a director, executive officer, principal shareholder, manager, or the equivalent has ever been arrested for, charged with, convicted of, or plead guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for a term exceeding 1 year, or to any offense that involves money laundering, currency transaction reporting, tax evasion, facilitating or furthering terrorism, fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, dishonesty, breach of trust, breach of fiduciary duty, moral turpitude, or that is otherwise related to the operation of a financial institution, within the prior 10 years.

(i) A declaration under penalty of perjury, signed by the executive officer or managing member of the proposed registrant, that, to the best of his or her knowledge:

1. No financial institution-affiliated party of the proposed registrant or of any affiliated international trust entity:

a. Has been fined or sanctioned as a result of any complaint to the office or any other state or federal regulatory agency.

b. Has been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any federal, state, foreign, or local law enforcement agency or international agency within the prior 10 years.

c. Provides or will provide services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws

of any country.

d. Provides or will provide banking services or promote or sell investments or accept custody of assets.

e. Acts or will act as a fiduciary in this state, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts.

2. The jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in, or facilitate the financial services functions, banking, or fiduciary activities of, the international trust entity, is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

(j) For each international trust entity that the proposed registrant will provide services for in this state:

1. The name of the international trust entity.

2. The names of the current officers and directors of the international trust entity.

3. Any country in which the international trust entity is organized or authorized to do business and the name of the home country regulator.

4. Proof that the international trust entity has been authorized by charter, license, or similar authorization by its home country regulator to engage in trust business.

5. Proof that the international trust entity lawfully exists and is in good standing under the laws of the jurisdiction where it is chartered, licensed, or organized.

6. A statement that the international trust entity is not in bankruptcy, conservatorship, receivership, liquidation, or in a similar status under the laws of any country.

7. Proof that the international trust entity is not operating under the direct control of government, regulatory, or supervisory authority of the jurisdiction of its incorporation, through government intervention or any other extraordinary actions, and confirmation that it has not been in such a status or under such control at any time within the prior 3 years.

8. Proof that the proposed registrant is affiliated with the international trust entities provided in the notice.

9. Proof that the jurisdictions where the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity are not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.

(k) A declaration under penalty of perjury signed by an executive officer or managing member of each affiliated international trust entity declaring that the information provided to the office is true and correct to the best of his or her knowledge.

The proposed registrant may provide additional information in the form of exhibits when attempting to satisfy any of the registration requirements. All information the proposed registrant desires to present to support the written notice

shall be submitted with the notice.

(2) The office may request additional information as the office reasonably requires. A request for additional information must be made by the office within 30 days after initial receipt of the proposed registrant's written notice and the full amount of the prescribed fee. Additional information shall be submitted by the proposed registrant within 60 days after a request has been made by the office. Failure to respond to such request within 60 days after the date of the request is a ground for denial of the registration. No notice shall be deemed complete until all requested information has been submitted to the office. Upon deeming the notice complete, the office has 120 days to register the limited service affiliate or issue a denial. Any order denying a registration must contain notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) A registration under this part shall be suspended by the office if the limited service affiliate made a material false statement in the written notice. The suspension shall remain in effect until a final order is entered by the office. For the purposes of s. 120.60(6), a material false statement made in the limited service affiliate's written notice constitutes an immediate and serious danger to the public health, safety, and welfare. If a limited service affiliate made a material false statement in the written notice, the office shall enter a final order revoking the registration and may issue a fine as prescribed by s. 655.041 or issue an order of suspension, removal, or prohibition under s. 655.037 to a financial institution-affiliated party of the limited service affiliate.

(4) Any instance wherein a director, executive officer, principal shareholder, manager, or the equivalent has ever been arrested for, charged with, convicted of, or plead guilty or nolo contendere to, regardless of adjudication, any offense that involves money laundering, currency transaction reporting, tax evasion, facilitating or furthering terrorism, fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, dishonesty, breach of trust, breach of fiduciary duty, moral turpitude, or that is otherwise related to the operation of a financial institution, is a ground for denial of the registration.

(5) A registration is not transferable or assignable.

(6) Fees collected under this section must be submitted in the manner prescribed by the commission and must be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this part.

(7) Any person or entity in operation as of January 1, 2018, that is a limited service affiliate must, on or before March 31, 2018, apply for registration as a limited service affiliate or cease doing business in this state.

(8) On or before March 31, 2018, any person or entity that is a limited service affiliate and previously qualified under the moratorium in s. 663.041 must register under this part or cease doing business in this state. Any person or entity that is a limited service affiliate and previously qualified under the moratorium in s. 663.041 may remain open and in operation until March 31, 2018, without registering under this part but must refrain from engaging in new lines of business in this state until the disposition of registration under this section.

Section 8. Section 663.533, Florida Statutes, is created to read:

663.533 Applicability of the financial institutions codes.—Except as otherwise provided, the following provisions of the financial institutions codes are applicable to a limited service affiliate:

(1) Section 655.012, relating to general supervisory powers of the office.

(2) Section 655.031, relating to administrative enforcement guidelines.

(3) Section 655.032, relating to investigations.

(4) Section 655.0321, relating to hearings and proceedings.

(5) Section 655.033, relating to cease and desist orders.

(6) Section 655.034, relating to injunctions.

(7) Section 655.037, relating to removal of a financial institution-affiliated party by the office.

(8) Section 655.041, relating to administrative fines.

(9) Section 655.057, relating to public records.

(10) Section 655.059, relating to access to books and records.

(11) Section 655.0591, relating to trade secret documents.

(12) Section 655.91, relating to records of institutions and copies thereof and retention and destruction.

(a) With respect to a limited service affiliate registered under this part, s. 655.91 requires only the retention of:

1. Correct and complete books and records of account of financial transactions by such limited service affiliate. All policies and procedures relating specifically to the financial transactions of such limited service affiliate, as well as any

existing general ledger or subsidiary accounts, must be maintained in English. Any policies and procedures of the limited service affiliate which are not specific to the operations of such office may be maintained in a language other than English.

2. Current copies of the articles of incorporation or organization and bylaws of the limited service affiliate, and minutes of the proceedings of its directors, officers, or committees relative to the business of the limited service affiliate. Such records may be maintained in a language other than English, and shall be kept pursuant to s. 655.91 and made available to the office, upon request, at any time during regular business hours of the limited service affiliate.

3. Information required to be provided to the office or retained under ss. 663.531, 663.532, 663.534, 663.535, 663.536, 663.538, and 663.539, including any source documents used to prepare any application or report required under this part.

4. Copies of agreements with third parties.

5. Marketing or advertising materials used by the limited service affiliate.

6. Policies and procedures adopted or followed by the limited service affiliate regarding compliance with this part.

(b) Limited service affiliates are not required to preserve or retain any of their records or copies thereof for a period longer than is expressly required by an applicable statute or rule or regulation of this state or the United States which identifies, either specifically or by type or category, the relevant records or copies thereof. If there is no such statute, rule, or regulation that specifies a retention period applicable

to the records or copies thereof, limited service affiliates shall adopt their own records retention policies, provided that the records required under paragraph (a) must be retained for at least 18 months. A limited service affiliate may destroy any of its records or copies thereof after the expiration of the retention period determined as provided in this paragraph.

(c) The office may require, at any time, that any document not written in English that the office deems necessary for the purposes of its regulatory and supervisory functions be translated into English at the expense of the limited service affiliate.

(d) If the law of the home country jurisdiction of an international trust entity affiliated with the limited service affiliate prohibits disclosure of information that is in the possession of the limited service affiliate, the limited service affiliate must inform the office, specifically identifying the applicable provisions of law of the home country jurisdiction that prohibit such disclosure. In such case, the office may examine only the nonconfidential portions of a record unless it has obtained consent from the home country regulator or a final nonappealable order of a court of competent jurisdiction requiring the disclosure of such information.

(e) Any record required to be maintained may be maintained in any format determined by the limited service affiliate, including electronic formats.

(13) Section 655.968, relating to financial institutions and transactions relating to Iran or terrorism.

This section does not prohibit the office from investigating or

examining an entity to ensure that it is not in violation of this chapter or provisions of the financial institutions codes made applicable hereby.

Section 9. Section 663.534, Florida Statutes, is created to read:

663.534 Events that require notice be provided to the office.—A registrant must report to the office within 15 days after the registrant's knowledge of any change to the information previously relied upon by the office for registration or renewal of a registration under this part.

Section 10. Section 663.535, Florida Statutes, is created to read:

663.535 Notice to customers.—All marketing documents and advertisements and any display at the location of the limited service affiliate or at any trade or marketing event must contain the following statement in a contrasting color in at least 10-point font: "The Florida Office of Financial Regulation DOES NOT provide safety and soundness oversight of this company or provide any opinion as to any affiliated companies or products, or the oversight of its affiliated international trust entities or the jurisdictions in which they operate. This company may not act as a fiduciary and may not accept the fiduciary appointment, execute fiduciary documents, take possession of any assets, create the fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts, provide banking services, or promote or sell investments."

Section 11. Section 663.536, Florida Statutes, is created to read:

663.536 Recordkeeping requirements for trade, industry, or professional events.—Any registrant under this part which participates in a trade, industry, or professional event under s. 663.531 must maintain a record of its participation in the event. The record must be maintained for at least 2 years after the event and must contain the following information:

(1) The date, time, and location of the event.

(2) The list of participants in the event, including other vendors, presenters, attendees, and targeted attendees, to the extent known or available.

(3) The nature and purpose of the event.

(4) The registrant's purpose for participating in the event.

(5) Samples of materials or, if samples are unavailable, descriptions of materials provided by the registrant to attendees and other participants at the event.

Section 12. Section 663.537, Florida Statutes, is created to read:

663.537 Examinations and investigations of a limited service affiliate.—

(1) The office may conduct an examination or investigation of a limited service affiliate at any time it deems necessary to determine whether the limited service affiliate or financial institution-affiliated party thereof is in violation of any provision of this chapter, any applicable provision of the financial institutions codes, or any rule adopted by the commission pursuant to this chapter or the codes. The office shall conduct an examination of each limited service affiliate within the first 18 months after the initial registration to

assess compliance with this part and the financial institutions codes applicable to this part. The office may conduct an examination of any person or entity who submits a notice for registration, to confirm information provided in the registration filing and to confirm the activities of the person or entity registering, before or after registration.

(2) For each examination of a limited service affiliate authorized under this part, the limited service affiliate shall pay a fee for the costs of the examination. As used in this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to the examination of the registrant and the travel expenses of any supervisory and support staff required as a result of examination findings. The costs of examination shall be determined as follows:

(a) The office shall charge each limited service affiliate in this state an examination fee equal to the actual cost of each examiner's participation during each examination of such limited service affiliate. The examination fee shall equal the actual cost of the examination, but in no event shall such fees, including travel expenses and other incidental expenses, be less than $200 per day for each examiner participating in the examination;

(b) For purposes of this section, "actual cost" means the direct salary not including employee benefits, travel expenses, and other incidental expenses required as a result of the examination staff's onsite and offsite examination of the limited service affiliate. The term includes the travel expenses of any supervisory staff required as a result of examination

findings.

(3) All examination fee payments must be received within 30 days after receipt of an invoice from the office and submitted in a manner prescribed by the commission. The office may levy a late fee of up to $100 per day for each day that a payment is overdue unless the fee is waived by the office for good cause. However, if the office determines that the late payment of costs is intentional, the office may levy an administrative fine of up to $1,000 per day for each day the payment is overdue.

(4) All fees collected under this section must be submitted in the manner prescribed by the commission and deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this part.

Section 13. Section 663.538, Florida Statutes, is created to read:

663.538 Suspension, revocation, or voluntary surrender of registration.—

(1) A registrant that proposes to terminate operations in this state must surrender its registration to the office and comply with the procedures required by the commission.

(2) A registrant that fails to renew their registration is subject to a fine and penalty. A registrant shall have 30 days after the expiration of its registration to renew the registration or must surrender the registration in accordance with procedures as the commission prescribes by rule.

(3) The registration of a limited service affiliate in this state may be suspended or revoked by the office, with or without examination, upon the office's determination that the registrant does not meet all requirements for registration or renewal.

(4) If a registration is surrendered by the registrant or is suspended or revoked by the office, all rights and privileges afforded by this part to the limited service affiliate shall cease.

(5) If a registrant voluntarily surrenders a registration, the registrant must provide the office with a written notice of its intention to surrender its registration and terminate operations at least 60 days before the proposed date of termination. The notice must include the proposed date of termination and the name of the officer in charge of the termination procedures.

(6) The office may conduct an examination of the books and records of a limited service affiliate at any time after receipt of the notice of surrender of registration to confirm the winding down of operations.

(7) Operations of a registrant are terminated 60 days after the date of the filing of the notice of voluntary surrender, or upon the date provided in the notice of voluntary surrender, unless the office provides written notice specifying the grounds for denial of such proposed termination. The office may not deny a request to terminate a registration unless it learns of the existence of an outstanding claim or claims against the registrant, that the requirements to terminate operations have not been satisfied, or that there would be an immediate and serious danger to the public health, safety, and welfare if the termination were to occur.

Section 14. Section 663.539, Florida Statutes, is created to read:

663.539 Biennial registration renewal.—A registration must

be renewed every 2 years. Registration must be renewed by furnishing information required by the commission with payment of a $500 nonrefundable renewal fee. All fees received by the office pursuant to this section must be submitted in the manner prescribed by the commission and must be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this part. A complete biennial renewal of registration shall include a declaration under penalty of perjury, signed by the executive officer or managing member of the registrant, declaring that the information submitted for the purposes of renewal is true and correct to the best of his or her knowledge, and confirming or providing:

(1) That the registrant is in compliance with this part.

(2) The physical location of the principal place of business of the registrant.

(3) The telephone number of the registrant.

(4) The current financial institution-affiliated parties operating under the registration.

(5) Any updates or changes in the information previously provided either in the initial registration or subsequent renewals that were not previously disclosed to the office.

Section 15. Section 663.540, Florida Statutes, is created to read:

663.540 Civil action subpoena enforcement.—

(1) Notwithstanding s. 655.059, an international trust entity's limited service affiliate established under this chapter is not required to produce a book or record pertaining to a customer of the international trust entity's offices that

are located outside the United States or its territories in response to a subpoena if the book or record is maintained outside the United States or its territories and is not in the possession, custody, or control of the international trust entity's limited service affiliate established in this state.

(2) This section applies only to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or other similar law or rule of civil procedure in another state or territory of the United States. This section does not apply to a subpoena issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body, or grand jury and does not limit the power of the office to access all books and records in the exercise of the office's regulatory and supervisory powers under the financial institutions codes.

Section 16. This act shall take effect January 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

1078
Bill Number (if applicable)

875648
Amendment Barcode (if applicable)

Topic International Financial Institutions

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

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

Representing Florida International Administrations Assoc.

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1080
INTRODUCER:	Senator Garcia
SUBJECT:	Public Records/International Trust Entities and Limited Service Affiliates
DATE:	March 24, 2017
REVISED:	

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

I. Summary:

SB 1080 requires the OFR to hold the examination reports and working papers of limited services affiliates and international trust entities confidential and exempt from the public disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill also specifies that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The revision is necessary because SB 1078 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption.

The public records exemptions created and amended by this bill are subject to the Open Government Sunset Review Act and repeal on October 2, 2022, unless the Legislature reviews and saves them from repeal through reenactment.

The bill will be effective on the same date SB 1078 takes effect, should that bill be adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.[2]

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements.[9] An exemption must pass by a two-thirds vote of the House and the Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[13] Records designated as 'confidential and exempt' may

[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So.2d 633, 640 (Fla. 1980).
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] FLA. CONST., art. I, s. 24(c).
[12] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.
[13] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as 'exempt' may be released at the discretion of the records custodian.[14]

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.[15] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.[17] Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes). [18]

International Banking Corporations

The OFR licenses and regulates international banking corporations[19] that transact business in Florida.[20] International banking entities enable depository institutions in the United States to

[14] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).
[15] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).
[16] Section 119.15(3), F.S.
[17] See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).
[18] Financial Institutions Codes include chs. 655, F.S., relating to financial institutions generally, 657, F.S., relating to banks and trust companies, 660, F.S., relating to trust business, 662 family trust companies, 663, F.S., relating to international banking, 665, F.S., relating to associations, and 657, F.S., relating to savings banks.
[19] An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.
[20] Sections 663.04 and 663.05, F.S.

offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.[21] These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of "financial institution"[22] includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.[23] In addition, the OFR qualified six entities for the moratorium on the OFR's enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.[24]

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;[25]
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of $20 million.

Section 663.02, F.S., provides that international banking corporations with offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust

[21] Section 663.06(1), F.S.
[22] Section 655.005(i), F.S.
[23] Office of Financial Regulation, *Financial Institution Search,* at https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx (last visited February 25, 2017).
[24] The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).
[25] Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation's foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. *See* Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment.*

companies.[26] Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches. International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.[27] An international branch has the same rights and privileges as a federally licensed international branch.[28]

International Representative Offices and International Administrative Offices. International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts. [29] In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.[30]

International Trust Company Representative Offices. An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in nonfiduciary activities described in s. 663.0625, F.S.[31] An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.[32] An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;

[26] Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

[27] Section 663.061, F.S.

[28] Section 663.064, F.S.

[29] Section 663.062, F.S.

[30] Section 663.063, F.S.

[31] In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the $8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

[32] Section 663.01(9), F.S.

- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).[33]

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if certain conditions are met. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

Senate Bill 736 (2017)

SB 1080 provides public records exemptions that accompany the classification of international trust entities and limited service affiliates as financial institutions in SB 1078 (2017). SB 1078 creates a regulatory framework for limited service affiliates (LSAs). The bill revises the regulatory framework of international trust entities under the Office of Financial Regulation. The bill classifies "international trust entities" (ITE) and "limited service affiliates" as financial institutions, subjecting them to the regulatory jurisdiction of the Office of Financial Regulation (OFR) under ch. 655, F.S.

The LSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity. This will allow multiple types of foreign entities licensed to conduct trust business in a foreign country to open LSAs, some of which may choose to conduct marketing operations through an LSA rather than an ITCRO. An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. SB 1078 will allow multiple types of foreign entities licensed to conduct trust business in a foreign country to open LSAs, some of which may choose to conduct marketing operations through an LSA rather than an ITCRO.

[33] Section 663.0625, F.S.

III. Effect of Proposed Changes:

Expansion of Public Records Exemption for Examinations of Financial Institutions

Section 1 requires the OFR to hold the examination reports and working papers of limited services affiliates and international trust entities confidential and exempt from the public disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill also specifies that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The revision is necessary because SB 1078 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption. Expanding the public records exemptions also subjects them to an Open Government Sunset Review and repeal on October 2, 2022, unless the Legislature reviews and saves the exemptions from repeal by reenacting them.

Section 2 provides legislative findings that expanding the public records exemptions to international trust entities and limited services affiliates is a public necessity. The exemption is needed because SB 1078 defines international trust entity and limited service affiliate as financial institutions. The OFR in performing its duties may receive sensitive personal and financial information and trade secrets related to ITEs and LSAs. The public records exemption will prevent disadvantaging these entities in comparison to other financial institutions and publicly disclosing the financial information of customers. Public disclosure of customer's and prospective customer's financial information could jeopardize their personal safety and make them targets of criminal predators seeking access to their assets. The existing and prospective customers of affiliated ITEs often reside in or frequently travel to counties where there is a significant risk of kidnapping and extortion. Disclosure of records and information relating to an examination, examination report, or emergency cease and desist order could expose individuals to security risks or defame or cause unwarranted damage to the reputation of the individual who is the subject of the information.

Effective Date

Section 3 makes the bill effective on the date SB 736 or similar legislation takes effect during the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 655.057 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 Garcia

36-00620-17 20171080__

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; revising definitions; providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to international trust entities and limited service affiliates; authorizing release of such information under certain circumstances; authorizing the publication of certain information; providing a penalty; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (2), paragraphs (a) and (d) of subsection (12), and subsection (14) of section 655.057, Florida Statutes, are amended, and subsection (10) of that section is republished, to read:

655.057 Records; limited restrictions upon public access.—

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such reports

or papers or portions thereof may be released to:

(a) The financial institution under examination;

(b) Any holding company of which the financial institution is a subsidiary;

(c) Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;

(d) Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;

(e) Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or

(f) A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

(g) Examination, operation, or condition reports of a financial institution shall be released by the office within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s.

119.07(1).

Any confidential information or records obtained from the office pursuant to this subsection ~~paragraph~~ shall be maintained as confidential and exempt from s. 119.07(1).

(10) Examination reports, investigatory records, applications, and related information compiled by the office, or photographic copies thereof, shall be retained by the office for at least 10 years.

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

(a) "Examination report" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012, ~~or~~ s. 655.045(1), s. 663.532, s. 663.533, s. 663.534, s. 663.536, s. 663.537, s. 663.538, or s. 663.539.

(d) "Working papers" means the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032, ~~or~~ s. 655.045, s. 663.532, s. 663.533, s. 663.537, s. 663.538, or s. 663.539. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation.

(14) Subsections (2), (3), and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Section 2. The Legislature finds that it is a public necessity that reports of examination, operations, or condition, including working papers, prepared by, or for the use of, the Office of Financial Regulation or any state or federal agency responsible for the regulation or supervision of financial institutions in this state which pertain to international trust entities and limited service affiliates be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(1) The terms "international trust entity" and "limited service affiliate" referenced in part III of chapter 663, Florida Statutes, are added to the definition of "financial institution" and made subject to investigations and examinations by the Office of Financial Regulation. As such, the office may receive sensitive personal and financial information and trade secrets relating to such entities in conjunction with its duties under chapter 663. This exemption prevents gaps in the law which would put such entities at a disadvantage in comparison to other entities currently defined as financial institutions and also subject personal and financial information of customers to risk of disclosure.

(2) Public disclosure of financial information and lists of names of existing and prospective customers of an affiliated international trust entity could jeopardize the personal and financial safety of those existing and prospective customers and their family members. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such customers and their family members to threats of extortion,

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

kidnapping, and other crimes not be increased. Placing the names of family members and their private family business records and methodologies in the public domain would increase the security risk that a client or family could become the target of criminal activity. This is especially important because many of the existing and prospective customers of affiliated international trust entities reside in or frequently travel to countries in which kidnapping and extortion are significant risks and public corruption impedes the rule of law.

(3) Public disclosure of an examination, report of examination, or emergency cease and desist order could expose individuals to security risks or could defame or cause unwarranted damage to the good name or reputation of the individual who is the subject of the information.

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

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:	CS/SB 1298
INTRODUCER:	Banking and Insurance Committee and Senator Garcia
SUBJECT:	Mortgage Loans
DATE:	March 27, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1298 revises provisions governing non-depository loan originators, mortgage brokers, and mortgage lender businesses subject to regulation by the Office of Financial Regulation (OFR) to provide greater consumer protections for residential loans. The bill amends the definition of "mortgage loan" to include residential mortgage loans made for business purposes. Persons originating, brokering, or lending for such loans would be subject to licensure by the OFR, unless they are otherwise exempt. Further, the bill provides a definition of the term "hold himself or herself out to the public as being in the mortgage lending business," as that term is used in two current licensing exemptions.

Under ch. 494, F.S., conditions requiring licensure by the OFR include whether a person takes part in making a mortgage loan, which requires such a loan be made primarily for personal, family, or household use. Currently two exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, if the individual does not "hold himself or herself out to the public as being in the mortgage lending business." However, this term is currently undefined.

The fiscal impact on the OFR is indeterminate.

II. Present Situation:

Shadow Real Estate Transactions

The Financial Crimes Enforcement Network (FinCEN) recently announced the renewal of an existing Geographic Targeting Orders (GTO) in 2017. This GTO temporarily extends the requirement that U.S. title insurance companies in six metropolitan areas in the U.S., including Miami-Dade County, Florida, identify the natural persons behind shell companies used to pay "all cash" for high-end residential real estate.[1] FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. The GTOs are one of the tools that FinCEN uses to combat money laundering. According to FinCEN, this corroborates their concerns about the use of shell companies to buy luxury real estate in "all-cash" transactions. In an earlier GTO issued in January 2016, FinCEN indicated that it was prioritizing anti-money laundering protections on real estate transactions involving lending.

FinCEN is covering title insurance companies because title insurance is a common feature in the vast majority of real estate transactions. Title insurance companies thus play a central role that can provide FinCEN with valuable information about real estate transactions of concern. The GTOs do not imply any derogatory finding by FinCEN with respect to the covered companies.

In recent years, private lenders and representatives of a local building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. Further, these groups stated that some of these unscrupulous lenders would not make the "residential loan" unless the borrower formed a limited liability company.[2] In another example described by private lenders and a local building association, an offshore shell company buys a parcel of real estate. Shortly thereafter, a Florida corporation, which is formed to participate in the scheme, obtains a mortgage loan on the property through an unlicensed mortgage lender. Next, the shell company pays the Florida corporation's monthly mortgage payments and ultimately pays off the mortgage. As a result, the perpetrator successfully launders money in the United States.[3]

Federal Oversight of Mortgage Brokerage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.[4] Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or the "S.A.F.E. Mortgage Licensing Act of 2008." (S.A.F.E.), The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance

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[1] FinCEN Press Release (Feb. 23, 2017) available at https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash (last viewed Mar. 25, 2017).
[2] Latin Builders Association, Letter to Governor Rick Scott (Dec. 19, 2013) (on file with Senate Banking and Insurance Committee).
[3] http://www.miamiherald.com/opinion/letters-to-the-editor/article75237702.html (last viewed Mar. 23, 2017) (on file with Senate Committee on Banking and Insurance).
[4] Pub. L. No. 110-289.

consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to S.A.F.E., states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.[5]

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.[6] The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)[7] and the Real Estate Settlement Procedures Act (RESPA).[8] TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The Real Estate Settlement Procedures Act of 1974 (RESPA)[9] requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made "primarily for a business, commercial or agricultural purpose."[10] Therefore, TILA and RESPA do not cover "business purpose" mortgage loans but rather only "consumer purpose" mortgage loans. When determining whether credit is for consumer purposes, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds.
- The primary occupation of the consumer and how it relates to the use of the proceeds.
- Personal management of the assets purchased from proceeds.
- The size of the transaction.
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,[11] and the

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[5] NLMS Resource Center, available at http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx (last viewed Feb. 22, 2017).
[6] Pub. L. No. 111-203.
[7] 15 U.S.C. s. 1601, *et. seq*.
[8] 15 U.S.C. s. 2601, *et. seq*.
[9] 12 U.S.C. s. 2601, *et. seq*.
[10] Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/ (last viewed Mar. 23, 2017).
[11] 12 U.S.C. ss. 5532(f), 2603; 15 U.S.C. s. 1604(b).

CFPB issued final rules in 2015.[12] The integrated rule applies to most closed-end consumer mortgages. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not list investment properties or business purpose loans as one categories of loans exempt from the rule. Further, the guide provides creditors that are not prohibited from using the integrated disclosure forms on loans not covered by TILA or RESPA.[13]

State Regulation of Mortgage Brokers

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of S.A.F.E., which increased licensure requirements and required licensure through the registry.[14] Section 494.001(24), F.S., defines the term, "mortgage loan," to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders

The term, "loan originator," includes an individual who is required to be licensed as a loan originator under S.A.F.E. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.[15]

Licensure as a loan originator is required for an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

A mortgage broker license is required for an entity conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker.[16]

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[12] 78 Fed Reg 79730.
[13] See CFPB, *Small Entity Compliance Guide*, available at http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf (last viewed Mar. 23, 2017).
[14] Ch. 2009-241, Laws of Fla.
[15] Section 494.001(17), F.S.
[16] Section 494.001(22), F.S.

A mortgage lender license is required for an entity making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor.[17] "Making a mortgage loan" means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.[18]

The following persons are exempt from regulation as a mortgage lender under part III of this chapter:[19]

- A person acting in a fiduciary capacity conferred by the authority of a court.
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans.
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

Examination Authority, Administrative Penalties and Fines

The OFR may conduct investigations, examinations and investigate complaints.[20] The OFR may take disciplinary action against a person licensed or subject to licensure under part II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.[21]

III. Effect of Proposed Changes:

Section 1 amends the definition of the term, “mortgage loan” in s. 494.001, F.S., by removing the requirement that residential loans be used primarily for personal, family, or household purposes. As a result, residential loans made for a business purpose would fall under the definition of a “mortgage loan,” and would be subject to regulation by the OFR. Persons originating such loans would be subject to licensure by the OFR, unless they were exempted under s. 494.00115, F.S.

Section 2 amends s. 494.00115, F.S., relating to exemptions from regulation. Two current exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender under ch. 494, F.S., if the individual does not hold himself or herself out to the public as

[17] Section 494.001(23), F.S.
[18] *See* Section 494.001(20), F.S.
[19] Section 494.00115, F.S.
[20] Section 494.0012, F.S.
[21] Section 494.00255(1)(m), F.S.

being in the mortgage lending business. This provision defines the term "hold himself or herself out to the public as being in the mortgage lending business" to include any of the following:

- Representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or promotional items), by any medium whatsoever, that such individual can or will perform the activities described in s. 494.001(23), F.S., as a mortgage lender.
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(23), F.S.
- Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(23), F.S., or regularly meets with current or prospective borrowers.
- Advertising, soliciting, or conducting business through use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies that the business being advertised, solicited, or conducted is the kind or character of business transacted or conducted by a licensed mortgage lender or which is likely to lead any person to believe that such business is that of a licensed mortgage lender.
- Using any form promulgated by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, or the CFPB in performing the activities described in s. 494.001(23), F.S.

Section 3 provides the act take effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill would allow borrowers obtaining residential mortgage for business purposes (not primarily for personal, family, or household use) greater consumer protections provided under ch. 494, F.S., which requires compliance with RESPA and TILA. All residential mortgage loans regardless of the purpose would be subject to the provisions of ch. 494, F.S.

Persons making residential mortgage loans for business purposes and who are not licensed would be required to obtain licensure under ch. 494, F.S., in order to continue such lending activity.

C. Government Sector Impact:

Indeterminate at this time. The OFR has indicated that additional staff may be needed to perform licensing and regulatory functions. In recent years, the OFR has closed cases relating to information pertaining to approximately 24 entities allegedly making residential mortgage loans for business purposes. Of these cases, the OFR imposed administrative fines on three entities engaging in unlicensed mortgage lending. The OFR closed 15 other cases because the residential loans were determined to be for business purposes, which was outside of the jurisdiction of the OFR.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but would not necessarily be required to provide the disclosures required under RESPA and TILA if the residential mortgage loan is made for business purposes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.001 and 494.00115.

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 Committee on March 27, 2017:
The bill provides a definition of the term "hold himself or herself out to the public as being in the mortgage lending business," which is used in two current licensure exemptions and removes a rulemaking provision.

B. Amendments:

None.

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

[22] OFR Mortgage Lender Referrals (Nov. 3, 2016) (on file with Senate Banking and Insurance Committee).

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

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

(24) "Mortgage loan" means any:

(a) Residential loan that ~~primarily for personal, family, or household use which~~ is secured by a mortgage, deed of trust,

or other equivalent consensual security interest on a dwelling, as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Section 2. Subsection (4) is added to section 494.00115, Florida Statutes, to read:

(4) As used in this section, the term "hold himself or herself out to the public as being in the mortgage lending business" includes any of the following:

(a) Representing to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or promotional items), by any medium whatsoever, that such individual can or will perform the activities described in s. 494.001(23).

(b) Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in s. 494.001(23).

(c) Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in s. 494.001(23) or regularly meets with current or prospective borrowers.

(d) Advertising, soliciting, or conducting business through

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use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies that the business being advertised, solicited, or conducted is the kind or character of business transacted or conducted by a licensed mortgage lender or which is likely to lead any person to believe that such business is that of a licensed mortgage lender.

(e) Using any form promulgated by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the United States Department of Housing and Urban Development, or the Consumer Financial Protection Bureau in performing the activities described in s. 494.001(23).

Section 3. This act shall take effect January 1, 2018.

========== 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 mortgage lending; amending s. 494.001, F.S.; revising the definition of the term "mortgage loan"; amending s. 494.00115, F.S.; providing a definition for the term "hold himself or herself out to the public as being in the mortgage lending business"; providing an effective date.

By Senator Garcia

36-00321B-17 20171298__

A bill to be entitled

An act relating to mortgage loans; amending s. 494.001, F.S.; redefining the term "mortgage loan"; amending s. 494.00115, F.S.; requiring the Financial Services Commission to define the term "hold himself or herself out to the public as being in the mortgage lending business" by rule; providing an effective date.

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

Section 1. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

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

(24) "Mortgage loan" means any:

(a) Residential loan that ~~primarily for personal, family, or household use which~~ is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Section 2. Subsection (2) of section 494.00115, Florida Statutes, is amended to read:

494.00115 Exemptions.—

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

36-00321B-17 20171298__

(2) The following persons are exempt from regulation under part III of this chapter:

(a) A person acting in a fiduciary capacity conferred by the authority of a court.

(b) A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.

(c) A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.

(d) A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.

(e) An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

(f) An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

The commission shall define by rule the term "hold himself or herself out to the public as being in the mortgage lending business" as it is used in this subsection.

Section 3. This act shall take effect January 1, 2018.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

1298
Bill Number (if applicable)

Topic Mortgage Loans

Amendment Barcode (if applicable)

Name Valerie Saunders

Job Title Government Affairs - FL Assoc. of Mtg Professionals

Address _____ Phone _____

Street

N. Palm Beach FL

Email _____

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing FL Assoc of Mtg Professionals

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

1298
Bill Number (if applicable)

Topic Mortgage Loans

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee, FL 32303
City *State* *Zip*

Phone 850 556 3121

Email alicevickers@flacp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB1298
Bill Number (if applicable)

Topic Mortgage

Amendment Barcode (if applicable)

Name Bernie Navarro

Job Title President Benworth Capital

Address 7000 SW 97 Ave #201 Phone 3055028511
Street

Miami FL 33173 Email bnavarro@benworthcapital.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Myself

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 1482
INTRODUCER:	Senator Garcia
SUBJECT:	Transactions with Foreign Financial Institutions
DATE:	March 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.			CM	
3.			RC	

I. Summary:

SB 1482 mandates certain reporting requirements on Florida-chartered financial institutions that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program. Such a financial institution must identify and report the source of every transaction that passes through the foreign correspondent account to their state regulator, the Office of Financial Regulation (OFR).

The bill also requires the Florida institution to certify that the source does not involve any "confiscated property" as defined in the Libertad Act. For purposes of the Libertad Act, the term, "confiscated," means:

- The nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959, without the property having been returned or adequate and effective compensation provided; or without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
- The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959, a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government; a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or a debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions' compliance with safety and soundness provisions and federal requirements, such as the federal Bank Secrecy Act and economic and trade sanctions administered by the U.S. Treasury.

The bill has an indeterminate fiscal impact on the OFR.

II. Present Situation:

The global financial system, trade flows, and economic development rely on correspondent banking relationships. Correspondent banking is the provision of banking services between two unrelated financial institutions, whether domestic or international. Correspondent banking relationships are essential to the function of the U.S. and international financial system, facilitating everything from remittances, development, trade finance, and economic development.

Foreign correspondent accounts are a gateway into the U.S. financial system by facilitating everything from remittances, development, trade finance, and economic development. To protect this system from abuse, U.S. financial institutions must comply with the Bank Secrecy Act provisions, which are designed to prevent, detect, and prosecute terrorism activities and international money laundering and the sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

Bank Secrecy Act of 1970

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. This legislation was in response to growing concerns regarding money being "laundered" to conceal illegal activity, including the crimes that generate the money itself, such as drug trafficking. The 2001 USA PATRIOT ACT strengthened provisions of the BSA.[1] The 2001 law included additional measures to prevent, detect, and prosecute terrorism activities and international money laundering. One of the central goals of the USA PATRIOT Act is to protect access to the U.S. financial system by requiring certain records, reports, and due diligence programs for foreign correspondent accounts. The BSA requires traditional banks and other entities, as defined by federal regulations, to establish written anti-money laundering programs, maintain certain records, and file reports that have a high degree of usefulness in criminal and regulatory proceedings.

The Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department, is responsible for administering the BSA in furtherance of its mission to safeguard the U.S. financial system from illicit use. The Federal Banking Agencies (FBAs) have the responsibility and authority to conduct examinations of depository institutions for compliance with the BSA and OFAC requirements in order to ensure the safety and soundness of the U.S. financial system. Together, these agencies are responsible for implementing the regulatory and supervisory framework that is essential for promoting compliance with these obligations and keeping the U.S. banking system safe and sound. Federal and state banking regulators also oversee these recordkeeping and reporting requirements as part of their respective examination duties.

In addition, if Treasury finds "reasonable grounds" exist for concluding that a non-U.S. jurisdiction or any financial institution operating outside of the U.S. is of "primary money laundering concern," Treasury may subject U.S. financial institutions to special measures,

[1] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56).

including prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts.[2] Specifically, the BSA/AML requires U.S. financial institutions to take certain customer identification and due diligence measures regarding correspondent and payable-through accounts, if the U.S. Treasury determines transactions that involve jurisdictions outside of the U.S. to be of "primary money laundering concern."[3] Federal and state banking regulators also oversee these recordkeeping and reporting requirements as part of their respective examination duties.

FinCEN has estimated there are approximately 300 banks in the United States that provide correspondent banking services to foreign financial institutions. When these U.S. banks receive funds or instructions for a funds transfer from a foreign correspondent bank, they likely do not have a relationship with the originator of the payment. For this reason, conducting appropriate due diligence on the foreign correspondent bank is critical to managing the vulnerability associated with this product. The complexity and volume of transactions that flow through U.S. correspondent accounts, coupled with the varying (often limited) recordkeeping requirements of funds transfer systems in different countries, increase the likelihood that some correspondent accounts can be exploited to facilitate the flow of illicit proceeds into or through the U.S. financial system.[4]

The U.S. financial institutions that maintain correspondent accounts for foreign financial institutions (FFI) are required to establish appropriate, specific, and risk-based due diligence policies, procedures, and processes that are designed to assess and manage the risks inherent with these relationships. To comply with their legal obligations, U.S. depository institutions must monitor transactions related to these accounts to detect and report suspicious activities. These policies, procedures, and processes will depend on the level of risk posed by the correspondent FFI. Such risks can vary depending on the FFI's strategic profile, including its size and geographic locations, the products and services it offers, and the markets and customer bases it serves. [5]

Office of Foreign Assets Control (OFAC) and U.S. Sanctions Programs

The Office of Foreign Assets Control (OFAC), another office of the U.S. Treasury, administers and enforces numerous economic and trade sanctions, based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the United States' national security, foreign policy, or economy. OFAC acts under Presidential wartime and national emergency powers, as well as various authorities granted by specific legislation, to impose controls on transactions and to freeze assets

[2] 31 U.S.C. s. 5318A(e)(1)(B) and (C). A "correspondent account" is defined as an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution."Payable-through account" means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

[3] 31 U.S.C. s. 5318A(b).

[4] U.S. Treasury, *2015 National Money Laundering Risk Assessment, available at* https://www.treasury.gov. (last viewed Mar. 23, 2017).

[5]See https://www.treasury.gov/press-center/press-releases/Documents/Foreign%20Correspondent%20Banking%20Fact%20Sheet.pdf (last viewed Mar. 15, 2017).

under U.S. jurisdiction. These sanctions can be either comprehensive or selective, as well as program-based (e.g., counter narcotics trafficking, counterterrorism, or cyber-related) or geographically targeted, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Currently, the OFAC administers over 20 country-specific sanctions programs, including Cuba.[6]

The OFAC regulations are broad in scope. Unlike the BSA, the laws and OFAC-issued regulations apply not only to U.S. banks, their domestic branches, agencies, and international banking facilities, but also to their foreign branches, and often overseas offices and subsidiaries. All U.S. persons (including U.S. citizens and permanent resident aliens regardless of where they are located) and entities within the U.S., all U.S. incorporated entities and their foreign branches must comply with OFAC regulations. U.S. persons, including U.S. financial institutions, are required to "block" (freeze) targeted property which means that title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without OFAC authorization. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property.[7] If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful.[8]

In addition, OFAC regulations prohibit financial institutions from doing business with specific individuals, groups, and entities that are owned or controlled by, or acting for or on behalf of, targeted countries, known as the Specially Designated Nationals (SDNs) and Blocked Persons List. The OFAC can designate individuals and entities as SDNs and Blocked Persons, regardless whether their country of residence is listed as a state sponsor of terrorism.

U.S. Cuba Embargo Legislation and Recent Events

Since the 1960s, the United States has maintained an embargo on Cuba through various laws, regulations, and presidential proclamations that restricts trade, travel, and financial transactions.

Trading with the Enemy Act of 1917 (TWEA)

The TWEA grants the President broad authority to impose embargoes on foreign countries during times of war and grants this authority during times of a presidentially declared national emergency. The International Emergency Economic Powers Act of 1977 amended section 5(b) of TWEA, again limiting the President's authority to times of war but allowing the President's continued exercise of his national emergency authority with respect to the ongoing Cuba embargo. This act required that the President determine on an annual basis that maintaining the Cuba embargo is in the national interest of the United States.

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[6] For a list of current OFAC sanctions programs, see U.S. Department of the Treasury, *Resource Center: Sanctions Programs and Country Information*, at: https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx (last visited Feb. 26, 2017).

[7] U.S. Department of the Treasury, *OFAC FAQs: General Questions*, at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Feb. 26, 2016).

[8] U.S. Department of the Treasury, *OFAC FAQs: Sanctions Compliance – Additional Questions from Financial Institutions #44 and 45,* https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_compliance.aspx#other_fi (last visited Feb. 29, 2016).

The Cuban Assets Control Regulations (CACR), which the Treasury issued in 1963 under the President's authority under TWEA and the Foreign Assistance Act, define "confiscated property"[9] and prohibits U.S. nationals,[10] permanent resident aliens, and U.S. agencies from knowingly making a loan, extending credit or providing other financing for the purpose of financing transactions involving "confiscated property" the claim to which is owned by a U.S. national, except for financing by a U.S. national owning such a claim for a transaction permitted under U.S. law.[11]

Cuban Liberty and Democratic Solidarity Act of 1996 (LIBERTAD)

The LIBERTAD defines and codifies the embargo as it was in effect on March 1, 1996. The LIBERTAD authorizes the President to suspend the embargo only if he or she determines that a transition Cuban government is in power. In addition, the act prohibits U.S. persons, permanent resident aliens, and U.S. agencies from knowingly financing any transactions involving property of U.S. nationals confiscated by the Cuban government. The act permits U.S. nationals to file suit in U.S. courts against persons trafficking in such confiscated property (this authority has been suspended by the President since enactment).[12] Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission within the U.S. Department of Justice. Since its inception, the commission has approved almost $2 billion awards for claims against the Cuban government. However, the U.S. has not settled these claims with Cuba.

Recent Events

On December 17, 2014, President Obama announced a major shift in U.S. policy on Cuba intended to increase engagement between the two countries. Specifically, the administration's new policy called for establishing diplomatic relations with Cuba, authorizing expanded commercial sales and exports from the United States of certain goods and services, and facilitating authorized financial transactions between the United States and Cuba. On May 29, 2016, the U.S. removed Cuba from the terrorism list.

Subsequently, the U.S. government has made a series of regulatory changes to the CACR since the administration announced its new Cuba policy. These regulatory changes have eased restrictions on travel, financial services, and trade with Cuba.. In the area of financial services, the federal Department of Treasury has modified the CACRs[13] to allow credit and debit cards issued by U.S. banks to be used in Cuba. Treasury has also modified the regulations to allow

[9]31 C.F.R. ss. 515.311(b) and 515.336.

[10]The term U.S. national generally includes: (1) A subject or citizen of the United States or any person who has been domiciled in or a permanent resident of the United States; (2) A United States partnership, association, corporation, or other organization; (3) Any organization's office or other sub-unit that is located within the United States; (4) Any person to the extent that such person was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of the United States; (5) Any other person who there is reasonable cause to believe is a "national," as so defined. *See* 31 C.F.R. s. 515.302.

[11]31 C.F.R. s. 515.208.

[12] Claims of U.S. nationals against the Cuban government may be certified under Title V of the International Claims Settlement Act of 1949 to the Foreign Claims Settlement Commission within the U.S. Department of Justice. Since its inception, the commission has approved almost $2 billion awards for claims against the Cuban government. However, the U.S. has not settled these claims with Cuba.

[13] 31 C.F.R. s. 515.584.

U.S. banking institutions to open and maintain bank accounts in the United States for Cuban nationals in Cuba to use for authorized transactions.

Further, U.S. banking institutions may process payments in which Cuba or a Cuban national has an interest. These changes authorize funds transfers from a bank outside the U.S. that pass through one or more U.S. financial institutions before being transferred to a bank outside the U.S., where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.[14] A U.S. banking institution may process U.S. dollar monetary instruments, including cash and travelers' checks, presented indirectly by Cuban financial institutions. Additionally, correspondent accounts at third-country financial institutions used for such transactions may now be denominated in U.S. dollars.[15] United States banking institutions may process transactions originating and terminating outside of the U.S. if neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.

In July 2015, subsequent to the CACR changes, a Florida-chartered financial institution, Stonegate Bank, announced it was establishing a correspondent banking relationship with Banco Internacional de Comercio, a bank owned by the Cuban government. To date, Stonegate Bank's correspondent relationship with Banco Internacional de Comercio is strictly limited to U.S. embassy business.[16]

Florida Office of Financial Regulation

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (codes), and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness, as well as federal Bank Secrecy Act (BSA). In addition, the OFR regulates international banking corporations (IBCs) that transact business in Florida. The OFR does not regulate federally chartered financial institutions and financial institutions that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, pursuant to ch. 663, F.S.

State Regulations for Correspondent Accounts and Payable-Through Accounts, and Transactions Relating to Iran or Terrorism

Each financial institution chartered in Florida that maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:[17]

a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

[14] 31 C.F.R. s. 515.584(d).
[15] 31 C.F.R. s. 515.584(g).
[16] Mimi Whitefield, *Broward's Stonegate Bank makes a banking breakthrough in Cuba*, MIAMI HERALD (Jul. 22, 2015), http://www.miamiherald.com/news/business/article28072318.html (last visited Mar. 23, 2017).
[17] Section 655.968, F.S.

b) Provides support for an organization designated by the United States as a foreign terrorist organization;
c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;
d) Engages in money laundering to carry out any activity in this list;
e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity in this list; or
f) Facilitates a significant transaction or provides significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

Additionally, each state chartered financial institution in Florida must annually certify that the financial institution has adopted and substantially complies with the due diligence policies, procedures, and controls required by s. 655.968, F.S., and the rules adopted thereunder,[18] and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described above.[19]

Florida Control of Money Laundering in Financial Institutions Act

The Florida Control of Money Laundering in Financial Institutions Act codifies federal BSA/AML recordkeeping and reporting requirements for Florida-chartered financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties that are enforced by the OFR.[20] In 2014, the Legislature amended the act to codify the requirements of the Federal USA PATRIOT Act and the Office of Foreign Asset Control, which allows the OFR to enforce these provisions.

Competitive Equality

The codes contain a unique provision that ensures competitive equality for Florida-chartered financial institutions with their nationally-chartered counterparts. If a state law places a Florida-chartered financial institution at a competitive disadvantage with their nationally chartered counterparts, the codes authorizes the OFR to grant Florida-chartered financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were nationally chartered, and provides they are entitled to the same privileges and protections granted to their national counterparts.[21] In addition, this provision states:

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.

[18] *See* Rule 69U-100.964, F.A.C.
[19] Section 655.968(4), F.S.
[20] Section 655.50, F.S.
[21] Section 655.061, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 655.969, F.S., to require Florida-chartered financial institutions that maintain correspondent or payable-through accounts with any foreign financial institution owned by a country under a U.S. Treasury sanctions program to identify and report the source of every transaction that passes through the foreign correspondent account to the OFR within 5 business days. The bill also requires the Florida-chartered financial institution to certify that the source does not involve any "confiscated property" as defined in the Libertad Act.

- For purposes of the Libertad Act, the term, "confiscated,"[22] means the nationalization, expropriation, or other seizure by the Cuban Government or ownership or control of property, on or after January 1, 1959, without the property having been returned or adequate and effective compensation provided; or without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
- The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959, a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government; a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or a debt which is incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

"Property" means: any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.[23]

Section 2 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[22] 22 U.S.C. s. 6023(4).
[23] 22 U.S.C. s. 6023(12). The definition of "property" excludes real property used for residential purposes unless, as of March 12, 1996, the claim to the property is held by a U.S. national and the claim has been certified under title V of the International Claims Settlement Act or the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

D. Other Constitutional Issues:

Two federal decisions have addressed state legislation regarding Florida-Cuba relations: In 2008, Florida enacted amendments to the Florida Sellers of Travel Act, which placed restrictions on travel businesses in Florida as well as businesses providing services to individuals traveling to or sending humanitarian aid to families in certain designated "terrorist states." In *ABC Charters, Inc. v. Bronson*, 519, F.Supp.2d 1272 (S.D. Fla. 2008), a federal district court found that the law was aimed principally, if not solely, to travel to Cuba. The court enjoined enforcement of the Travel Act Amendments, concluding they will likely be found unconstitutional under the Foreign Affairs Provisions, the Supremacy Clause, the Foreign Commerce Clause, and the Interstate Commerce Clause of the U.S. Constitution.

In 2012, Florida enacted a "Cuba amendment" to s. 287.4725, F.S., to prohibit companies engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of $1 million or more. In Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp., 715 F.3d 1268 (11th Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

The bill may implicate the same constitutional considerations as the statutes enjoined in the *ABC Charters* and *Odebrecht* decisions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate impact on affected financial institutions.

C. Government Sector Impact:

According to the OFR, the fiscal impact of the bill is indeterminate. Expenditures will be required to review and analyze documentation submitted, assess compliance with statute, and take action, if necessary, regarding non-compliance.[24]

VI. Technical Issues:

The OFR provided the following comments:[25]

[24] Office of Financial Regulation, *SB 1482 Analysis* (Mar. 16, 2017) (on file with Senate Banking and Insurance Committee).
[25] Id.

- The term "foreign financial institutions owned by a country under a sanctions program administered by the U.S. Department of Treasury" is ambiguous. First, "sanctions program" is not defined, and thus it is unclear how financial institutions will be able to identify the applicable accounts and comply with the requirements. Further, it is unclear whether "owned by" means chartered by that foreign country, or applies to only "state-owned" institutions.
- While the legislation appears to be specifically aimed at any correspondent account that touches or is associated with Cuba, as drafted, each state-chartered financial institution will have to identify and report the source of any transaction that runs through any correspondent account that it maintains with every institution in any country under a sanctions program, regardless of whether that country is Cuba. The requirement that the source of the transactions be certified is problematic insofar as state-chartered financial institutions are given no guidance to identify the "source of the transaction," a term which is not defined.
- The legislation fails to provide specific agency action related to the collection of the information. The legislation fails to provide any purpose for reporting, and does not provide any protocol or guidance to the OFR regarding further required efforts, if any, once the information is received. The legislation does not provide for a public record exemption related to the reporting, although the information required to be reported may be the books and records of a financial institution. Financial institutions are required to keep their books and records confidential pursuant to s. 655.059, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 655.969 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.

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

By Senator Garcia

36-01545-17 20171482__

A bill to be entitled

An act relating to transactions with foreign financial institutions; creating s. 655.969, F.S.; requiring financial institutions maintaining correspondent or payable-through accounts with certain foreign financial institutions to report and certify specified information to the Office of Financial Regulation; providing an effective date.

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

Section 1. Section 655.969, Florida Statutes, is created to read:

655.969 Correspondent accounts or payable-through accounts with a foreign financial institution; reporting.—A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution that is owned by a country under a sanctions program administered by the United States Department of the Treasury must, within 5 business days, identify and report to the office the source of every transaction that passes through the account and certify that the source does not involve any confiscated property, as defined in the Cuban Liberty and Democratic Solidarity Act of 1996, 22 U.S.C. 6023(4) and (12).

Section 2. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1482

2/27/17
Meeting Date

[redacted]
Bill Number (if applicable)

Topic Int'l Transactions Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Govt. Relations

Address 1001 Thomasville Rd
Street

Tallahassee FL 32303
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Phone 224-2265

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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

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 1600
INTRODUCER:	Banking and Insurance Committee and Senators Young and Broxson
SUBJECT:	Viatical Settlement Contracts
DATE:	March 27, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1600 makes stranger-originated life insurance (STOLI) contracts void and unenforceable and allows a life insurer to contest a policy obtained through a STOLI practice, notwithstanding that life insurance contracts are incontestable 2 years after issuance. A stranger-originated life insurance practice is an act, practice, arrangement or agreement to initiate a life insurance policy for the benefit of a third party investor who has no insurable interest in the insured at policy origination.

The bill makes void and unenforceable viatical settlement contracts entered into within 5 years from the issuance of the underlying insurance policy. Under current law, the prohibition lasts only 2 years and is referred to as the contestability period of the viatical settlement contract. Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. The bill modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period. Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applied. The bill also revises and clarifies some of the conditions that allow viatication during the contestability period.

The bill adds as prohibited practices under the Viatical Settlement Act:

- Engaging in a fraudulent viatical settlement act;
- Engaging in a STOLI practice;

- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or within 5 years after the date of the viaticated policy unless the viator complied with s. 626.99287, F.S.; and
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party.

Violations are third-degree felonies if the insurance policy has a value less than $20,000; second-degree felonies if the insurance policy has a value of $20,000 or more but less than $100,000; and first-degree felonies if the insurance policy has a value of $100,000 or more.

II. Present Situation:

Life Insurance – Insurable Interests

A fundamental concept in life insurance is that the purchaser and beneficiary of an insurance policy must have an insurable interest—a reasonable expectation of a monetary benefit from the continued well-being of the life being insured. In the context of life insurance, the insurable interest prevents purchasing insurance as a form of gambling on the death of the insured, which creates a moral hazard for the purchaser who may be tempted to create a situation where he or she will be able to collect on the policy.

The insurance interest requirement for life insurance can be found in the Florida Statutes at s. 627.404, F.S. Florida law prohibits the procurement of "an insurance contract on the life or body of another individual unless the insurance contract benefits are payable to the insured, his or her personal representatives, a person having an insurable interest in the insured when the contract was made."[1] Persons with insurable interest include the insured, family members and loved ones of the insured, others if the insured's life and health is of greatest benefit to them, trusts and trustees in specified circumstances, charitable organizations, and business organizations in specified circumstances.

Viatical Settlement Contracts - Background

A viatical settlement contract is a written agreement entered into between the owner[2] of a life insurance policy, referred to as the viator, and a viatical settlement provider wherein the viator agrees to transfer ownership or change the beneficiary designation of a life insurance policy at a later date in exchange for compensation paid to the viator.[3] The compensation paid to the viator is generally less than the expected death benefit under the policy. Rather than retaining the policy, the provider usually sells all or part of the policy to one or more investors. In return for providing funds, these investors receive the death benefit, or a proportionate share thereof, upon the passing of the insured.

Viatical settlements emerged during the HIV/AIDS epidemic in the 1980s, enabling terminally ill patients with short life expectancies who could no longer work and afford the policy

[1] The insurable interest need not exist after the inception date of coverage under the contract.
[2] Or certificateholder if a group policy.
[3] s. 626.9911, F.S.

premiums to sell their life insurance policies at a cash discount to pay for high medical care expenses. In the early days of the epidemic, AIDS patients generally died within months of their diagnoses, resulting in fairly quick, significant returns to investors,[4] who in those days were typically senior individuals who risked their savings in what was represented as a safe investment and marketed as a compassionate way to help dying patients. However, innovations in AIDS treatment in the early 1990s significantly improved life expectancies of AIDS patients, sometimes even outliving their investors, which disrupted mortality assumptions and diminished investor returns.

Two consequences resulted from the insureds of viaticated policies exceeding their life expectance. The first is that some viatical settlement providers stopped brokering new viatical settlements. The second, unfortunately, is that some viatical settlement providers engaged in fraudulent practices.[5]

An example cited by the Office of Insurance Regulation of such fraudulent activity was Mutual Benefits Corporation.[6] In 2004, the OIR suspended MBC's license and the United States Securities and Exchange Commission (SEC) filed an action in federal court seeking an injunction and the appointment of a receiver. The court-appointed receiver reported that MBC had fraudulently procured insurance policies with a total face value of approximately $1.4 billion. The SEC agreed to a $25 million settlement and referred the case to prosecutors. Federal prosecutors charged former company employees, most of whom have pled guilty and were sentenced to lengthy prison terms. A factual statement filed by an MBC employee described the scheme. Mutual Benefits Corporation would falsely promise investors a fixed rate of return but was unable to keep those promises because insureds lived longer than expected and their premiums had to be paid to keep the underlying policies in force. New investor sales were used to continue to pay premiums on the previously viaticated life insurance policies. The MBC experience and other fraudulent schemes led to the Legislature comprehensively reforming the regulation of the viatical settlement industry in 2005.

Today, the viatical settlement market is not limited to the purchase of the life insurance products of the terminally ill. Viatical settlement contracts are also entered into with non-terminally ill insureds that no longer want, need, or can afford their policies. These agreements, often referred to as life settlements, serve as an alternative to exercising a redemption or accelerated death benefit clause in life insurance policies.

Regulation of the Viatical Settlement Industry

Viatical settlement providers and viatical settlement brokers are required to obtain licensure from the Office of Insurance Regulation. The Viatical Settlement Act (Act)[7] sets forth requirements for licensure, annual reporting, disclosures to viators, transactional procedures, adoption of anti-fraud plans, and administrative, civil, and criminal penalties. The Act also provides the OIR with examination and enforcement authority over viatical service providers and brokers; review and

[4] Kelly J. Bozanic, *An Investment to Die For: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 113 PENN. ST. L. REV. 229, 233-234 (2008).
[5] Office of Insurance Regulation, *Secondary Life Insurance Market Report to the Florida Legislature* (Dec. 2013), p. 9.
[6] *See* Office of Insurance Regulation, *supra* note 5, at pg. 10.
[7] Ch. 96-336, Laws of Fla.

approval authority over the viatical settlement contracts and forms; rulemaking authority; and provided that a violation of the Act is an unfair trade practice under the Insurance Code. The Act does not authorize the OIR to regulate the rate or amount paid as consideration for a viatical settlement contract.[8]

In 2005, legislation was enacted that requires the investment transaction to be regulated as a security under ch. 517, F.S. These investments must be registered with either the Office of Financial Regulation (OFR) or the federal Securities and Exchange Commission. In addition, persons offering such investments must obtain licensure from the OFR and provide full and fair disclosures concerning viatical settlement investments to prospective investors. The 2005 legislation also provides that a person or firm who offers or attempts to negotiate a viatical settlement between an insured (viator) and a viatical service provider for compensation is a *viatical settlement broker* who must be licensed with the Department of Financial Services (DFS) as a life insurance agent with a proper appointment from a viatical service provider. Viatical settlement brokers owe a fiduciary duty to the viator.[9]

In 2013, the Legislature directed the OIR to review Florida law and regulations to determine whether there were adequate protections for purchasers of life insurance policies in the secondary life insurance market.[10] Following a public hearing conducted by the OIR, in which both life insurers and institutional investors participated, the OIR published a report, concluding that adequate protections for institutional purchasers in the secondary life insurance market existed and that their recommendations did not warrant legislative action at the time.[11]

Stranger-Originated Life Insurance

Stranger-originated life insurance (STOLI) is somewhat similar to a viatical transaction, but with the key difference that the individual who obtains a life insurance policy does so for the express purpose of assigning the policy in exchange for compensation. In a typical STOLI transaction, an individual (usually a senior) is encouraged to take out insurance on his or her own life, sometimes in the millions of dollars, and then assigns the policy to an investor or group of investors (the "stranger") who pay the individual a large cash settlement in exchange for the ownership rights to the policy, including the right to receive the proceeds upon the insured's death.

Stranger-originated life insurance may appear similar to a viatical or life settlement. The critical difference is that in viatical or life settlements, an insured initially buys life insurance in a good-faith intent to protect valid insurable interests (i.e., to protect family members or a business from the risk of a premature death), but subsequently decides to sell the policy to a third party due to a change in circumstances that may not warrant the policy (such as divorce, death of an intended beneficiary, or the need for immediate cash due to illness or other loss). In a STOLI, the policy is intentionally purchased for the benefit of persons (usually investors) who lack an insurable interest at the time the life insurance contract is entered into. These investors ultimately receive

[8] s. 626.9926, F.S.
[9] ss. 626.9911(9) and 626.9916, F.S.
[10] Ch. 2013-40, s. 6, Laws of Fla. (2013 General Appropriations Act, p. 316).
[11] *See* Office of Insurance Regulation, *supra* fn. 5, pp. 50-51.

the proceeds, directly or indirectly.[12] The Uniform Law Commission has noted that the beneficiaries of STOLI transactions argue that it is an appropriate use of life insurance consistent with applicable legal principles, including the free transferability of assets. Life insurers oppose the use of STOLI, arguing that it is a perversion of the concept of life insurance and leads to the moral hazard concerns that insurable interest doctrines are intended to mitigate.[13]

Transactions involving STOLI often use fraudulent means to procure life insurance on individuals, such as misrepresentation, falsification, or omission of material facts in the life insurance application. The fraud is conducted so that an assignment or sale of a policy functions as a subterfuge that circumvents the insurable interest requirement. STOLI transactions generally target senior citizens and are often financed through non-recourse "premium finance loans." It is common for STOLI to be structured through the use of an irrevocable trust, which conceals from the life insurance company that the policy was sold. The insured pays premiums during the contestable period to prevent the insurer from discovering a possible violation of the insurable interest requirement.

According to the OIR, STOLI impacts consumers (both individual investors and insureds) and insurers in a number of ways:[14]

- Seniors may exhaust their life insurance purchasing capability and not be able to protect their own family or business.
- The incentives, especially cash payments, used to lure seniors to participate in STOLI schemes are taxable as ordinary income.
- Seniors may subject themselves or their estates to potential liability in the event the life insurance policy is rescinded by an insurer who discovers fraud.
- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.[15]
- The "free" insurance is not free and may be subject to tax based on the economic value of the coverage.
- Seniors have to give the purchaser, and subsequent purchasers, access to their medical records when they sell their life insurance policy in the secondary market so that investors know the health status of the insured. The investors want to know the "status" of their investment and how close they are to getting paid.
- STOLI may lead to an increase in life insurance rates for the over-65 population.
- If STOLI practices continue to proliferate, the U.S. Congress may remove the tax-free status of life insurance proceeds.

Over 30 states currently prohibit STOLI, generally through some combination of the NAIC and NCOIL model acts, in addition to common law or statutory insurable interest laws. STOLI has

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[12] AALU, NAIFA, and ACLI, *STOLI: The Problem and the Appropriate State Response*, p. 4, (on file with the Senate Committee on Banking and Insurance).

[13] UNIFORM LAW COMMISSION, *Insurable Interest Amendment to the Uniform Trust Code Summary*, at http://uniformlaws.org/ActSummary.aspx?title=Insurable%20Interest%20Amendment%20to%20the%20Uniform%20Trust%20Code (last visited March 22, 2017).

[14] Office of Insurance Regulation, 2017 Agency Legislative Bill Analysis of HB 1205, pg. 5 (March 12, 2017). Additionally, s. 626.9923, F.S., requires viatical service providers to disclose certain risks to viators, such as tax and Medicaid eligibility consequences.

[15] *See* IRS Rev. Ruls. 2009-13 and 2009-14, regarding taxation of proceeds from settlements as capital gains ordinary income and taxation on a post-settlement basis.

resulted in significant litigation, criminal and regulatory enforcement actions, both nationally and in Florida.[16]

The OIR may use several legal or regulatory remedies to address STOLI transactions. The Viatical Settlement Act authorizes the OIR to impose fines of up to $2,500 for nonwillful violations and up to $10,000 for willful violations, or to suspend, revoke, deny, or refuse to renew the license of any viatical settlement provider found to be engaging in certain acts, such as fraudulent or dishonest practices, dealing in bad faith with viators, or violating any provision of the Act or the Insurance Code. The OIR may also impose cease and desist orders and immediate final orders for violations of the Act.[17]

Currently, s. 627.409, F.S., provides that misrepresentation, omission, concealment of fact, or incorrect statements on an application for an insurance contract "may prevent recovery" in certain cases, however, there are no criminal penalties and an action for rescission by the life insurer is the only civil penalty available. Various provisions of the Insurance Code authorize the DFS to suspend or revoke the license or appointment of licensees, agencies, or appointees on various grounds, such as using fraudulent or dishonest practices in the conduct of business under the license.[18] Finally, the Unfair Insurance Trade Practices Act in s. 626.9541, F.S., lists several unfair methods of competition and unfair or deceptive acts or practices. Each violation of this statute can result in fines ranging from $5,000 to $75,000, depending on the willfulness and particular violation. In addition, "twisting" and "churning" are first-degree misdemeanors, while willfully submitting false signatures on an application is a third-degree felony.[19]

Current law does not specifically define STOLI, nor does it have a specific regulatory prohibition on STOLI or life insurance policies lacking an insurable interest at inception. Life insurers engage in insurable interest litigation to combat STOLI, usually relying on the insurable interest statute in s. 627.404, F.S., to rescind the policies transferred in a STOLI transaction for a lack of insurable interest when the policy was initially entered into. This argument is sometimes opposed with arguments seeking the application of the incontestability statute, s. 627.455, F.S., which requires life insurance policies to include a provision barring the insurer from challenging the policy after it is in force for 2 years.

In Wells Fargo Bank, N.A. v. Pruco Life Insurance Company, the Florida Supreme Court addressed whether a party can challenge the validity of a life insurance policy after the 2-year contestability period established by s. 627.455, F.S., because of its creation through a STOLI scheme.[20] The court ruled that if a STOLI policy has the insurable interest required by s. 627.404(1), F.S., at its inception, the policy becomes incontestable 2 years after it is issued under s. 627.455, F.S.[21] Thus, even if the insurable interest is created as the result of a STOLI scheme, the policy is incontestable after 2 years.

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[16] For a listing of OIR enforcement actions, see OIR, *Viatical Criminal, Civil and Regulatory Actions*, http://www.floir.com/sections/landh/viaticals/ccr_actions.aspx (last visited March 3, 2017) and 2013 OIR Report, *Appendix C: Florida Regulatory and Enforcement Actions Pertaining to Viatical Settlement Providers*.
[17] ss. 626.9914 and 626.99272 , F.S.
[18] ss. 626.611, 626.6115, 626.6215, and 626.621, F.S.
[19] s. 626.9541, F.S.
[20] *Wells Fargo Bank, N.A. v. Pruco Life Insurance Company*, No. SC15-382 (Fla. September 22, 2016).
[21] *See id* at pgs. 9-10.

Effect of Proposed Changes:

Defining a "Fraudulent Viatical Settlement Act" and a "Stranger-originated Life Insurance Practice"

Section 1 creates a new subsection (2) of s. 626.9911, F.S., defining as "fraudulent viatical settlement acts" as an act or omission committed by a person who knowingly, or with intent for the purpose of depriving another of property or for pecuniary gain, commits or allows an employee or agent to commit any of the following:

- Presenting, causing to be presented, or preparing false or concealed material information concerning specified material facts;[22]
- Employing a plan, financial structure, device, scheme or artifice related to viaticated policies for the purpose of perpetrating fraud;
- Engaging in a stranger-originated life insurance practice;
- Failing to disclose, upon request by an insurer, that the prospective insured has undergone a life expectancy evaluation by a person other than the insurer or its authorized representatives in connection with the issuance of the life insurance policy;
- Perpetuating a fraud or preventing its detection;[23]
- Embezzling, stealing, or misappropriating funds or other property of an insurance policyholder, insured, insurer, viator, viatical settlement provider, or any person engaged in the business of viatical settlement contracts or life insurance;
- Entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained on false or concealed information to defraud the policy's issuer, a viatical settlement provider, or a viator;
- Avoiding the requirements of the Act by facilitating the change of a viator's state of residency from Florida to another state, by transferring the ownership of an insurance policy to a trust with a situs outside Florida or another nonresident entity;
- Applying for or obtaining a loan that is secured directly or indirectly by an interest in a life insurance policy; and
- Attempting to commit, assisting, aiding, abetting, or conspiring to commit an act or omission that meets the definition of a "fraudulent viatical settlement act."

Subsection (9) is created for the purpose of defining a "stranger-originated life insurance practice." It is an act, practice, arrangement or agreement to initiate a life insurance policy for the

[22] Such information or documents include applications, underwriting, and claims for payment under a viatical settlement contract or life insurance policy; premiums paid on a life insurance policy; changes in ownership for the beneficiaries of a viatical settlement contract or life insurance policy; the reinstatement or conversion of a life insurance policy; the solicitation, offer, effectuation, or sale of a viatical settlement contract or life insurance policy; the issuance of written evidence of a viatical settlement contract or a life insurance policy; or a financing transaction for a viatical settlement contract or life insurance policy.

[23] Such acts include removing, concealing, altering, destroying, or sequestering from the OIR the assets or records of a licensee or other person engaged in viatical settlements; misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person; transacting business relating to viatical settlement contracts in violation of the Viatical Settlement Act; and filing with the OIR or the insurance regulator in another jurisdiction false information or concealing information about a material fact.

benefit of a third party investor who has no insurable interest in the insured at policy origination.[24]

Contestability Periods for Viaticated Policies and Stranger-Originated Life Insurance

Section 7 creates s. 626.99290, F.S., which allows a life insurer to contest a life insurance policy that was obtained by a STOLI practice, notwithstanding s. 627.455, F.S., which requires life insurance and annuity contracts to be incontestable once in force for 2 years.

Section 5 amends s. 626.99284, F.S., and makes void and unenforceable viatical settlement contracts entered into within 5 years from the issuance of the underlying insurance policy. Under current law, the prohibition lasts only 2 years. This is the contestability period of the viatical settlement contract.

Current law provides conditions that, if met, allow the execution of a viatical settlement contract during the contestability period. The bill modifies the process for doing so. The viator must provide a sworn affidavit and accompanying independent evidentiary documentation to a viatical settlement provider certifying that the viator has met a statutory exception that allows viatication of a policy during the contestability period. Current law does not require the viator to execute a sworn affidavit with documentation evidencing that the exception applied.

The bill revises two of the conditions allowing viatication during the contestability period. Currently, the limitation on viaticating a policy does not apply the life insurance policy was issued upon the owner's exercise of conversion rights arising out of a group or term policy. The bill limits this condition by requiring that the policy has been in effect for at least 60 months.[25] The bill clarifies the exception for insureds or viators with illnesses by requiring them to provide evidence of a "terminal" or "chronic" illness, terms that are more precise in meaning than the current law. Current law refers to an illness that is catastrophic, life threatening, or requires at least 3 years of long-term care or home health care.

The bill allows the viator to enter into a viatical settlement contract during the 5-year period viatication is generally prohibited if more than two years have passed after the viaticated policy's issuance date and if during that 2-year time period the viator met three conditions. The viator must continuously fund the policy premiums exclusively with the viator's unencumbered assets,[26] there is no agreement or understanding with another person to guarantee any liabilities related to the policy or to purchase the policy, and neither the insured nor policy were evaluated for settlement.

[24] The bill states that stranger-originated life insurance practices include the purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of the policy's inception, is not lawfully able to execute an arrangement or agreement to transfer the ownership or benefits of the policy to a third party. It also includes creating a trust or other entity that has the appearance of an insurable interest in order to initiate policies for investors, in violation of insurable interest laws and the prohibition against wagering on life.

[25] The 60-month period is calculated without regard to any change in insurance carriers if coverage has been continuous and under the same group sponsorship.

[26] May include the net surrender value of the life insurance policy being financed.

Section 2 amends s. 626.9924, F.S., to require the viatical settlement provider to give the documents required under s. 626.99287, F.S., to the life insurer that issued a life insurance policy within 20 days of an agreement to viaticate the policy during the 5-year contestability period. The documents must accompany the notice required under current law. The required documents support the affidavit executed by the viator that an exception applies allowing the creation of a viatical settlement contract within 5 years after the issuance of the viaticated insurance policy.

Prohibiting Fraudulent Viatical Settlement Acts and Stranger Originated Life Insurance

Section 4 amends s. 626.99275(1), F.S., to prohibit the following:

- Engaging in a fraudulent viatical settlement act;
- Engaging in a STOLI practice;
- Knowingly entering into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of the viatical settlement contract or within 5 years after the date of the viaticated policy unless the viator complied with s. 626.99287, F.S.; and
- Knowingly issuing, soliciting, marketing, or promoting the purchase of a life insurance policy for the purpose of, or with an emphasis on selling the property to a third party.

Violations are third-degree felonies if the insurance policy has a value less than $20,000; second-degree felonies if the insurance policy has a value of $20,000 or more but less than $100,000; and first-degree felonies if the insurance policy has a value of $100,000 or more.[27]

Section 6 creates s. 626.99289, F.S., which makes void and unenforceable any contract or agreement entered into for the furtherance or aid of a STOLI practice.

Effective Date

Section 8 provides that the act is effective upon becoming a law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[27] Section 626.99275(2), F.S.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders, particularly senior adults, will benefit from the prevention fraudulent viatical settlement acts and STOLI practices that deprive them of property or are created for the pecuniary gain of the party that becomes the new beneficiary or owner of the underlying life insurance policy.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.9911, 626.9924, 626.99245, 626.99275, and 626.99287.

This bill creates sections 626.99289 and 626.99290 of the Florida Statutes.

VIII. Additional Information:

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

CS by Banking and Insurance on March 27, 2017:
Defines a stranger-originated life insurance practice in s. 626.9911, F.S. Specifies that a life insurer may contest a life insurance policy obtained by a STOLI practice, notwithstanding that life insurance contracts are incontestable 2 years after issuance.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2017	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (2) through (7) of section 626.9911, Florida Statutes, are renumbered as subsections (3) through (8), respectively, present subsections (8) through (14) of that section are renumbered as subsections (10) through (16), respectively, and new subsections (2) and (9) are added to that section, to read:

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626.9911 Definitions.—As used in this act, the term:

(2) "Fraudulent viatical settlement act" means an act or omission committed by a person who knowingly, or with intent to defraud for the purpose of depriving another of property or for pecuniary gain, commits or allows an employee or agent to commit any of the following acts:

(a) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by another person, false or concealed material information as part of, in support of, or concerning a fact material to:

1. An application for the issuance of a viatical settlement contract or a life insurance policy;

2. The underwriting of a viatical settlement contract or a life insurance policy;

3. A claim for payment or benefit pursuant to a viatical settlement contract or a life insurance policy;

4. Premiums paid on a life insurance policy;

5. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or a life insurance policy;

6. The reinstatement or conversion of a life insurance policy;

7. The solicitation, offer, effectuation, or sale of a viatical settlement contract or a life insurance policy;

8. The issuance of written evidence of a viatical settlement contract or a life insurance policy; or

9. A financing transaction for a viatical settlement contract or life insurance policy.

(b) Employing a plan, financial structure, device, scheme,

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or artifice relating to viaticated policies for the purpose of perpetrating fraud.

(c) Engaging in a stranger-originated life insurance practice.

(d) Failing to disclose, upon request by an insurer, that the prospective insured has undergone a life expectancy evaluation by a person other than the insurer or its authorized representatives in connection with the issuance of the life insurance policy.

(e) Perpetuating a fraud or preventing the detection of a fraud by:

1. Removing, concealing, altering, destroying, or sequestering from the office the assets or records of a licensee or other person engaged in the business of viatical settlements;

2. Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

3. Transacting in the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority to transact such business; or

4. Filing with the office or the equivalent chief insurance regulatory official of another jurisdiction a document that contains false information or conceals information about a material fact from the office or other regulatory official.

(f) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or other person engaged in the business of viatical settlements or life insurance.

(g) Entering into, negotiating, brokering, or otherwise

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dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained based on information that was falsified or concealed for the purpose of defrauding the policy's issuer, viatical settlement provider, or viator.

(h) Facilitating the viator's change of residency state to avoid the provisions of this act.

(i) Facilitating or causing the creation of a trust with a non-Florida or other nonresident entity for the purpose of owning a life insurance policy covering a Florida resident to avoid the provisions of this act.

(j) Facilitating or causing the transfer of the ownership of an insurance policy covering a Florida resident to a trust with a situs outside this state or to another nonresident entity to avoid the provisions of this act.

(k) Applying for or obtaining a loan that is secured directly or indirectly by an interest in a life insurance policy.

(l) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit, an act or omission specified in this subsection.

(9) "Stranger-originated life insurance practice" means an act, practice, arrangement, or agreement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include, but are not limited to:

(a) The purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of such

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policy's inception, could not lawfully initiate the policy and the execution of a verbal or written arrangement or agreement to directly or indirectly transfer the ownership of such policy or policy benefits to a third party.

(b) The creation of a trust or other entity that has the appearance of an insurable interest in order to initiate policies for investors, in violation of insurable interest laws and the prohibition against wagering on life.

Section 2. Subsection (7) of section 626.9924, Florida Statutes, is amended to read:

626.9924 Viatical settlement contracts; procedures; rescission.—

(7) At any time during the contestable period, within 20 days after a viator executes documents necessary to transfer rights under an insurance policy or within 20 days of any agreement, option, promise, or any other form of understanding, express or implied, to viaticate the policy, the provider must give notice to the insurer of the policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by s. 626.99287 ~~626.99287(5)(a) in their entirety~~.

Section 3. Subsection (2) of section 626.99245, Florida Statutes, is amended to read:

626.99245 Conflict of regulation of viaticals.—

(2) This section does not affect the requirement of ss. 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office. As used in this subsection, the term "doing business from this state" includes

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effectuating viatical settlement contracts from offices in this state, regardless of the state of residence of the viator.

Section 4. Subsection (1) of section 626.99275, Florida Statutes, is amended to read:

626.99275 Prohibited practices; penalties.—

(1) It is unlawful for a ~~any~~ person to:

(a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a viatical settlement contract the subject of which is a life insurance policy, knowing that the policy was obtained by presenting materially false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer.

(b) ~~To~~ Knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain, issue or use a pattern of false, misleading, or deceptive life expectancies.

(c) ~~To~~ Knowingly engage in any transaction, practice, or course of business intending thereby to avoid the notice requirements of s. 626.9924(7).

(d) ~~To~~ Knowingly or intentionally facilitate the change of state of residency of a viator to avoid the provisions of this chapter.

(e) Knowingly enter into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of a viatical settlement contract or during the 5-year period commencing on the date of issuance of the policy or certificate, unless the viator provides a sworn

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affidavit and accompanying documentation in accordance with s. 626.99287.

(f) Engage in a fraudulent viatical settlement act, as defined in s. 626.9911.

(g) Knowingly issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of or with an emphasis on selling the policy to a third party.

(h) Engage in a stranger-originated life insurance practice, as defined in s. 626.9911.

Section 5. Section 626.99287, Florida Statutes, is amended to read:

626.99287 Contestability of viaticated policies.—Except as hereinafter provided, if a viatical settlement contract is entered into during ~~within~~ the 5-year ~~2-year~~ period commencing on ~~with~~ the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party. Notwithstanding this limitation, such a viatical settlement contract is not void and unenforceable if the viator provides a sworn affidavit and accompanying independent evidentiary documentation certifying to the viatical settlement provider that one or more of the following conditions were met during the 5-year period:

(1) The policy was issued upon the owner's exercise of conversion rights arising out of a group or term policy, if the total time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.~~;~~

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(2) The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. s. 501(c)(3).~~;~~

(3) The owner of the policy is not a natural person.~~;~~

~~(4) The viatical settlement contract was entered into before July 1, 2000;~~

(4)~~(5) The viator certifies by producing independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:~~

~~(a)~~1.~~~~ The viator or insured is terminally or chronically ill ~~diagnosed with an illness or condition that is either:~~

~~a. Catastrophic or life threatening; or~~

~~b. Requires a course of treatment for a period of at least 3 years of long-term care or home health care;~~ and

~~2.~~ the condition was not known to the insured at the time the life insurance contract was entered into.

(5)~~(b)~~ The viator's spouse dies.~~;~~

(6)~~(c)~~ The viator divorces his or her spouse.~~;~~

(7)~~(d)~~ The viator retires from full-time employment.~~;~~

(8)~~(e)~~ The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.~~;~~

(9)~~(f)~~ The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated.~~;~~

(10)~~(g)~~ A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all

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or a substantial part of the viator's assets.~~; or~~

(11)~~(h)~~ The viator experiences a significant decrease in income which is unexpected by the viator and which impairs his or her reasonable ability to pay the policy premium.

(12) The viator entered into a viatical settlement contract more than 2 years after the policy's issuance date and, with respect to the policy, at all times before the date that is 2 years after policy issuance, each of the following conditions are met:

(a) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured;

(b) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and

(c) Neither the insured nor the policy has been evaluated for settlement.

~~If the viatical settlement provider submits to the insurer a copy of the viator's or owner's certification described above, then the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the viatical settlement agreement shall not be void or unenforceable by operation of this section. The insurer shall timely respond to such request. Nothing in this section shall prohibit an insurer from exercising its right during the~~

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~~contestability period to contest the validity of any policy on grounds of fraud.~~

Section 6. Section 626.99289, Florida Statutes, is created to read:

626.99289 Void and unenforceable contracts, agreements, arrangements, and transactions.—Notwithstanding s. 627.455, a contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement or any other arrangement or understanding entered into, whether written or verbal, for the furtherance or aid of a stranger-originated life insurance practice is void and unenforceable.

Section 7. Section 626.99290, Florida Statutes, is created to read:

626.99290 Contestability of life insurance policies.—Notwithstanding s. 627.455, a life insurer may contest a life insurance policy if the policy was obtained by a stranger-originated life insurance practice, as defined in s. 626.9911.

Section 8. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to viatical settlement contracts; amending s. 626.9911, F.S.; defining the terms "fraudulent viatical settlement act" and "stranger-originated life insurance practice" for purposes of provisions relating to the Viatical Settlement Act;


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amending ss. 626.9924 and 626.99245, F.S.; conforming cross-references; amending s. 626.99275, F.S.; providing additional prohibited acts related to viatical settlement contracts; amending s. 626.99287, F.S.; extending the period in which viatical settlement contracts are void and unenforceable; revising conditions and requirements in which viatical settlement contracts entered into within a specified time period are valid and enforceable; deleting provisions related to the transfer of insurance policies or certificates to viatical settlement providers; creating s. 626.99289, F.S.; providing that certain contracts, agreements, arrangements, or transactions relating to stranger-originated life insurance practices are void and unenforceable; creating s. 626.99290, F.S.; authorizing a life insurer to contest policies obtained through such practices; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2017	.	
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The Committee on Banking and Insurance (Farmer) recommended the following:

Senate Amendment to Amendment (767012) (with title amendment)

Delete line 260
and insert:
Section 8. Effective July 1, 2017, section 626.99289, Florida Statutes, is created to read:
626.99289 Mandatory disclosure of alternatives to lapse or surrender.—
(1) As used in this section, the term:

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(a) "Agent" means a person who is the agent of record of a policy or who has a business relationship with the policyholder or insured.

(b) "Insured" means an individual who is covered by a policy.

(c) "Insurer" means the insurance company that issued or currently insures the policy.

(d) "Person" has the same meaning as provided in s. 1.01.

(e) "Policy" means an individual life insurance policy owned by an individual who is a resident of this state, regardless of whether such policy has been issued, delivered, or renewed in this state.

(2) The commissioner shall develop, and the commission shall adopt by rule, a written notice to inform a policyholder of alternatives to the lapse or surrender of a policy, and of the policyholder's rights, as an owner of the policy, which are related to the disposition of a policy. The notice must be developed at no cost to insurers, agents, or other licensees and must be written in lay terms.

(3) The written notice must contain all of the following:

(a) A statement explaining that life insurance is a critical part of a broader financial plan.

(b) A statement explaining that life insurance offers a future death benefit.

(c) A statement explaining that life insurance may offer current living benefits.

(d) A statement explaining that there are alternatives to the lapse or surrender of a policy.

(e) A general description of the following alternatives to

the lapse or surrender of a policy:

1. Accelerated death benefits available under the policy or as a rider to the policy.

2. The assignment of the policy as a gift.

3. The sale and assignment of the policy pursuant to a viatical settlement contract, including:

a. A statement that a viatical settlement is a regulated transaction in this state pursuant to part X of chapter 626;

b. A statement that a viatical settlement provider must be licensed in this state to transact a viatical settlement with a resident of this state; and

c. A statement that a life agent, as defined in s. 626.015, may represent the policyholder as a viatical settlement broker pursuant to s. 626.9916(2) if the policyholder decides to explore the feasibility of selling or assigning the policy pursuant to a viatical settlement contract.

4. The replacement of the policy pursuant to part III of chapter 627.

5. The maintenance of the policy pursuant to the terms of the policy or a rider to the policy, or through a viatical settlement contract.

6. The maintenance of the policy through loans issued by an insurer or a third party, using the policy or the cash surrender value of the policy as collateral for the loan.

7. Conversion of the policy from a term policy to a permanent policy.

8. Conversion of the policy in order to obtain long-term care health insurance coverage or a long-term care benefit plan.

(f) A statement explaining that life insurance, viatical

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settlements, or other alternatives to the lapse or surrender of the policy described in the notice may not be available to a particular policyholder depending on a number of circumstances, including the age and health status of the insured or the terms of a life insurance policy, and that the policyholder should contact his or her financial advisor, insurance agent, broker, or attorney to obtain further advice and assistance.

(4) An insurer, an agent, or an insurer and its agent must provide the written notice required under subsections (2) and (3) to a policyholder if an insured under the policy is 60 years of age or older or is known by the insurer or agent to be terminally ill or chronically ill, and:

(a) If the policyholder requests the surrender, in whole or in part, of the policy;

(b) If the policyholder requests a loan against, or withdrawal of cash value from, the policy;

(c) If the policyholder requests an accelerated death benefit, nursing home benefit, critical illness benefit, or any other living benefit under the policy;

(d) If the policyholder requests a reduction in the face amount of the policy;

(e) If the policyholder requests, or the policy automatically enters, an extended term;

(f) If the policyholder requests a waiver of premium;

(g) If a term policy is within 6 months before the end of the term of the policy and the policyholder has the right to convert the term policy to permanent insurance;

(h) If the insurer sends a notice to the policyholder that the policy may lapse; however, the insurer is not required to

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send such notice more than once within the 12-month period after the date of its first notice of lapse of the policy; or

(i) At any other time that the commission may prescribe by rule.

(5) A person may not prohibit, terminate, fine, or otherwise deter an agent from or penalize an agent for:

(a) At any time, informing a policyholder or his or her designee of the options under the policy terms or the alternatives described in this section to the lapse or surrender of a policy, or of a policyholder's rights related to the disposition of a policy; or

(b) Assisting a policyholder with securing any benefit or alternative described in this section or under the policy terms.

(6) A violation of this section is deemed an unfair trade practice under s. 626.9927.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete line 289

and insert:

practices; creating s. 626.99289, F.S.; defining terms; requiring the commissioner of the Office of Insurance Regulation to develop, and the Financial Services Commission to adopt by rule, a written notice informing a policyholder of a life insurance policy of alternatives to the lapse and surrender of the policy and the policyholder's rights related to the policy's


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disposition; requiring such notice to be developed at no cost to certain entities and to be written in lay terms; specifying requirements for the notice; requiring an insurer or an agent to provide the notice to a policyholder under certain circumstances; prohibiting a person from taking certain actions against an agent who informs or assists a policyholder in a specified manner; providing that a violation of the section is deemed an unfair trade practice; providing effective dates.

By Senator Young

18-01216-17 20171600__

A bill to be entitled

An act relating to viatical settlement contracts; amending s. 626.9911, F.S.; defining the terms "fraudulent viatical settlement act" and "recklessly" for purposes of provisions relating to the Viatical Settlement Act; amending ss. 626.9924 and 626.99245, F.S.; conforming cross-references; amending s. 626.99275, F.S.; providing additional prohibited acts related to viatical settlement contracts; amending s. 626.99287, F.S.; extending the period in which viatical settlement contracts are void and unenforceable; revising conditions and requirements in which viatical settlement contracts entered into within a specified time period are valid and enforceable; deleting provisions related to the transfer of insurance policies or certificates to viatical settlement providers; creating s. 626.99289, F.S.; defining the term "stranger-originated life insurance practice"; providing that specified acts and transactions relating to stranger-originated life insurance practices are void and unenforceable; authorizing a life insurer to contest policies obtained through such practices; providing an effective date.

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

Section 1. Subsections (2) through (14) of section 626.9911, Florida Statutes, are renumbered as subsections (3)

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

18-01216-17 20171600__

through (15), respectively, and a new subsection (2) is added to that section, to read:

626.9911 Definitions.—As used in this act, the term:

(2) "Fraudulent viatical settlement act" means an act or omission of a person or the person's employees or agents who knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain:

(a) Presents, causes to be presented, or prepares with the knowledge or belief a document or information listed in this paragraph knowing that the document or information contains false or concealed material information as part of, in support of, or concerning a fact that is material to it:

1. An application for the issuance of a viatical settlement contract or an insurance policy.

2. The underwriting of a viatical settlement contract or an insurance policy.

3. A claim for payment or benefit pursuant to a viatical settlement contract or an insurance policy.

4. A premium paid on an insurance policy.

5. A change in ownership or beneficiary for a viatical settlement contract or an insurance policy.

6. The reinstatement or conversion of an insurance policy.

7. The solicitation, offer, effectuation, or sale of a viatical settlement contract or an insurance policy.

8. The written evidence of a viatical settlement contract or an insurance policy.

9. A financing transaction.

(b) Uses a plan, financial structure, device, scheme, or artifice to defraud another person in a viatical settlement

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

contract.

(c) Engages in a stranger-originated life insurance practice in violation of s. 626.99289.

(d) Fails to disclose upon request by a viatical settlement provider that the prospective insured's life expectancy has been evaluated by a person other than the provider or its authorized representatives in connection with the issuance of the contract.

(e) Perpetuates a fraud or prevents the detection of a fraud by:

1. Removing, concealing, altering, destroying, or sequestering the assets or records of a licensee or other person engaged in the business of viatical settlements from the office.

2. Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person.

3. Transacting business relating to viatical settlement contracts in violation of this part.

4. Filing with the office or the equivalent chief insurance regulatory official of another jurisdiction documents that contain false information or concealing information about a material fact from the office or such other regulatory official.

(f) Embezzles, steals, or misappropriates moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyholder, or other person engaged in the business of viatical settlement contracts or insurance.

(g) Recklessly enters, negotiates, brokers, or otherwise deals in a viatical settlement contract based on false or misleading information to defraud the policy's issuer, a viatical settlement provider, or a viator. As used in this

paragraph, the term "recklessly" means an act or failure to act with conscious disregard of the relevant facts or risks that grossly deviates from acceptable standards of conduct.

(h) Facilitates in the change of a viator's state of residency from this state to another state by transferring the ownership of an insurance policy to a trust or other instruments to avoid requirements of this part.

(i) Applies for or obtains a loan that is secured directly or indirectly by an interest in a life insurance policy.

(j) Attempts to commit, assists, aids, or abets in the commission of or conspires to commit an act or omission described in this subsection.

Section 2. Subsection (7) of section 626.9924, Florida Statutes, is amended to read:

626.9924 Viatical settlement contracts; procedures; rescission.—

(7) At any time during the contestable period, within 20 days after a viator executes documents necessary to transfer rights under an insurance policy or within 20 days of any agreement, option, promise, or any other form of understanding, express or implied, to viaticate the policy, the provider must give notice to the insurer of the policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by s. 626.99287 ~~626.99287(5)(a) in their entirety~~.

Section 3. Subsection (2) of section 626.99245, Florida Statutes, is amended to read:

626.99245 Conflict of regulation of viaticals.—

(2) This section does not affect the requirement of ss.

626.9911(13) ~~626.9911(12)~~ and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts from offices in this state, regardless of the state of residence of the viator.

Section 4. Subsection (1) of section 626.99275, Florida Statutes, is amended to read:

626.99275 Prohibited practices; penalties.—

(1) It is unlawful for a ~~any~~ person to:

(a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a viatical settlement contract the subject of which is a life insurance policy, knowing that the policy was obtained by presenting materially false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer.

(b) ~~To~~ Knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain, issue or use a pattern of false, misleading, or deceptive life expectancies.

(c) ~~To~~ Knowingly engage in any transaction, practice, or course of business intending thereby to avoid the notice requirements of s. 626.9924(7).

(d) ~~To~~ Knowingly or intentionally facilitate the change of state of residency of a viator to avoid the provisions of this chapter.

(e) Knowingly enter into a viatical settlement contract

before the application for or issuance of a viaticated policy, or within 5 years after the date of the viaticated policy unless the viator complied with s. 626.99287.

(f) Engage in a fraudulent viatical settlement act, as defined in s. 626.9911.

(g) Knowingly issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of, or with an emphasis on, selling the policy.

(h) Engage in a stranger-originated life insurance practice as provided in s. 626.99289.

Section 5. Section 626.99287, Florida Statutes, is amended to read:

626.99287 Contestability of viaticated policies.—Except as hereinafter provided, if a viatical settlement contract is entered into within 5 years after ~~the 2-year period commencing with~~ the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party. However ~~Notwithstanding this limitation~~, such a viatical settlement contract is not void and unenforceable if the viator provides a sworn affidavit with supporting documentation to a viatical settlement provider which certifies one or more of the following conditions apply within 5 years after the date of issuance of the insurance policy or certificate:

(1) The policy was issued upon the owner's exercise of conversion rights arising out of a group or term policy that has been in effect for at least 60 months. The time covered under a group policy is calculated without regard to change in insurance carriers if the coverage has been continuous and under the same

group sponsorship.~~;~~

(2) The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. s. 501(c)(3).~~;~~

(3) The owner of the policy is not a natural person.~~;~~

~~(4) The viatical settlement contract was entered into before July 1, 2000;~~

(4)~~(5)~~ The viator certifies by producing independent evidence to the viatical settlement provider that one or more of the following conditions apply within 5 years after the date of issuance of the insurance policy or certificate ~~have been met within the 2-year period~~:

(a)~~1.~~ The viator or insured is terminally or chronically ill ~~diagnosed with an illness or condition that is either:~~

~~a. Catastrophic or life threatening; or~~

~~b. Requires a course of treatment for a period of at least 3 years of long-term care or home health care;~~ and

~~2.~~ the condition was not known to the insured at the time the life insurance contract was entered into;~~.~~

(b) The viator's spouse dies;

(c) The viator divorces his or her spouse;

(d) The viator retires from full-time employment;

(e) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

(f) The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

(g) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a

creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets; or

(h) The viator experiences a significant decrease in income which is unexpected by the viator and which impairs his or her reasonable ability to pay the policy premium.

(5) The viator entered into a viatical settlement contract 2 years after the viaticated policy's issuance date and during that period, the viator:

(a) Continuously funded the policy premiums exclusively with unencumbered assets of the viator, which may include the net surrender value of the life insurance policy being financed.

(b) Did not enter into an agreement or understanding with another person to guarantee the liability, purchase, assumption, or forgiveness of a loan on a viatical settlement contract or a viaticated policy.

(c) The insured and the policy were not evaluated for settlement.

~~If the viatical settlement provider submits to the insurer a copy of the viator's or owner's certification described above, then the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the viatical settlement agreement shall not be void or unenforceable by operation of this section. The insurer shall timely respond to such request. Nothing in this section shall prohibit an insurer from exercising its right during the contestability period to contest the validity of any policy on~~

~~grounds of fraud.~~

Section 6. Section 626.99289, Florida Statutes, is created to read:

626.99289 Stranger-originated life insurance.—

(1) As used in this section, the term "stranger-originated life insurance practice" means an act, practice, arrangement, or agreement to initiate a life insurance policy for the benefit of a third-party investor who does not have an insurable interest in the insured at the time the policy originated. Stranger-originated life insurance practices include, but are not limited to:

(a) The purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of such policy's inception, is not lawfully able to execute an arrangement or agreement to directly or indirectly transfer the ownership, or benefits of such a policy to a third party.

(b) The creation of a trust or other entity intended to create the appearance of having an insurable interest that would, if such an entity had such an interest, allow the trust or entity to initiate and execute a life insurance policy, when the entity has no such interest.

(2) Notwithstanding s. 627.455, a written or verbal contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement, arrangement, or understanding, entered into to further or aid a stranger-originated life insurance practice is void and unenforceable.

(3) A life insurer may contest a life insurance policy that was obtained by a stranger-originated life insurance practice.

Section 7. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 1600
Bill Number (if applicable)

420836
Amendment Barcode (if applicable)

Topic Viatical Settlements

Name Darwin Bayston

Job Title President & CEO

Address 280 W Canton Ave, Ste 430
Street

Phone 407-894-3797

Winter Park FL 32789
City *State* *Zip*

Email dbayston@lisa.org

Speaking: [X] For (Amendment) [X] Against (Bill) [ ] Information

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

Representing Life Insurance Settlement Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 1600
Bill Number (if applicable)

420836
Amendment Barcode (if applicable)

Topic Viatical Settlements

Name Brady Cobb

Job Title Partner

Address 642 NE 3rd Ave
Street

Ft. Lauderdale FL 33304
City *State* *Zip*

Phone 954-527-4111

Email bcobb@cobbeddy.com

Speaking: [X] For (Amendment) [X] Against (Bill) [ ] Information

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

Representing Cobb Eddy

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	1600

Amendment Barcode (if applicable): FARMER AMNDMNT #420836

Topic VIATICALS

Name CURT LEONARD

Job Title REG. V.P., STATE RELS.

Address 150 S. MONROE St. STE 206 (Street)

Phone 850/386-6668

TALL., FL 32301 (City / State / Zip)

Email curtleonard@acli.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing AMERICAN COUNCIL OF LIFE INSURERS

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)

March 27, 2017
Meeting Date

1600
Bill Number (if applicable)

420836
Amendment Barcode (if applicable)

Topic Life Insurance

Name Josh Auburchon

Job Title Attorney

Address 315 S. Calhoun St. Suite 600
Street

Phone 224-7000

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing New York Life

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)

March 27, 2017
Meeting Date

1600
Bill Number (if applicable)

Topic Life Insurance

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun St. Suite 600
Street

Phone 224-7000

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing New York Life

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

SB 1600
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 S. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-222-7200

Email paulsanf@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FIC

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)

Meeting Date	Bill Number (if applicable)
	S. 1600

Amendment Barcode (if applicable)

Topic VIATICALS

Name CURT LEONARD

Job Title REG. VP., STATE RELATIONS

Address 150 S. MONROE (Street)

TALL., FL 32301 (City / State / Zip)

Phone 850/386-6668

Email Curtleonard@acli.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AMERICAN COUNCIL OF LIFE INSURERS

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 1620
INTRODUCER:	Senator Powell
SUBJECT:	Deceptive and Unfair Trade Practices
DATE:	March 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.			CM	
3.			RC	

I. Summary:

SB 1620 exempts credit unions licensed under ch. 657, F.S., from part II of ch. 501, F.S., known as the Florida Deceptive and Unfair Trade Practices Act. Other entities currently exempt from the act include licensed banks and savings and loans associations.

II. Present Situation:

Regulation of Credit Unions

Under the dual banking system in the United States, credit unions may be chartered under either state or federal law:

- *State-chartered credit unions* may be formed under the Florida Credit Union Act (act), which became law in 1980.[1] The act provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[2] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- *Federally-chartered credit unions* are chartered under the Federal Credit Union Act of 1934[3] and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most

[1] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[2] s. 657.003, F.S.
[3] Public Law 73-467, codified at 12 U.S.C. s. 1751 *et seq.*

state-chartered credit unions.[4] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[5] The standard maximum share insurance amount is $250,000.[6]

Like banks, state-chartered and federally-chartered credit unions are subject to a number of regulations that govern their activities and provide some protections which overlap with FDUTPA, including the following regulations:

- *Truth in Savings Act (TISA)*[7] - The purpose of TISA is "to enable credit union members and potential members to make informed decisions about accounts at credit unions."[8] TISA "requires credit unions to provide disclosures so that members and potential members can make meaningful comparisons among credit unions and depository institutions."[9] TISA also prohibits an advertising that is misleading or inaccurate or that misrepresents a credit union's account agreement.[10]
- *Accuracy of advertising requirement* – Credit unions insured through NCUSIF "may [not] use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition."[11]
- *Equal Credit Opportunity (ECOA)*[12] *and Fair Housing (FHA)*[13] *Acts* – ECOA prohibits discrimination in any aspect of a credit transaction against persons on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that an applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The FHA works in conjunction with the ECOA to prohibit discrimination by anyone who is in the business of providing loans for housing.[14]
- *Fair Credit Reporting Act (FCRA)*[15] – The FCRA defines the responsibilities and liabilities of those who provide information to and access data from a consumer reporting agency (CRA).[16] The FCRA was designed to promote accuracy, fairness, and privacy of information in the files of every CRA by:
  - Regulating the consumer reporting industry;
  - Placing disclosure obligations on users of consumer reports;
  - Ensuring fair, timely, and accurate reporting of credit information;

---

[4] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. *See* NCUA, *Your Insured Funds*, available at https://www.ncua.gov/Legal/GuidesEtc/GuidesManuals/NCUAYourInsuredFunds.pdf (last visited March 20, 2017).
[5] ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[6] *Id*.
[7] 12 CFR Part 707.
[8] 12 CFR s. 707.1(b).
[9] *Id.*
[10] 12 CFR s. 707.8(a)(1).
[11] 12 CFR s. 740.2.
[12] 12 CFR Part 1002.
[13] 42 U.S.C. s. 3601 *et seq.*
[14] NCUA, *Consumer Compliance Manual: Fair Housing Act*, available at https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx (last visited March 20, 2017).
[15] 15 U.S.C. s. 1681 *et seq.*
[16] NCUA, *Consumer Compliance Manual: Fair Credit Reporting Act*, available at https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx (last visited March 20, 2017).

  - Restricting the use of reports on consumers; and
  - In certain situations, requiring the deletion of obsolete information.[17]
- *Truth in Lending Act (TILA)*[18] – TILA requires certain disclosures relating to the terms and cost of various forms of consumer credit, and such disclosures must be made "clearly and conspicuously."[19]
- *Real Estate Settlement Procedures Act (RESPA)*[20] – RESPA requires certain timely disclosures regarding the nature and costs of the real estate settlement process. For example, a lender must provide an applicant with a good faith estimate no later than 3 business days after a lender receives an application.[21]
- *Privacy of consumer financial information under the Gramm-Leach-Bliley Act (GLBA)*[22] The GLBA governs a financial institution's treatment of nonpublic personal information about consumers.[23] Subject to only certain exceptions, the GLBA prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided that the consumer has not elected to opt out of the disclosure.[24] The GLBA also requires the institution to provide notice of its privacy policies and practices to its customers. Various rules and regulations have been issued to implement provisions of the GLBA.[25]
- *Consumer Financial Protection Bureau's (CFPB's) prohibition on unfair, deceptive, or abusive acts or practices*[26] – The CFPB is a federal agency that regulates the offering and provision of consumer financial products or services under the federal consumer financial laws for which the CFPB has been given authority to enforce.[27] The CFPB is the enforcement authority for many of the above-mentioned regulations. The CFPB has broad prohibitions on covered persons or service providers "from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service."[28] State-chartered and federally-chartered credit unions would be considered covered persons for purposes of the CFPB's prohibition on unfair, deceptive, or abusive acts or practices.[29]
- Federal Trade Commission's (FTC's) prohibition on unfair or deceptive acts or practices.[30] The FTC is a federal agency whose mission is "[t]o prevent business practices that are

[17] *Id.*
[18] 12 CFR Part 1026.
[19] *Id.* at ss. 1026.1(b) and 1026.5(a).
[20] 12 CFR Part 1024.
[21] *Id.* at s. 1024.7 and Appendix C.
[22] 15 U.S.C. s. 6801 *et seq.*
[23] NCUA, *Consumer Compliance Manual: Privacy of Consumer Financial Information*, available at https://www.ncua.gov/regulation-supervision/Pages/manuals-guides/consumer-compliance.aspx (last visited March 20, 2017).
[24] *Id.*
[25] 12 CFR s. 716.1 and Part 1016.
[26] 12 U.S.C. s. 5536(a)(1).
[27] 12 U.S.C. ss. 5481(14) and 5491(a).
[28] 12 U.S.C. s. 5531(a). *See also* s. 5536(a)(1) (prohibiting "any covered person or service provider – (A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or (B) to engage in any unfair, deceptive, or abusive act or practice").
[29] 12 U.S.C. ss. 5481(5), (6), and (15).
[30] 15 U.S.C. s. 45(a).

anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity."[31] The FTC is empowered to prevent persons and entities "from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."[32] The FTC's authority in this area does not extend to banks, savings and loan institutions, or federally-chartered credit unions.[33] Because state-chartered credit unions are not expressly exempted from the FTC's authority to enforce this prohibition on unfair or deceptive acts or practices, such credit unions would be covered by the FTC's authority. However, as noted above, the CFPB has broad authority to enforce a prohibition on unfair, deceptive, or abusive acts or practices in relation to both state-chartered and federally-chartered credit unions.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[34] The purpose[35] of FDUTPA is to:

1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[36] The term "trade or commerce" is defined as "advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated," and the term includes "the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity."[37]

Investigative and enforcement authority under FDUTPA is given to a state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction, and to the Department of Legal Affairs (Department) if a violation occurs in or affects more than one judicial circuit or if the state attorney defers to the Department.[38] These enforcing authorities may, within 4 years after the occurrence of a violation or within 2 years after the last payment in a transaction involved in a violation, bring an action to obtain a declaratory judgment that an act or practice violates FDUTPA; an action to enjoin any person who has violated, is violating, or is otherwise

[31] Federal Trade Commission, *About the FTC*, https://www.ftc.gov/about-ftc (last visited March 20, 2017).
[32] 15 U.S.C. s. 45(a).
[33] *Id.* at 45(a)(2).
[34] Ch. 73-124, Laws of Fla.; codified at Part II of ch. 501, F.S.
[35] s. 501.202, F.S.
[36] s. 501.204(1), F.S.
[37] s. 501.203(8), F.S.
[38] ss. 501.203(2), 501.206, and 501.207, F.S.

likely to violate FDUTPA; or an action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.[39] Additionally, these enforcing authorities may collect a civil penalty of up to $10,000 per violation plus reasonable attorney's fees and costs for willful violations of FDUTPA and up to $15,000 plus reasonable attorney's fees and costs for willful violations of FDUTPA involving a senior citizen, a person who has a disability, a military servicemember, or the spouse or dependent child of a military servicemember.[40] The Department also has authority to issue a cease and desist order if it would be in the interest of the public.[41]

If a state attorney or the Department receives a complaint regarding a person who is subject to other supervision in this state, such enforcing authority must inform the supervising agency.[42]

FDUTPA provides a private cause of action for anyone aggrieved by a violation of FDUTPA to obtain a declaratory judgment that an act or practice violates FDUTPA; to enjoin a person who has violated, is violating, or is otherwise likely to violate this part; and to recover actual damages plus reasonable attorney's fees and costs.[43]

FDUTPA contains a list of certain entities to which it is *inapplicable*, including:[44]

a) Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission;
b) Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission;
c) Banks or savings and loan associations regulated by federal agencies; or
d) Any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

Although FDUTPA contemplates the exemption of the above entities that are otherwise regulated, it does not currently exempt credit unions.

III. Effect of Proposed Changes:

Credit unions regulated by the OFR under ch. 657, F.S., and credit unions regulated by federal agencies, will no longer be subject to part II of ch. 501, F.S., The Florida Deceptive and Unfair Trade Practices Act. Current law exempts banks as well as savings and loan associations regulated by the OFR or federal agencies from FDUTPA.

State-chartered and federally-chartered credit unions remain subject to a number of regulations that govern their activities and provide some protections which overlap with FDUTPA, including the:

- Truth in Savings Act,
- Accuracy of advertising requirement,

[39] s. 501.207(1) and (5), F.S.
[40] ss. 501.2075, 501.2077, and 501.2105, F.S.
[41] s. 501.208(1), F.S.
[42] s. 501.209, F.S.
[43] ss. 501.2105 and 501.211, F.S.
[44] s. 501.212, F.S.

- Equal Credit Opportunity and Fair Housing Acts,
- Fair Credit Reporting Act,
- Truth in Lending Act,
- Real Estate Settlement Procedures Act,
- Gramm-Leach-Bliley Act's requirements relating to the privacy of consumer financial information,
- Consumer Financial Protection Bureau's prohibition on unfair, deceptive, or abusive acts or practices, and
- Federal Trade Commission's prohibition on unfair or deceptive acts or practices.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.212 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.

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

506574

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/27/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 18 - 23

and insert:

~~(b) Banks and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission;~~

~~(c) Banks or savings and loan associations regulated by federal agencies;~~ or

(b) ~~(d)~~ Any person or activity regulated under the laws

506574

11
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 3 - 5
15 and insert:
16 practices; amending s. 501.212, F.S.; deleting an
17 exemption to the Florida Deceptive and Unfair Trade
18 Practices Act for banks and savings and loan
19 associations regulated by the

By Senator Powell

30-01297-17 20171620__

A bill to be entitled

An act relating to deceptive and unfair trade practices; amending s. 501.212, F.S.; specifying that the Florida Deceptive and Unfair Trade Practices Act does not apply to credit unions regulated by the Office of Financial Regulation or federal agencies; providing an effective date.

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

Section 1. Subsection (4) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(4)(a) Any person or activity regulated under laws administered by~~:~~

~~(a)~~ the Office of Insurance Regulation of the Financial Services Commission;

(b) Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation of the Financial Services Commission;

(c) Banks, credit unions, or savings and loan associations regulated by federal agencies; or

(d) Any person or activity regulated under the laws administered by the former Department of Insurance which are now administered by the Department of Financial Services.

Section 2. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/27/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1620

Meeting Date *Bill Number (if applicable)*

Topic FDUTPA *Amendment Barcode (if applicable)*

Name Jared Ross

Job Title SVP, Governmental Affairs

Address 3692 Coolidge Ct. Phone (850) 322-6456

Street

Tallahassee FL 32311 Email jared.ross@fcu.coop

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Credit Union 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)

3/27/17
Meeting Date

1600
Bill Number (if applicable)

506574
Amendment Barcode (if applicable)

Topic Deceptive and Unfair Trade Practices

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee, FL 32303
City *State* *Zip*

Phone 850 556-3121

Email alicevickers@flacp.org

Speaking: ☑ For ☐ Against ☐ Information

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

amendment only

Representing Florida Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/17
Meeting Date

1620
Bill Number (if applicable)

506574
Amendment Barcode (if applicable)

Topic Bill

Name Anthony DiMarco

Job Title EVP of Govt Affairs

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Email adimarco@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)

03/27/17
Meeting Date

1620
Bill Number (if applicable)

506574
Amendment Barcode (if applicable)

Topic FDUTPA

Name JARED ROSS

Job Title SVP, Governmental Affairs

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Credit Union Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Committee on Banking and Insurance **Judge:**

Started: 3/27/2017 4:07:29 PM
Ends: 3/27/2017 5:52:46 PM Length: 01:45:18

4:07:31 PM Meeting called to order by Chair.
4:07:41 PM Roll Call - Quorum present.
4:08:04 PM TAB 3 SB 800 by Sen Broxson recognized to explain the bill
4:09:17 PM Amd. 445314 delete all - fwo - adopted
4:10:42 PM Joy Ryan -America's Health Insurance Plans
4:12:02 PM Sally West - Walgreens
4:13:31 PM Roll call vote on CS/SB 800 - Favorable
4:14:13 PM TAB 4 - SB 850 by Sen. Rouson - Public Housing
4:14:36 PM Sen. Rouson recognized to explain the bill.
4:14:47 PM Amd. 412698 - fwo - adopted
4:15:08 PM Roll call vote on CS/SB 850 - Favorable
4:15:40 PM TAB 5 SB 872 by Sen. Rouson - Consumer Finance Loans
4:16:09 PM Delete all Amd. 554840 - Sen. Rouson explains the amend. - fwo/adopted
4:20:20 PM James Gutierrez - CEO of Insight
4:29:58 PM Dorene Barker, Associate State Director, AARP
4:36:14 PM Alice Vickers, Attorney, FL Alliance for Consumer Protection
4:42:26 PM Alice Vickers, Attorney, FL Alliance for Consumer Protection
4:42:48 PM Roll call vote on CS/SB 872 - Favorable
4:43:58 PM TAB 2 - SB 594 by Sen. Garcia - Consumer Finance
4:44:20 PM Sen. Garcia recognized to explain delete all amd. 872886 - fwo - adopted
4:45:12 PM Sen. Garcia recognized to explain delete all amd. 872886 - fwo - adopted
4:45:14 PM Alice Vickers, Attorney, FL Alliance for Consumer Protection
4:48:01 PM Raul Vazquez, CEO, Oportun
4:52:22 PM Sen. Garcia recognized to close on bill.
4:52:56 PM Roll Call Vote on CS/SB 594 - Favorable
4:54:07 PM TAB 11 - SB 1620 - Deceptive and Unfair Trade Practices
4:54:23 PM Sen. Powell recognized to explain the bill
4:55:15 PM Amd. 506574 (late filed) by Sen. Farmer --fwo to take up late filed amendment
4:58:33 PM Sen. Farmer recognized to explain amendment (506574) - Amendment withdrawn
4:59:59 PM Roll call on SB 1620 - Adopted
5:00:31 PM TAB 10 SB 1600 by Sen. Young - Viatical Settlement Contracts
5:02:18 PM Sen Rouson recognized to present the bill for Sen. Young
5:03:18 PM Delete all Amd. (767012) Sen. Young
5:04:28 PM Amd. to Amd. (420836) Farmer (explanation of amendment)
5:06:06 PM Brady Cobb - Cobb Eddy
5:08:35 PM Brady Cobb - Cobb Eddy
5:11:00 PM Curt Leonard, American Council of Life Insurers
5:13:15 PM Curt Leonard, American Council of Life Insurers
5:13:22 PM Josh Aubuchon Life INsurance
5:15:53 PM Amd. 420836 - withdrawn by Sen. Garmer
5:16:33 PM Delete all Amd. 7676012 - fwo - adopted
5:17:44 PM Curt Leonard, American Council of Life Insurers
5:18:52 PM Roll call vote on CS/SB 1600 -Favorable
5:20:05 PM TA B 6 SB 1078 by Sen. Garcia - International Financial Insitutions
5:20:29 PM Sen. Garcia recognized to explain the bill
5:20:40 PM Delete all Amd (875648) - fwo-adopted
5:21:16 PM Roll call vote on CS/SB 1078 - Favorable
5:21:50 PM TAB 7 - SB 1080 - TP'd by Sen. Garcia
5:22:46 PM TAB 8 SB 1298 by Sen. Garcia
5:23:08 PM Amd. 395062 by Sen. Garcia - fwo - adopted
5:24:07 PM Bernie Navarro representing self
5:30:02 PM Roll call Vote on CS/SB 1298 - Favorable

5:30:51 PM TAB 9 - SB 1482 by Sen. Garcia - Transactions with Foreign Financial Institutions
5:31:27 PM Explanation of bill by Sen. Garcia
5:31:43 PM Anthony DiMarco, FL Bankers Association
5:32:14 PM Roll call vote on SB 1482 - Favorable
5:32:42 PM TAB 1 - SB 530 by Sen. Steube - Health Insurance
5:33:10 PM Sen. Steube recognized to explain the bill
5:33:49 PM Amd. (187710) delete all by Sen Steube - explanation of amd. by Sen. Steube
5:34:35 PM Amd. to Amd. (171194) by Sen. Steube - explanation of amd. by Sen. Steube fwo - Adopted
5:35:22 PM Delete all Amd. as amended - Favorable
5:37:15 PM Peggy Symms representing mentally ill people
5:40:16 PM Maribel Lockwood - Capital Medical Society
5:44:13 PM Wences Troncoso - FL Association of Health Plan
5:49:28 PM Debate on bill.
5:51:10 PM Sen. Steube closed on bill
5:51:22 PM Vote on CS/ SB 530 - Favorable
5:51:59 PM Meeting adjourned