

Tab 1	SB 248 by Broxson (CO-INTRODUCERS) Passidomo; (Identical to H 00243) Public Records/Office of Financial Regulation					
Tab 2	SB 460 by Brandes; (Compare to CS/H 00601) Personal Delivery Devices					
~~677020~~	D	S	WD	BI, Brandes	Delete everything after	04/03 06:48 PM
Tab 3	SB 580 by Garcia (CO-INTRODUCERS) Mayfield; (Similar to CS/H 00617) Insurance Administrators					
Tab 4	CS/SB 680 by JU, Baxley (CO-INTRODUCERS) Garcia; (Similar to CS/H 00361) Bail Bonds					
751988	A	S	RCS	BI, Baxley	Delete L.34 - 38:	04/03 06:48 PM
932932	AA	S	RCS	BI, Baxley	Delete L.5:	04/03 06:48 PM
204770	A	S	RCS	BI, Baxley	Delete L.111 - 116:	04/03 06:48 PM
Tab 5	CS/SB 724 by JU, Passidomo; (Similar to CS/H 00267) Estates					
842814	A	S	RCS	BI, Passidomo	Delete L.232 - 234:	04/03 06:48 PM
Tab 6	SB 922 by Garcia; (Similar to CS/H 00911) Insurance Adjusters					
655674	D	S	RCS	BI, Garcia	Delete everything after	04/03 06:48 PM
Tab 7	SB 958 by Thurston; (Compare to CS/CS/H 00585) Financial Institutions					
347510	A	S	RCS	BI, Thurston	Delete L.41 - 95:	04/03 06:48 PM
Tab 8	SB 1008 by Perry (CO-INTRODUCERS) Bradley; (Similar to CS/H 01107) Public Records/Injured or Deceased Employee/Department of Financial Services					
305854	D	S	RCS	BI, Perry	Delete everything after	04/03 06:48 PM
Tab 9	SB 1012 by Brandes; (Similar to CS/H 01007) Investigative and Forensic Services					
883346	D	S	RCS	BI, Brandes	Delete everything after	04/03 06:48 PM
Tab 10	SB 1014 by Brandes; (Similar to CS/H 01009) Public Records/Division of Investigative and Forensic Services of the Department of Financial Services					
309546	D	S	RCS	BI, Brandes	Delete everything after	04/03 06:48 PM
Tab 11	SB 1032 by Mayfield; (Similar to H 01029) Unfair Insurance Trade Practices					
Tab 12	SB 1084 by Stargel; Firefighter Certifications					
863310	A	S	RCS	BI, Stargel	Delete everything after	04/03 06:48 PM
Tab 13	SB 1218 by Farmer; (Compare to H 01421) Property Repair					
310588	D	S	RCS	BI, Farmer	Delete everything after	04/03 06:48 PM
Tab 14	SB 1316 by Bracy; (Similar to CS/H 01299) Preinsurance Inspection					
571826	A	S	RCS	BI, Bracy	Delete L.18 - 27:	04/03 06:48 PM
Tab 15	SB 1582 by Bradley; (Compare to H 07085) Workers' Compensation Insurance					

Tab 16 SB 1684 by Farmer; Insurance Rates						
164156	D	S	RCS	BI, Farmer	Delete everything after	04/03 06:48 PM
Tab 17 SB 1766 by Lee; (Compare to H 00461) Motor Vehicle Insurance						
482232	A	S		BI, Lee	btw L.588 - 589:	03/31 03:19 PM
463472	A	S		BI, Lee	Delete L.3787 - 3788:	03/31 03:20 PM
Tab 18 SB 1768 by Lee; (Compare to CS/H 01063) Public Records/Medical Payments Coverage and Liability Motor Vehicle Insurance Policies/Department of Highway Safety and Motor Vehicles						
685848	A	S		BI, Lee	Delete L.97:	03/31 03:19 PM
Tab 19 SB 7012 by HP (CO-INTRODUCERS) Mayfield; (Similar to H 07009) Ratification of Department of Health Rules						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE

Senator Flores, Chair
Senator Steube, Vice Chair

MEETING DATE: Monday, April 3, 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 248 Broxson (Identical H 243)	Public Records/Office of Financial Regulation ; Providing an exemption from public records requirements for the personal identifying and location information of certain nonsworn investigative personnel of the Office of Financial Regulation and the names and personal identifying and location information of the spouses and children of such personnel; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Favorable GO RC	Favorable Yeas 9 Nays 0
2	SB 460 Brandes (Compare CS/H 601)	Personal Delivery Devices; Authorizing the operation of personal delivery devices within county or municipal jurisdictions under certain circumstances; prohibiting the operation of personal delivery devices on the Florida Shared-Use Nonmotorized Trail Network; requiring a personal delivery device operator to maintain an insurance policy that provides general liability coverage of at least a specified amount for damages arising from the operation of a personal delivery device; exempting personal delivery devices from certain registration and insurance requirements, etc. TR 03/14/2017 Favorable BI 04/03/2017 Favorable RC	Favorable Yeas 9 Nays 0
3	SB 580 Garcia (Similar CS/H 617)	Insurance Administrators; Requiring the Office of Insurance Regulation to conduct quarterly audits, for a certain purpose, of pharmacy benefits managers that hold certificates of authority to act as administrators; adding violations of certain provisions of the Florida Pharmacy Act as grounds for the office's suspension or revocation of an administrator's certificate of authority or imposition of a fine, respectively, etc. BI 04/03/2017 Favorable HP AP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 680 Judiciary / Baxley (Similar CS/H 361)	Bail Bonds; Revising legislative intent concerning the obligations of a bail bond agent; revising the commitments and obligations of a bail bond agent; revising the circumstances under which a surety bond deposited as bail must be forfeited, etc. JU 03/22/2017 Fav/CS BI 04/03/2017 Fav/CS CJ RC	Fav/CS Yeas 9 Nays 0
5	CS/SB 724 Judiciary / Passidomo (Similar CS/H 267)	Estates; Revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; providing for the valuation of the decedent's protected homestead under certain circumstances; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property, etc. JU 03/14/2017 Fav/CS BI 04/03/2017 Fav/CS RC	Fav/CS Yeas 9 Nays 0
6	SB 922 Garcia (Similar CS/H 911, Compare CS/H 925, CS/S 986)	Insurance Adjusters; Revising applicability of the Licensing Procedures Law to include adjusting firms; prohibiting certain entities from acting as insurance adjusting firms without specified licenses; specifying that an unlicensed firm is subject to a certain administrative penalty, etc. BI 04/03/2017 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
7	SB 958 Thurston (Compare CS/CS/H 585)	Financial Institutions; Revising an applicable timeframe of a minimum financial institution experience requirement for certain proposed directors of a bank or trust company applicant; revising applicability of the Florida Business Corporations Act to include parts II and III of ch. 607, F.S., etc. BI 04/03/2017 Fav/CS RI RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1008 Perry (Similar CS/H 1107)	Public Records/Injured or Deceased Employee/Department of Financial Services; Providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in certain notices or reports filed with the Division of Workers' Compensation of the Department of Financial Services; authorizing the division to disclose such information under certain circumstances; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO RC	Fav/CS Yeas 8 Nays 0
9	SB 1012 Brandes (Similar CS/H 1007, Compare CS/H 1009, Linked S 1014)	Investigative and Forensic Services; Deleting the Justice Administrative Commission from a list of entities whose unencumbered or undisbursed funds appropriated from the Workers' Compensation Administration Trust Fund must be reverted to the trust fund at specified intervals; requiring insurers to designate primary anti-fraud employees; creating the Insurance Fraud Dedicated Prosecutor Program, etc. BI 04/03/2017 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
10	SB 1014 Brandes (Similar CS/H 1009, Compare CS/H 1007, Linked S 1012)	Public Records/Division of Investigative and Forensic Services of the Department of Financial Services; Providing an exemption from public records requirements for certain information held by the Division of Investigative and Forensic Services of the Department of Financial Services, or the department, relating to insurer anti-fraud plans, descriptions, contracts, related documents, anti-fraud statistics, and information reported by insurers writing workers' compensation insurance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO AP	Fav/CS Yeas 9 Nays 0
11	SB 1032 Mayfield (Similar H 1029)	Unfair Insurance Trade Practices; Revising provisions to permit a licensed insurer or its agent to give promotional or advertising items under a certain value, etc. BI 04/03/2017 Favorable CM RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1084 Stargel	Firefighter Certifications; Authorizing certain firefighters to complete specified continuing education training in lieu of a specified instruction requirement; exempting firefighters holding current Firefighter Certificates of Compliance and volunteer firefighters holding current Volunteer Firefighter Certificates of Completion from certain periodic requirements under specified circumstances; authorizing the Division of State Fire Marshal within the Department of Financial Services to investigate, in a specified manner, certain reports or complaints against firefighters claiming such exemptions, etc. BI 04/03/2017 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0
13	SB 1218 Farmer (Compare H 1421, S 1150)	Property Repair; Defining the terms "professional water damage restorer" and "water damage restoration"; requiring the Department of Business and Professional Regulation to license applicants who are qualified to practice water damage restoration; prohibiting personal lines residential or commercial residential property insurance policies from prohibiting the post-loss assignment of benefits, etc. BI 04/03/2017 Fav/CS RI RC	Fav/CS Yeas 6 Nays 2
14	SB 1316 Bracy (Similar CS/H 1299)	Preinsurance Inspection; Providing an exception to the requirement that an insurer inspect private passenger motor vehicles before issuing certain motor vehicle insurance policies; requiring insurers using the exception to file a manual rule with the Office of Insurance Regulation; authorizing insurers to establish their own preinsurance inspection requirements, etc. BI 04/03/2017 Fav/CS TR RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 1582 Bradley (Compare H 7085)	Workers' Compensation Insurance; Requiring carriers to authorize or decline, rather than respond to, certain requests for authorization within a specified time; revising conditions under which the Office of the Judges of Compensation Claims must dismiss petitions for benefits; adding prospective loss costs to a list of reviewable matters in certain proceedings by appellate courts; requiring copies of prospective loss costs to be filed with the Office of Insurance Regulation, etc. BI 04/03/2017 Favorable AP RC	Favorable Yeas 7 Nays 1
16	SB 1684 Farmer (Compare S 1746)	Insurance Rates; Providing that certain attorney fees, costs, and expenses may not be considered expenses by the Office of Insurance Regulation when the office is determining whether a rate is excessive, inadequate, or unfairly discriminatory; providing that certain attorney fees, costs, and expenses may not be included in an insurer's rate base and may not be used to justify a rate or rate change, etc. BI 04/03/2017 Fav/CS RC	Fav/CS Yeas 8 Nays 0
17	SB 1766 Lee (Compare H 461, CS/H 1063, S 156, Linked S 1768)	Motor Vehicle Insurance; Repealing provisions which compose the Florida Motor Vehicle No-Fault Law; requiring certain motor vehicle liability insurance policies to include specified medical payments coverage; providing requirements, procedures, conditions, exclusions, prohibited acts, and construction relating to an insurer's payment of medical payments coverage benefits, etc. BI 04/03/2017 Not Considered AHS AP	Not Considered
18	SB 1768 Lee (Compare CS/H 1063, Linked S 1766)	Public Records/Medical Payments Coverage and Liability Motor Vehicle Insurance Policies/Department of Highway Safety and Motor Vehicles; Revising an exemption from public records requirements to exempt certain information held by the Department of Highway Safety and Motor Vehicles relating to medical payments coverage and liability motor vehicle insurance policies, rather than relating to personal injury protection and property damage liability insurance policies; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Not Considered GO AP	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	SB 7012 Health Policy (Similar H 7009)	Ratification of Department of Health Rules; Ratifying a rule, adopted by the Board of Medicine, relating to the standard of care for office surgery for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs, etc. BI 04/03/2017 Favorable RC	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 248

INTRODUCER: Senators Broxson and Passidomo

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 31, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Knudson	BI	Favorable
2. _____	_____	GO	_____
3. _____	_____	RC	_____

I. Summary:

SB 248 exempts from public inspection and disclosure certain personal identifying information of nonsworn investigative employees for the Office of Financial Regulation (Office). The exemption applies to all current or former employees as well as their spouses and children. The exemption also covers an employee's spouse's place of employment and his or her child's school or daycare facility.

The bill states it is a public necessity to protect such information because the investigative duties can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigators have been intimidated and threatened, including the brandishing of firearms.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022, unless reenacted by the Legislature. The bill goes into effect upon becoming law.

II. Present Situation:

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 provide 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

Office of Financial Regulation

The Office of Financial Regulation provides regulatory oversight for Florida’s financial services providers. The nonsworn investigators for the Office work under the Bureau of Financial Investigations. The bureau has 39 employees, 35 of which would be covered by this exemption.¹⁵ The bureau’s nonsworn investigators are housed in satellite offices throughout the state (Tallahassee, Tampa, Orlando, West Palm Beach, and Miami). Although the investigators are nonsworn, they work criminal and civil cases independently and collaboratively with law enforcement and prosecutorial agencies. The nonsworn investigators also provide investigative assistance to those agencies, including testimony at trial.¹⁶

III. Effect of Proposed Changes:

SB 248 amends s. 119.071, F.S., to exempt from public inspection and disclosure the home address, telephone numbers, dates of birth, and photographs of any current or former nonsworn investigative employee of the Office of Financial Regulation.

The bill also exempts from public inspection and disclosure the spouse’s and children’s home address, telephone numbers, dates of birth, photographs. A spouse’s place of employment as well as the school or daycare of an employee’s children are also exempt.

The bill requires that the employee must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information because these employees and their families may be subject to revenge perpetrated by people who have been investigated. The bill states such investigations can result in arrests and prosecutions for crimes up to and including first degree felony violations and can also result in the loss of commerce and property, the assessment of monetary fines, or the suspension or loss of professional licenses. The Office has documented several instances where their nonsworn investigative personal and their families have been intimidated or threatened as a result of their work.¹⁷

- A person associated with an investigation appeared at an investigator’s former residence, where his young children still resided. The visit put the investigator and his family at great unease.
- An investigator’s name appeared on a credible hit list found by U.S. Marshals during the search of a suspect’s home. Other evidence, including photos of the investigator’s residence and children were also found during the search.

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 Office of Financial Regulation, Senate Bill 248 Bill Analysis (Jan. 9, 2017) (on file with the Senate Committee on Banking and Insurance.

¹⁶ *Id.*

¹⁷ *Id.*

- Two investigators conducting surveillance of a suspected illegal banking operation were seen by suspects and were chased by vehicle through the streets of Miami and Liberty City. The suspects were observed brandishing firearms before the investigators were able to escape.
- While investigators were reviewing records obtained via subpoena, notes were found by the investigators indicating that the suspects hired private investigators to collect personal background information on the investigators working the case.
- The suspect of an investment fraud case learned of the time and location of a deposition taken by an investigator. The suspect arrived at the location and waited outside for the deposition to conclude. As the investigator emerged from the deposition room, the suspect approached and verbally confronted the investigator loudly and in a threatening way. As a result, the investigator took personal time from his job to work with his local property appraiser's office to conceal his personal information from any public search of his records.
- An investigator received verbal threats from a suspect while conducting an advance fee investigation. In one instance, the suspect told her that "if he went down, she would go down, too." In a subsequent instance, the suspect threatened that if he went to prison, "she would not be around any longer." The investigator felt endangered to the point that she reported the matter to law enforcement and purchased a firearm for her personal protection.

The Office believes these documented instances of nonsworn investigative personal and their families being intimidated or threatened for completing their work warrants their identification and location information being exempt from public inspection and copying.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2022, unless reenacted by the Legislature.

The bill goes in to effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. The public necessity statement supports the breadth of the 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 119.071 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 Broxson

1-00219-17

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A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; providing an exemption from public

records requirements for the personal identifying and

location information of certain nonsworn investigative

personnel of the Office of Financial Regulation and

the names and personal identifying and location

information of the spouses and children of such

personnel; providing for future review and repeal of

the exemption; providing a statement of public

necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or

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neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

(IV) The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open

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Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(V) The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers,

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dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(II) The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division

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120 of Administrative Hearings, and child support enforcement
 121 hearing officers; the home addresses, telephone numbers, dates
 122 of birth, and places of employment of the spouses and children
 123 of general magistrates, special magistrates, judges of
 124 compensation claims, administrative law judges of the Division
 125 of Administrative Hearings, and child support enforcement
 126 hearing officers; and the names and locations of schools and day
 127 care facilities attended by the children of general magistrates,
 128 special magistrates, judges of compensation claims,
 129 administrative law judges of the Division of Administrative
 130 Hearings, and child support enforcement hearing officers are
 131 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 132 Constitution if the general magistrate, special magistrate,
 133 judge of compensation claims, administrative law judge of the
 134 Division of Administrative Hearings, or child support hearing
 135 officer provides a written statement that the general
 136 magistrate, special magistrate, judge of compensation claims,
 137 administrative law judge of the Division of Administrative
 138 Hearings, or child support hearing officer has made reasonable
 139 efforts to protect such information from being accessible
 140 through other means available to the public.

141 f. The home addresses, telephone numbers, dates of birth,
 142 and photographs of current or former human resource, labor
 143 relations, or employee relations directors, assistant directors,
 144 managers, or assistant managers of any local government agency
 145 or water management district whose duties include hiring and
 146 firing employees, labor contract negotiation, administration, or
 147 other personnel-related duties; the names, home addresses,
 148 telephone numbers, dates of birth, and places of employment of

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149 the spouses and children of such personnel; and the names and
 150 locations of schools and day care facilities attended by the
 151 children of such personnel are exempt from s. 119.07(1) and s.
 152 24(a), Art. I of the State Constitution.

153 g. The home addresses, telephone numbers, dates of birth,
 154 and photographs of current or former code enforcement officers;
 155 the names, home addresses, telephone numbers, dates of birth,
 156 and places of employment of the spouses and children of such
 157 personnel; and the names and locations of schools and day care
 158 facilities attended by the children of such personnel are exempt
 159 from s. 119.07(1) and s. 24(a), Art. I of the State
 160 Constitution.

161 h. The home addresses, telephone numbers, places of
 162 employment, dates of birth, and photographs of current or former
 163 guardians ad litem, as defined in s. 39.820; the names, home
 164 addresses, telephone numbers, dates of birth, and places of
 165 employment of the spouses and children of such persons; and the
 166 names and locations of schools and day care facilities attended
 167 by the children of such persons are exempt from s. 119.07(1) and
 168 s. 24(a), Art. I of the State Constitution, if the guardian ad
 169 litem provides a written statement that the guardian ad litem
 170 has made reasonable efforts to protect such information from
 171 being accessible through other means available to the public.

172 i. The home addresses, telephone numbers, dates of birth,
 173 and photographs of current or former juvenile probation
 174 officers, juvenile probation supervisors, detention
 175 superintendents, assistant detention superintendents, juvenile
 176 justice detention officers I and II, juvenile justice detention
 177 officer supervisors, juvenile justice residential officers,

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178 juvenile justice residential officer supervisors I and II,
 179 juvenile justice counselors, juvenile justice counselor
 180 supervisors, human services counselor administrators, senior
 181 human services counselor administrators, rehabilitation
 182 therapists, and social services counselors of the Department of
 183 Juvenile Justice; the names, home addresses, telephone numbers,
 184 dates of birth, and places of employment of spouses and children
 185 of such personnel; and the names and locations of schools and
 186 day care facilities attended by the children of such personnel
 187 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 188 Constitution.

189 j. (I) The home addresses, telephone numbers, dates of
 190 birth, and photographs of current or former public defenders,
 191 assistant public defenders, criminal conflict and civil regional
 192 counsel, and assistant criminal conflict and civil regional
 193 counsel; the home addresses, telephone numbers, dates of birth,
 194 and places of employment of the spouses and children of such
 195 defenders or counsel; and the names and locations of schools and
 196 day care facilities attended by the children of such defenders
 197 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 198 the State Constitution.

199 (II) The names of the spouses and children of the specified
 200 agency personnel identified in sub-sub-subparagraph (I) are
 201 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 202 Constitution. This sub-sub-subparagraph is subject to the Open
 203 Government Sunset Review Act in accordance with s. 119.15 and
 204 shall stand repealed on October 2, 2019, unless reviewed and
 205 saved from repeal through reenactment by the Legislature.

206 k. The home addresses, telephone numbers, and photographs

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207 of current or former investigators or inspectors of the
 208 Department of Business and Professional Regulation; the names,
 209 home addresses, telephone numbers, and places of employment of
 210 the spouses and children of such current or former investigators
 211 and inspectors; and the names and locations of schools and day
 212 care facilities attended by the children of such current or
 213 former investigators and inspectors are exempt from s. 119.07(1)
 214 and s. 24(a), Art. I of the State Constitution if the
 215 investigator or inspector has made reasonable efforts to protect
 216 such information from being accessible through other means
 217 available to the public. This sub-subparagraph is subject to the
 218 Open Government Sunset Review Act in accordance with s. 119.15
 219 and shall stand repealed on October 2, 2017, unless reviewed and
 220 saved from repeal through reenactment by the Legislature.

221 l. The home addresses and telephone numbers of county tax
 222 collectors; the names, home addresses, telephone numbers, and
 223 places of employment of the spouses and children of such tax
 224 collectors; and the names and locations of schools and day care
 225 facilities attended by the children of such tax collectors are
 226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 227 Constitution if the county tax collector has made reasonable
 228 efforts to protect such information from being accessible
 229 through other means available to the public. This sub-
 230 subparagraph is subject to the Open Government Sunset Review Act
 231 in accordance with s. 119.15 and shall stand repealed on October
 232 2, 2017, unless reviewed and saved from repeal through
 233 reenactment by the Legislature.

234 m. The home addresses, telephone numbers, dates of birth,
 235 and photographs of current or former personnel of the Department

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of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a consultant or employee has made reasonable

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efforts to protect such information from being accessible through other means available to the public. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the emergency medical technicians or paramedics have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth,

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294 and places of employment of spouses and children of such
 295 personnel; and the names and locations of schools and day care
 296 facilities attended by the children of such personnel are exempt
 297 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 298 if the personnel have made reasonable efforts to protect such
 299 information from being accessible through other means available
 300 to the public. This sub-subparagraph is subject to the Open
 301 Government Sunset Review Act in accordance with s. 119.15 and
 302 shall stand repealed on October 2, 2021, unless reviewed and
 303 saved from repeal through reenactment by the Legislature.

304 3. An agency that is the custodian of the information
 305 specified in subparagraph 2. and that is not the employer of the
 306 officer, employee, justice, judge, or other person specified in
 307 subparagraph 2. shall maintain the exempt status of that
 308 information only if the officer, employee, justice, judge, other
 309 person, or employing agency of the designated employee submits a
 310 written request for maintenance of the exemption to the
 311 custodial agency.

312 4. The exemptions in this paragraph apply to information
 313 held by an agency before, on, or after the effective date of the
 314 exemption.

315 5. Except as otherwise expressly provided in this
 316 paragraph, this paragraph is subject to the Open Government
 317 Sunset Review Act in accordance with s. 119.15, and shall stand
 318 repealed on October 2, 2017, unless reviewed and saved from
 319 repeal through reenactment by the Legislature.

320 Section 2. The Legislature finds that it is a public
 321 necessity to exempt from public records requirements the home
 322 addresses, telephone numbers, dates of birth, and photographs of

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323 current or former nonsworn investigative personnel of the Office
 324 of Financial Regulation's Bureau of Financial Investigations
 325 whose duties include the investigation of fraud, theft, other
 326 related criminal activities, or state regulatory requirement
 327 violations; the names, home addresses, telephone numbers, dates
 328 of birth, and places of employment of the spouses and children
 329 of such personnel; and the names and locations of schools and
 330 day care facilities attended by the children of such personnel.
 331 The efforts of such personnel can lead to arrests and
 332 prosecutions for crimes up to and including first degree felony
 333 violations and can also result in the loss of commerce and
 334 property, the assessment of monetary fines, or the suspension or
 335 loss of professional licenses. The office has documented
 336 multiple compelling instances of such personnel being threatened
 337 and fearing repercussions as a result of carrying out their
 338 duties. These threats have included weapons being brandished,
 339 verbal threats made to harm them or their family members,
 340 harassment, and intimidation. The Legislature finds that the
 341 release of such personal identifying and location information
 342 might place these nonsworn investigative personnel of the office
 343 and their family members in danger of physical and emotional
 344 harm from disgruntled individuals who have contentious reactions
 345 to actions taken by such personnel, or whose business or
 346 professional practices have come under the scrutiny of such
 347 personnel. The Legislature further finds that the harm that may
 348 result from the release of such personal identifying and
 349 location information outweighs any public benefit that may be
 350 derived from the disclosure of the information.

351 Section 3. This act shall take effect upon becoming a law.

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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)

4/13
Meeting Date

248
Bill Number (if applicable)

Topic Waive in Support of SB 248

Name Jamie Mongiovi

Job Title FL Office of Financial Regulation

Address _____
Street

Phone 850-559-7003

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 460

INTRODUCER: Senator Brandes

SUBJECT: Personal Delivery Devices

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	Favorable
2.	Matiyow	Knudson	BI	Favorable
3.			RC	

I. Summary:

SB 460 authorizes the operation of personal delivery devices (PDDs) within county or municipal jurisdictions, unless prohibited by local ordinance. The bill allows local governments to adopt regulations for the safe operation of PDDs, prohibits PDD operation on the Florida Shared-Use Nonmotorized Trail Network, and requires a PDD operator to maintain specified insurance coverage. The bill also revises cross-references to conform to changes made in the act.

The bill takes effect July 1, 2017.

II. Present Situation:

Personal Delivery Devices

Personal delivery devices (PDDs) are low mass, low speed devices traveling on sidewalks using mapping, navigation, and obstacle avoidance technology. These devices are equipped with cameras and sensors and are monitored by a remote operator. PDDs are designed to be a low cost, low-emissions method of delivery.¹ PDDs are currently being tested in various communities in the United States and Europe. At least one other state, Virginia, has enacted legislation authorizing the use of PDDs on its sidewalks.²

Currently, Florida law does not contain any provisions regarding the operation of PDDs.

¹ Starship Technologies Frequently Asked Questions (on file with the Senate Committee on Banking and Insurance).

² <http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+HB2016ER+pdf> (last viewed March 28, 2017).

Federal Law Relating to Motorized Vehicles on Sidewalks

Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways funded in whole or in part with federal dollars³ except for maintenance purposes, snowmobiles when snow conditions and state or local regulations permit, motorized wheelchairs, electric bicycles when state or local regulations permit, and such other circumstances as the U.S. Department of Transportation secretary deems appropriate.

Sidewalk⁴ and Crosswalk⁵ Use in Florida

Florida law currently does not contain any provisions relating to the operation of a PDD but does contain provisions relating to other sidewalk and crosswalk uses. For example:

- Section 316.008(7), F.S., authorizes counties or municipalities to enact an ordinance permitting, controlling, or regulating the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law;
- Section 316.1945(1)(a), F.S., with certain exceptions, prohibits stopping, standing, or parking a vehicle on a sidewalk, a crosswalk, or a bicycle path; and
- Section 316.1995, F.S., with certain exceptions, prohibits driving any vehicle other than by human power on a bicycle path, sidewalk, or sidewalk area.

Florida Registration and Insurance Requirements

Similarly, Florida law currently does not contain any provisions relating specifically to registration of PDDs or required insurance to cover damages caused by their operation.

III. Effect of Proposed Changes:

The bill establishes a regulatory framework for PDD operations in the absence of a local prohibition. The bill authorizes local governmental entities to regulate PDD operations within their county or municipal jurisdictions so long as such regulation and operation are permissible under federal law.

³ Surface Transportation and Congestion Mitigation Program Funds and National Highway Performance program funds apportioned to the states may be used, respectively, for construction of pedestrian walkways and bicycle transportation facilities. 23 U.S.C. s. 217(a) and (b).

⁴ “Sidewalk” is defined in s. 316.003(70), F.S., to mean that portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

⁵ “Crosswalk” is defined in s. 316.003(15), F.S., to mean that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and, any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Section 1 of the bill amends s. 316.003, F.S., adding new subsections (51) and (52) to define the following terms:

- “Personal delivery device” means a motorized device for use primarily on sidewalks and crosswalks at a maximum speed of 10 miles per hour, which weighs 50 pounds or less excluding cargo, and which is capable of all of the following:
 - Transporting items with or without a PDD operator directly controlling the device;
 - Identifying and yielding to pedestrians, bicyclists, and other lawful user of public space;
 - Identifying and yielding to property;
 - Navigating public thoroughfares;
 - Interpreting traffic signals and signs at crosswalks; and
 - Directing a PDD operator to assume actual physical control over the navigation and control of the device and coming to an off-roadway controlled stop in the event an operator is unable to assume actual physical control. A PDD must have a plate or marker that identifies the name and contact information of the PDD operator.
- “Personal delivery device operator” means an entity or its agent that exercises direct physical control over the navigation system and operation of a PDD. The PDD operator is legally responsible for the navigation and operation of a PDD. The term does not include any person or entity that requests, or contracts for, the service of a PDD for transporting property. The term “agent” means a person charged by the entity with the responsibility of navigating and operating the device.

Section 2 amends s. 316.008(7), F.S., authorizing PDD operation within county or municipal jurisdictions when such use is permissible under federal law, unless a county or municipality enacts an ordinance to prohibit such operation. The bill expressly does not restrict a county or municipality from otherwise adopting regulations for the safe operation of a PDD. However, the bill prohibits PDD operation on the Florida Shared-Use Nonmotorized Trail Network.⁶

Section 3 creates s. 316.82, F.S., requiring a PDD operator to maintain an insurance policy that provides general liability coverage of at least \$100,000 for damages arising from the operation of a PDD.

Section 4 amends s. 320.02, F.S., providing that a PDD operator is not required to satisfy any other insurance requirements other than what is required in Section 3 of the bill.

Sections 5 – 8 amend ss. 316.2128(1), 316.545(2)(b), 316.613(2)(a), and 655.960, F.S., respectively, to revise cross-references to conform to changes made in the act.

Section 6 provides the bill take effect July 1, 2017.

⁶ Known as SUN Trail, the network is a component of the Florida Greenways and Trails System established in ch. 260, F.S. It “consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides *nonmotorized* transportation opportunities for bicyclists and pedestrians statewide between and within a wide range of points of origin and destinations...” Section 339.81, F.S. For additional details, a map, and a list of projects for Fiscal Year 2016-2017, see the Florida Department of Transportation website available at: <http://fdot.gov/info/CO/news/newsreleases/20161011-suntrailfunding.pdf>. (Last visited March 28, 2017).

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:

Delivery service companies, businesses engaged in the manufacture or sale of PDDs, or businesses engaged in providing PDD services may all experience an indeterminate positive fiscal impact.

Personal delivery device operators could face financial penalties for any violations under ch. 316, F.S.⁷

C. Government Sector Impact:

There could be indeterminate costs associated with any regulations approved by local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.003, 316.008, 316.82, 320.02, 316.2128, 316.545, 316.613, and 655.960.

⁷ Section 316.655, F.S.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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: WD	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (51) through (97) of section 316.003, Florida Statutes, are renumbered as subsections (53) through (99), respectively, present subsections (40), (55), and (95) of that section are amended, and new subsections (51) and (52) are added to that section, to read:

316.003 Definitions.—The following words and phrases, when



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used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, “motor vehicle” has the same meaning as provided in s. 320.01(1)(a).

(51) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Weighs less than 80 pounds, excluding cargo;

(c) Has a maximum speed of 10 miles per hour; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle.

(52) PERSONAL DELIVERY DEVICE OPERATOR.—An entity or its agent that exercises direct physical control over or monitoring of the navigation system and operation of a personal delivery device. For the purposes of this subsection, the term “agent” means a person charged by the entity with the responsibility of navigating and operating the personal delivery device. The term “personal delivery device operator” does not include an entity or person who requests the services of a personal delivery



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device for the purpose of transporting property or an entity or person who only arranges for and dispatches the requested services of a personal delivery device.

(57)~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (79) (b) ~~(77) (b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(97)~~(95)~~ VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices and devices used exclusively upon stationary rails or tracks.

Section 2. Subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7) (a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(b)1. Except as provided in subparagraph 2., a personal delivery device may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices.

2. A personal delivery device may not be operated on the



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Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 or components of the Florida Greenways and Trails System created under chapter 260.

Section 3. Section 316.2071, Florida Statutes, is created to read:

316.2071 Personal delivery devices.—

(1) Notwithstanding any provision of law to the contrary, a personal delivery device may operate on sidewalks and crosswalks, subject to s. 316.008(7)(b). A personal delivery device operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(2) A personal delivery device must:

(a) Obey all official traffic and pedestrian control signals and devices.

(b) Include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator.

(c) Be equipped with a braking system that, when active or engaged, enables the personal delivery device to come to a controlled stop.

(3) A personal delivery device may not:

(a) Operate on a public highway except to the extent necessary to cross a crosswalk.

(b) Operate on a sidewalk or crosswalk unless the personal delivery device operator is actively controlling or monitoring



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the navigation and operation of the personal delivery device.

(c) Transport hazardous materials as defined in s. 316.003.

(4) A personal delivery device operator must maintain an insurance policy, on behalf of itself and its agents, which provides general liability coverage of at least \$100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

Section 4. Paragraph (a) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

Section 5. Subsection (19) is added to section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(19) A personal delivery device as defined in s. 316.003 is not required to satisfy the registration and insurance requirements of this section.

Section 6. Subsection (1) of section 324.021, Florida Statutes, is amended to read:



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

(1) MOTOR VEHICLE.—Every self-propelled vehicle that ~~which~~ is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that ~~which~~ is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device as defined in s. 316.003, bicycle, or moped. However, the term “motor vehicle” does ~~shall~~ not include a any motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 7. Paragraph (a) of subsection (2) of section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility for property damage.—

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

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

1. A mobile home.



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

3. A school bus as defined in s. 1006.25.

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

5. A personal delivery device as defined in s. 316.003.

Section 8. Subsection (1) of section 316.2128, Florida Statutes, is amended to read:

316.2128 Operation of motorized scooters and miniature motorcycles; requirements for sales.—

(1) A person who engages in the business of, serves in the capacity of, or acts as a commercial seller of motorized scooters or miniature motorcycles in this state must prominently display at his or her place of business a notice that such vehicles are not legal to operate on public roads, may not be registered as motor vehicles, and may not be operated on sidewalks unless authorized by an ordinance enacted pursuant to s. 316.008(7)(a) ~~316.008(7)~~ or s. 316.212(8). The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this section must also be provided to a consumer prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle.

Section 9. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:



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316.545 Weight and load unlawful; special fuel and motor
fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license
plate or registration certificate of the commercial vehicle to
determine whether its gross weight is in compliance with the
declared gross vehicle weight. If its gross weight exceeds the
declared weight, the penalty shall be 5 cents per pound on the
difference between such weights. In those cases when the
commercial vehicle is being operated over the highways of the
state with an expired registration or with no registration from
this or any other jurisdiction or is not registered under the
applicable provisions of chapter 320, the penalty herein shall
apply on the basis of 5 cents per pound on that scaled weight
which exceeds 35,000 pounds on laden truck tractor-semitrailer
combinations or tandem trailer truck combinations, 10,000 pounds
on laden straight trucks or straight truck-trailer combinations,
or 10,000 pounds on any unladen commercial motor vehicle. A
driver of a commercial motor vehicle entering the state at a
designated port-of-entry location, as defined in s. 316.003
~~316.003(54)~~, or operating on designated routes to a port-of-
entry location, who obtains a temporary registration permit
shall be assessed a penalty limited to the difference between
its gross weight and the declared gross vehicle weight at 5
cents per pound. If the license plate or registration has not
been expired for more than 90 days, the penalty imposed under
this paragraph may not exceed \$1,000. In the case of special
mobile equipment, which qualifies for the license tax provided
for in s. 320.08(5)(b), being operated on the highways of the



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state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of \$75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 10. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~316.003(68)~~.

Section 11. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does



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not include any street or highway open to the use of the public,
as defined in s. 316.003(79)(a) or (b) ~~316.003(77)(a) or (b)~~,
including any adjacent sidewalk, as defined in s. 316.003.

Section 12. 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 personal delivery devices; amending
s. 316.003, F.S.; revising and providing definitions;
amending s. 316.008, F.S.; authorizing operation of
personal delivery devices within a county or
municipality under certain circumstances; providing
construction; providing exceptions; creating s.
316.2071, F.S.; providing requirements for the
operation of such devices; requiring specified
insurance coverage; amending ss. 320.01, 324.021, and
324.022, F.S.; excluding such devices from the
definition of the term "motor vehicle"; amending s.
320.02, F.S.; exempting such devices from certain
registration and insurance requirements; amending ss.
316.2128, 316.545, 316.613, and 655.960, F.S.;
conforming cross-references; providing an effective
date.

By Senator Brandes

24-00306B-17

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A bill to be entitled

An act relating to personal delivery devices; amending s. 316.003, F.S.; defining the terms "personal delivery device," "personal delivery device operator," and "agent"; conforming a cross-reference; amending s. 316.008, F.S.; authorizing the operation of personal delivery devices within county or municipal jurisdictions under certain circumstances; providing for construction; prohibiting the operation of personal delivery devices on the Florida Shared-Use Nonmotorized Trail Network; creating s. 316.82, F.S.; requiring a personal delivery device operator to maintain an insurance policy that provides general liability coverage of at least a specified amount for damages arising from the operation of a personal delivery device; amending s. 320.02, F.S.; exempting personal delivery devices from certain registration and insurance requirements; requiring a personal delivery device operator to maintain a specified insurance policy; amending ss. 316.2128, 316.545, 316.613, and 655.960, F.S.; conforming provisions to changes made by the act; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (51) through (97) of section 316.003, Florida Statutes, are renumbered as subsections (53) through (99), respectively, present subsection (55) of that section is amended, and new subsections (51) and (52) are added to that section, to read:

316.003 Definitions.—The following words and phrases, when

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used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(51) PERSONAL DELIVERY DEVICE.—A motorized device for use primarily on sidewalks and crosswalks at a maximum speed of 10 miles per hour, which weighs 50 pounds or less excluding cargo, and which is capable of all of the following:

(a) Transporting items with or without a personal delivery device operator directly controlling the device.

(b) Identifying and yielding to pedestrians, bicyclists, and other lawful users of public space.

(c) Identifying and yielding to property.

(d) Navigating public thoroughfares.

(e) Interpreting traffic signals and signs at crosswalks.

(f) Directing a personal delivery device operator to assume actual physical control over the navigation and control of the device, and coming to an off-roadway controlled stop in the event an operator is unable to assume actual physical control of the device. A personal delivery device must include a plate or marker that identifies the name and contact information of the personal delivery device operator.

(52) PERSONAL DELIVERY DEVICE OPERATOR.—An entity or its agent that exercises direct physical control over the navigation system and operation of a personal delivery device. The personal delivery device operator is legally responsible for the navigation and operation of a personal delivery device. For the purposes of this subsection, the term "agent" means a person charged by the entity with the responsibility of navigating and operating the device. The term "personal delivery device

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operator" does not include any person or entity that requests, or contracts for, the services of a personal delivery device for the purpose of transporting property.

~~(57)(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (79)(b) ~~(77)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(b)1. Except as provided in subparagraph 2., the operation of personal delivery devices within county or municipal jurisdictions is authorized when such use is permissible under federal law, unless a county or municipality enacts an ordinance to prohibit such operation. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices.

2. The operation of personal delivery devices on the Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 is prohibited.

Section 3. Section 316.82, Florida Statutes, is created to

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read:

316.82 Personal delivery device operators; insurance requirement.—A personal delivery device operator as defined in s. 316.003 shall maintain an insurance policy that provides general liability coverage of at least \$100,000 for damages arising from the operation of a personal delivery device.

Section 4. Subsection (19) is added to section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(19) A personal delivery device as defined in s. 316.003 is not required to satisfy the registration and insurance requirements of this section, except that a personal delivery device operator must maintain an insurance policy as provided in s. 316.82.

Section 5. Subsection (1) of section 316.2128, Florida Statutes, is amended to read:

316.2128 Operation of motorized scooters and miniature motorcycles; requirements for sales.—

(1) A person who engages in the business of, serves in the capacity of, or acts as a commercial seller of motorized scooters or miniature motorcycles in this state must prominently display at his or her place of business a notice that such vehicles are not legal to operate on public roads, may not be registered as motor vehicles, and may not be operated on sidewalks unless authorized by an ordinance enacted pursuant to s. 316.008(7)(a) or s. 316.212(8). The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this

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section must also be provided to a consumer prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle.

Section 6. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle to determine whether its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A driver of a commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003 ~~s. 316.003(54)~~, or operating on designated routes to a port-of-entry location, who obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5

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cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed \$1,000. In the case of special mobile equipment, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of \$75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 7. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~s. 316.003(68)~~.

Section 8. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

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178 655.960 Definitions; ss. 655.960-655.965.—As used in this
179 section and ss. 655.961-655.965, unless the context otherwise
180 requires:

181 (1) "Access area" means any paved walkway or sidewalk which
182 is within 50 feet of any automated teller machine. The term does
183 not include any street or highway open to the use of the public,
184 as defined in s. 316.003(79)(a) ~~s. 316.003(77)(a)~~ or (b),
185 including any adjacent sidewalk, as defined in s. 316.003.

186 Section 9. 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)

4-3-17

Meeting Date

460

Bill Number (if applicable)

Topic Personal Delivery Devices

Name Megan Sirjane-Samples

Job Title Legislative Advocate

Address P.O. Box 1757
Street

Tallahassee, Florida 32302
City State Zip

Phone 561-352-3388

Email Msirjanesamples@flcities.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17
Meeting Date

460
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Leslie Dugh

Job Title _____

Address 105 E College Ave
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Starship Technologies

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

The Florida Senate
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 580

INTRODUCER: Senators Garcia and Mayfield

SUBJECT: Insurance Administrators

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.			HP	
3.			AP	

I. Summary:

SB 580 amends the Insurance Code to require the licensure and regulation of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR) as insurance administrators or third party administrators. A PBM contracts with a health plan or employer to administer or manage prescription drug benefits, which includes negotiating drug prices with pharmacies and drug manufacturers on behalf of health plans. In addition, a PBM may perform other administrative, clinical, and cost containment services, and process drug claims for the health plans. The bill requires the OIR to conduct quarterly audits of each PBM to determine compliance with ss. 465.1862, F.S., and 465.1865, F.S. The bill authorizes the OIR to impose administrative fines, and to suspend or revoke a certificate of authority of a PBM for violations of ss. 465.1862, F.S., and 465.1865, F.S.

The OIR will incur an estimated fiscal impact of \$550,000 to implement the provisions of the bill.

II. Present Situation:

Prescription Drug Cost Containment

In 2014, spending on retail prescription drugs in the United States was approximately \$298 billion.¹ In 2015, total retail prescription drug spending increased by 9 percent, reaching \$325 billion. The significant growth in 2015 was attributed to certain cost drivers, such as, spending on new drugs, price growth for existing brand-name drugs, increased spending on generics, and a decrease in the number of expensive drugs whose patents have expired.²

¹ See HEALTH AFFAIRS 36, No. 1 (2017):166-176.

² *Id.*

Due to increasing health care expenditures, public and private employers and insurers continue to look for cost containment methods, including the reduction of prescription drug costs. Many employer-sponsored health plans and insurers contract with pharmacy benefit managers (PBMs). While PBMs provide pharmacy claims processing and mail-order pharmacy services to their customers, many provide additional services, including rebate negotiations with drug manufacturers, development of pharmacy networks, formulary management, prospective and retrospective drug utilization reviews, generic drug substitutions, and disease management programs. The PBM generally manages the list of preferred drug products (formulary) for each of its plan sponsors. The decision of plan sponsors to use PBMs to control pharmacy benefit costs, however, can shift business away from retail pharmacies.

Currently, the six largest PBMs represent over 90 percent of the market.³ These companies are Express Scripts (29 percent), CVS Health (24 percent), UnitedHealth and Catamaran (22 percent), Prime (6 Percent), Humana (6 percent), Medimpact (5 percent), and others (7 percent).

Pharmacy Benefit Managers and Pharmacies

MAC Pricing List (Maximum Allowable Cost)

Contracts between a PBM and health plan sponsors specify how much the health plan sponsors will pay PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price (AWP)⁴ for brand-name drugs and at a MAC⁵ for generic drugs (and sometimes brand drugs that have generic versions), plus a dispensing fee. The MAC represents the upper limit price that a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands). A MAC pricing list creates a standard reimbursement amount for identical products. A MAC pricing list is a common cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profit margins, and other factors.

The purpose of the MAC pricing list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price in the marketplace. If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or in some instances may lose money on that specific purchase. If a pharmacy purchases generic drugs at a more favorable price, they will be more likely to make a profit.

Federal Pharmacy Benefits Managers Transparency Requirements

On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation

³ Trefis Team, *Insurance Companies Start to Bring PBM In-House: CVS Health's PBM Business Could Be Under Threat*, Forbes (Jul. 28, 2015) <https://www.forbes.com/sites/greatspeculations/2015/07/28/insurance-companies-start-to-bring-pbm-in-house-cvs-healths-pbm-business-could-be-under-threat/#3177b45f8b7c> (last viewed Mar. 30, 2017).

⁴ AWP is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies and others, such as hospitals.

⁵ MAC is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.

Act of 2010, amending PPACA. The law⁶ requires Medicare Part D plans and qualified health plan issuers who have their own PBM or contract with a PBM to report to the U.S. Department of Health and Human Services (HHS) aggregate information about rebates, discounts, or price concessions that are passed through to the plan sponsor or retained by the PBM. In addition, the plans must report the difference between the amount the plan pays the PBM and the amount that the PBM pays its suppliers (spread pricing). The reported information is confidential, subject to certain limited exceptions.

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.⁷ 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.⁸

Insurance Administrators

An administrator,⁹ also known as a third party administrator or TPA, must be licensed by the Office of Insurance Regulation (OIR). Third party administrators provide various administrative services for life and health insurers, health maintenance organizations (HMOs), self-insurance programs, and other types of insurers. Some of the services provided by TPAs include soliciting and making effective insurance coverage, collecting premiums, and adjusting and settling claims.

Administrators are subject to various regulatory requirements under ss. 626.88 - 626.894, F.S. For example, an administrator must make its books and records available to the OIR for examination, audit, and inspection and must maintain its business records for 5 years.¹⁰ Administrators are also required to file annual, audited financial statements with the OIR.¹¹ Administrators must have a written agreement with an insurer containing specified provisions.¹²

The insurance company, and not the administrator, must be responsible for determining the benefits, rates underwriting criteria, and claims payment procedures.¹³ A payment to the administrator of any premiums on behalf of the insured are deemed to have been received by the insurer and all premiums collected by an administrator on behalf of an insurer must be held by the administrator in a fiduciary capacity. If an administrator is collecting premiums for more than one insurer, the administrator must keep records clearly recording each insurer's accounts. The administrator law requires that a person who provides billing and collection services to HMOs on behalf of health care providers must comply with s. 641.3155, F.S., the prompt payment statute.

⁶ 42 U.S.C. s. 1320b-23.

⁷ Section 20.121(3)(a), F.S.

⁸ Section 641.21(1), F.S.

⁹ Section 626.88, F.S.

¹⁰ Section 626.884, F.S.

¹¹ Section 626.89, F.S.

¹² Section 626.882, F.S.

¹³ Sections 626.8817 and 626.882, F.S.

State Regulation of Pharmacies and Pharmacy Benefit Management Companies

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (act) in ch. 465, F.S. The Board of Pharmacy (board), created under the Department of Health (DOH), adopts rules to implement provisions of the act and takes other actions according to duties conferred on it by the act.¹⁴ Each pharmacy is subject to inspection by the DOH and disciplined for violations of applicable laws relating to a pharmacy.¹⁵

Section 465.1862, F.S., provides that in a contract between PBMs and pharmacies, the PBM must update the maximum allowable cost (MAC) at least every 7 days and maintain a process that will eliminate drugs from MAC lists or modify drug prices to remain consistent with changes in pricing data used in formulating MAC prices and product availability.

Further, s. 465.1885, F.S., establishes the rights of a pharmacy when it is audited by a managed care plan, insurer, third-party payor, PBM, or an entity that represents companies or groups. These rights include:

- To have at least 7 days prior notice of each initial on-site audit with some exceptions;
 - To have an on-site audit scheduled after the first 3 days of the month;
 - To limit the audit period to 24 months after the date a claim is submitted to or adjudicated by the entity;
 - To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
 - To use the written and verifiable records of a hospital, physician, or other authorized practitioner to validate the pharmacy records in accordance with state and federal law;
 - To be reimbursed for a claim that was retroactively denied for a clerical, typographical, scrivener's, or computer error, if the prescription was properly dispensed, unless the pharmacy has a pattern of such errors or fraudulent billing is alleged or the error results in actual financial loss to the entity;
 - To receive the preliminary audit report within 120 days after the audit is concluded and to receive the final audit report within 6 months after receiving the preliminary report;
 - To have 10 business days after the preliminary audit report is delivered to produce documentation to address a discrepancy or audit finding; and
 - To have recoupment or penalties based on actual overpayments, not extrapolation.
- The rights do not apply to audits that are based on a suspicion of fraud or wilful misrepresentation; audits of claims paid for by federally-funded programs; or concurrent reviews or desk audits that occur within 3 business days after transmission where no chargeback or recoupment is demanded.

Although PBMs are not subject to licensure in Florida, PBMs may obtain accreditation from various independent, external organizations that determine if certain national standards are being met. Some states, such as Connecticut, Georgia, Kansas, Kentucky, Louisiana, Maryland, New Mexico, and South Dakota, require PBMs to either register with state insurance regulators or be licensed as third-party administrators.¹⁶

¹⁴ Sections 465.005 and 465.022, F.S.

¹⁵ Sections 465.015 and 465.016, F.S.

¹⁶ Joanne Wojcik, *States Try to Regulate Pharmacy Benefit Managers*, Business Insurance, August 22, 2010, available at <http://www.businessinsurance.com/article/20100822/ISSUE07/308229997> and Steven Imber, *Pharmacy Benefit Manager*

III. Effect of Proposed Changes:

Section 1 revises the definition of an “administrator,” to include PBMs, thereby requiring PBMs to be licensed and regulated by the OIR as a TPA.

Section 2 requires the OIR to conduct quarterly audits of each PBM, who holds a certificate of authority to act as an administrator, to determine whether the PBM is complying with the provisions of s. 465.182, F.S.

Section 3 provides that a violation of s. 465.1982, F.S., or s. 465.1885, F.S., is grounds for suspension or revocation of the certificate of authority of a PBM.

Section 4 authorizes the OIR to impose an administrative fine upon an administrator for a violation of s. 465.1862, F.S., or s. 465.1865, F.S., in an amount not to exceed \$5,000 for each violation and up to an aggregate amount of \$25,000 for all knowing and willful violations arising out of the same action.

Section 5 requires that, within 180 days after the effective date of this act, the OIR may not penalize a PBM, as defined in s. 465.1862(1), F.S., for operating as an administrator if the PBM applies for a certificate of authority within 90 days after the effective date of this act and is issued such certificate of authority within 180 days after the effective date of this act.

Section 6 directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” wherever it occurs in this act with the date this act becomes a law.

Section 7 provides the act takes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The PBMs will incur additional expenses associated with obtaining a license as an administrator with the OIR and the costs of quarterly audits incurred by the OIR. The PBMs would also be required to file annual reports and audited financial statements with the OIR.

C. Government Sector Impact:

The implementation of the bill may impose a significant additional workload on the OIR staff due to the initial applications process, quarterly audits, and review of annual reports.¹⁷ A preliminary survey indicated that there are approximately 36 PBMs that may be subject to licensure in Florida.

The OIR estimates the fiscal impact of the bill would be approximately \$550,000. This estimate includes additional staffing of one actuary, one pharmacist, and two analysts.

VI. Technical Deficiencies:

The bill requires the OIR to audit licensed PBMs to determine compliance with s. 465.1862, F.S., which requires contracts between a PBM and pharmacy to contain certain contract provisions. However, the audit does not require the OIR to determine if the PBM is actually complying with the contractual provisions.

The bill requires the OIR to determine the PBM's compliance with s. 465.1885, F.S., relating to pharmacy rights during an audit by a managed care company, an insurance company, a third-party payor, a PBM, or other entity. It is unclear whether the OIR would have access to records of the audited pharmacy in order to verify whether the PBM's audit complied with the requirements of this section.

If the OIR will be regulating PBMs under the Insurance Code, the ch. 465, F.S., provisions may need to be transferred to the Insurance Code.

It is unclear what the intent of the term, "within 180 days after the effective date of this act" means on lines 185-186.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.88, 626.8805, 626.891, and 626.894.

¹⁷ Office of Insurance Regulation, *SB 580 Analysis* (Feb. 10, 2017) (on file with Senate Banking and Insurance Committee1).

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

36-00709-17

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A bill to be entitled

An act relating to insurance administrators; amending s. 626.88, F.S.; redefining the term "administrator" to include a pharmacy benefits manager; amending s. 626.8805, F.S.; requiring the Office of Insurance Regulation to conduct quarterly audits, for a certain purpose, of pharmacy benefits managers that hold certificates of authority to act as administrators; amending ss. 626.891 and 626.894, F.S.; adding violations of certain provisions of the Florida Pharmacy Act as grounds for the office's suspension or revocation of an administrator's certificate of authority or imposition of a fine, respectively; prohibiting the office, within a specified timeframe, from penalizing a pharmacy benefits manager for operating as an administrator if the pharmacy benefits manager meets certain conditions; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (1) of section 626.88, Florida Statutes, is amended to read:

626.88 Definitions.—For the purposes of this part, the term:

(1) "Administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other

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expenses described in s. 624.33(1); ~~or~~ any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers; or a pharmacy benefits manager as defined in s. 465.1862(1). The term does not include the following persons, other than any of the following persons:

(a) An employer or wholly owned direct or indirect subsidiary of an employer, on behalf of such employer's employees or the employees of one or more subsidiary or affiliated corporations of such employer.

(b) A union on behalf of its members.

(c) An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

(d) A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

(e) An entity that is affiliated with an insurer and that only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is

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responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

(f) A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

(g) An insurance agent licensed in this state whose activities are limited exclusively to the sale of insurance.

(h) A person licensed as a managing general agent in this state whose activities are limited exclusively to the scope of activities conveyed under such license.

(i) An adjuster licensed in this state whose activities are limited to the adjustment of claims.

(j) A creditor on behalf of such creditor's debtors with respect to insurance covering a debt between the creditor and its debtors.

(k) A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. s. 186.

(l) A trust exempt from taxation under s. 501(a) of the Internal Revenue Code, a trust satisfying the requirements of ss. 624.438 and 624.439, or any governmental trust as defined in s. 624.33(3), and the trustees and employees acting pursuant to

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such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of s. 401(f) of the Internal Revenue Code.

(m) A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

(n) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

(o) A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage.

(p) A person approved by the department who administers only self-insured workers' compensation plans.

(q) A service company or service agent and its employees, authorized in accordance with ss. 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

(r) Any provider or group practice, as defined in s. 456.053, providing services under the scope of the license of the provider or the member of the group practice.

(s) Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and

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providing services under the scope of its license.

(t) A corporation not for profit whose membership consists entirely of local governmental units authorized to enter into risk management consortiums under s. 112.08.

A person who provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers shall comply with ~~the provisions of~~ ss. 627.6131, 641.3155, and 641.51(4).

Section 2. Present subsection (6) of section 626.8805, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

626.8805 Certificate of authority to act as administrator.—

(6) The office shall conduct quarterly audits of each pharmacy benefits manager who holds a certificate of authority to act as an administrator under this part for the purpose of determining whether the pharmacy benefits manager violated any provision of s. 465.1862.

Section 3. Subsection (2) of section 626.891, Florida Statutes, is amended to read:

626.891 Grounds for suspension or revocation of certificate of authority.—

(2) The office may, in its discretion, suspend or revoke the certificate of authority of an administrator if it finds that the administrator:

(a) Has violated any lawful rule or order of the commission or office, or any provision of this chapter, s. 465.1862, or s. 465.1885;

(b) Has refused to be examined or to produce its accounts,

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records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to such examination, when required by the office;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, compelled insured persons to accept less than the amount due them or to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

(d) Is or was affiliated with and under the same general management or interlocking directorate or ownership as another administrator which transacts business in this state without having a certificate of authority;

(e) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the office;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony relating to the business of insurance or insurance administration in this state or in any other state without regard to whether adjudication was withheld; or

(g) Is under suspension or revocation in another state.

Section 4. Subsection (3) of section 626.894, Florida Statutes, is amended to read:

626.894 Administrative fine in lieu of suspension or revocation.—

(3) With respect to any knowing and willful violation of a lawful order or rule of the office or commission, ~~or~~ a provision

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of this part, s. 465.1862, or s. 465.1885, the office may impose
a fine upon the administrator in an amount not to exceed \$5,000
for each such violation. In no event may such fine exceed an
aggregate amount of \$25,000 for all knowing and willful
violations arising out of the same action. In addition to such
fine, the administrator shall make restitution when due in
accordance with the provisions of subsection (2).

Section 5. Within 180 days after the effective date of this
act, the Office of Insurance Regulation may not penalize a
pharmacy benefits manager, as defined in s. 465.1862(1), Florida
Statutes, for operating as an administrator if the pharmacy
benefits manager applies for a certificate of authority within
90 days after the effective date of this act and is issued such
certificate of authority within 180 days after the effective
date of this act.

Section 6. The Division of Law Revision and Information is
directed to replace the phrase "the effective date of this act"
wherever it occurs in this act with the date this act becomes a
law.

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)

4/13/17

Meeting Date

580

Bill Number (if applicable)

Topic

Insurance Administrators

Amendment Barcode (if applicable)

Name

Joy Ryan

Job Title

Address

325 W. College Avenue

Phone

850-425-4000

Street

Tallahassee

FL

Email

joy@mcenanlawfirm.com

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Prime Therapeutics

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

4-3-2017
Meeting Date

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

SB 580
Bill Number (if applicable)

Topic Insurance Administrators

Amendment Barcode (if applicable)

Name Benjamin Benoit

Job Title Pharmacist

Address 10720 State Road 54 STE 103 Phone (727) 375-2502
Street
Trinity, FL 34655 City State Zip
Email 1939@Medicineshoppe.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Medicine Shoppe Trinity

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)

4/3/17

Meeting Date

SB 580

Bill Number (if applicable)

Topic OIR Regulation of PBMs

Amendment Barcode (if applicable)

Name Larry Gonzalez

Job Title General Counsel

Address 223 S. Gadsden St

Phone 570-6307

Street

Tallahassee

City

FL

State

32301

Zip

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/CS/SB 680

INTRODUCER: Banking and Insurance Committee; Judiciary Committee; Senators Baxley and Garcia

SUBJECT: Bail Bonds

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.	Matiyow	Knudson	BI	Fav/CS
3.			CJ	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Licensure Requirement

CS/CS/SB 680 prohibits any person not a licensed bail bond agent pursuant to ch. 648, F.S., corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash bail bond from using the term “bail” in any advertisements or printed materials. Such advertising materials must disclose that the services do not facilitate a surety bail bond.

Discharge of a Forfeiture

Current law requires a court to discharge the forfeiture of a bail bond within 60 days after the court determines that at the scheduled day and time of the appearance, the defendant did not appear because of circumstances beyond his or her control or because the defendant was adjudicated insane and confined in an institution or hospital or incarcerated.

This bill requires a court to discharge the forfeiture of a bail bond in additional circumstances. Specifically, the bond must be discharged if within 60 days after the scheduled appearance, the defendant is confined in an immigration detention facility, is deported, or is deceased. Further, the bond must be discharged if the defendant becomes incarcerated and the state refuses to seek the extradition of the defendant within 30 days after a surety agent’s request if the surety agrees to pay all costs and expenses to return the defendant.

The bill also revises an existing ground in which a court is required to discharge a forfeiture of a bail bond. Under existing law, the forfeiture must be discharged or the proceeds remitted if the defendant surrenders or is arrested. Under the bill, a forfeiture must be discharged only if the surrender or arrest occurs within 60 days after the required court appearance and if a hold is placed on the defendant to return him or her to the court.

Remission of a Forfeiture

Current law also authorizes a bail bond agent to seek the remission or return of all or a portion of the proceeds of a bail bond which has been forfeited to the court. Grounds to seek a remission occur when a defendant surrenders or is apprehended within a certain number of days after forfeiture. Current law grants the court discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on the maximum percentages available under current law.

Cancellation of a Bond

Current law requires the court to order a bail bond cancelled within 10 business days after the conditions of the bond are met. This bill provides that the conditions of the bond are met if the bond has not been declared forfeited within the 36 months since the original bond was posted.

II. Present Situation:

Bail

Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S. Bail requires an arrestee to pay a set sum of money to the court to be released from jail. As an alternative to posting the entire bail amount, a defendant may use a criminal surety bail bond executed by a bail bond agent. A bail bond agent is generally enlisted by paying a nonrefundable fee to the bond agent equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond. This contract acts as an insurance policy against the risk that the defendant will not abide by the conditions of his or her release. Bail may also be paid in cash. Cash payments for bail are often times facilitated through a third party vendor who charges a fee to process a credit card or transmit cash for the payment of bail.

Determination of Pretrial Release

Setting bail for a defendant at an initial appearance is a way for the court to ensure the presence of the defendant at subsequent court hearings without keeping him or her incarcerated.¹ This is consistent with the requirements of the Florida Constitution which provide a constitutional right to pretrial release in Art. I, s. 14:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a

¹ Section 903.011(1), F.S.

crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

However, the court must balance the constitutional right to pretrial release with other considerations:

If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

Therefore, in determining whether to release a defendant on bail and the actual amount of bail, the court must include in its considerations:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear at court proceedings;
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond, and any connection to criminal activity;
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The nature and probability of intimidation and danger to victims;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release; and
- Any other factors relevant to the court.³

At the time of determining bail, the court will establish conditions of pretrial release. The court must impose as a condition of pretrial release that the defendant refrain from criminal activity. Also, the court may issue an order of no contact, prohibiting the defendant from having any contact with the victim.⁴

If the court includes a monetary requirement of bail in its order of pretrial release, a registered bail bond agent⁵ may satisfy the bail requirement through the posting of a criminal surety bail bond.⁶

² Art. I, s. 14, FLA. CONST. Section 903.046(1), F.S., provides that the purpose of a bail determination is to ensure the appearance of the criminal defendant at subsequent proceedings, while protecting the community from unreasonable danger from the defendant.

³ Section 903.046(2), F.S.

⁴ Section 903.047(1), F.S.

⁵ Section 903.045, F.S., provides, in part, "It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent ... shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond."

⁶ Section 903.011, F.S.

Qualifications as a Bail Bond Agent

To qualify as a surety, a bail bond agent must:

- Be at least 18 years old and possess a high school diploma or its equivalent;
- Meet citizen or legal alien requirements;
- Have certain ties to the state, including locating the business in the state;
- Provide at least three sworn letters of recommendation from residents of the counties in which the bail bond agent intends to operate;
- Not have been convicted of or plead guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by incarceration in prison; and
- Have passed any required examination.⁷

If the Department of Financial Services (DFS) finds that a person meets the conditions to serve as a bail bond agent, the DFS will issue a license to him or her.⁸ To operate in specific counties, a bail bond agent must then register with the sheriff's office and the clerk of the circuit court in the county in which he or she lives, and then apply to other counties, if desired.⁹

Forfeiture, Discharge, Remission, and Cancellation of a Bond

If a defendant on pretrial release fails to appear at a scheduled court appearance, any bond posted is forfeited.¹⁰ If the bond is forfeited, the clerk of the court will mail or electronically send a notice to the bail bond agent within 5 days after forfeiture. The bail bond agent must pay the forfeiture within 60 days of the date the notice was mailed or electronically sent.¹¹

However, the court will discharge a forfeiture within 60 days if the court determines that:

- It was impossible for the defendant to appear due to circumstances beyond the defendant's control;
- At the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital, or incarcerated;
- The defendant has surrendered or been arrested, provided that the delay has not compromised the ability of the state to prosecute the defendant.¹²

If the defendant is arrested and returned to the county of jurisdiction prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk must discharge the forfeiture of the bond. However, the bail bond agent must pay the costs and expenses incurred in returning the defendant to the county.¹³

If a court has ordered the forfeiture of a bond and the amount of the forfeiture has been paid to the clerk of court, a bail bond agent may still recoup some or all of the original bond through a remission. If the defendant surrenders or is apprehended within 90 days after forfeiture, the court must direct remission of up to 100 percent of a forfeiture if the bail bond agent apprehended and

⁷ Section 648.34(2), F.S.

⁸ Section 648.27(1), F.S.

⁹ Section 648.42, F.S.

¹⁰ Section 903.26(2)(b), F.S.

¹¹ Section 903.26(2)(a), F.S.

¹² Section 903.26(5), F.S.

¹³ Section 903.26(8), F.S.

surrendered the defendant or if the bail bond agent substantially procured the return of the defendant.¹⁴ Percentages of up to less than 100 percent of a forfeiture are provided beyond the 90 days after forfeiture, so that if the defendant surrenders or is returned to the county within:

- 180 days after forfeiture, up to 95 percent is remitted;
- 270 days after forfeiture, up to 90 percent is remitted;
- 1 year after forfeiture, up to 85 percent is remitted; or
- 2 years after forfeiture, up to 50 percent is remitted.¹⁵

The conditions of the bond are met at the time that a case is disposed of by a court entering an order of an adjudication of guilt or innocence, an acquittal, or a withholding of an adjudication of guilt. Within 10 business days after the conditions of a bond are met, or the forfeiture discharged or remitted, the court must order the bond cancelled.¹⁶

Funding of Clerks of Court

The clerks of court receive funding from a variety of sources. One funding source is the fine and forfeiture fund, which the clerks of the circuit court in each county are to establish for use in “performing court-related functions.”¹⁷ The fine and forfeiture fund also has many funding sources, one of which is the proceeds of forfeited bail bonds.¹⁸

III. Effect of Proposed Changes:

Payment of Bail

The bill prohibits any person not a licensed bail bond agent pursuant to ch. 648, F.S., corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash bail bond may from using the term “bail” in any advertisements or printed materials. Such advertisements or printed materials must disclose that the services do not facilitate a surety bail bond.

Discharge of a Forfeiture

This bill provides additional bases for a court to discharge or release a bail bond agent from the obligation to pay the amount of a forfeited bond to a court. Similarly, the bill provides additional bases for a bail bond agent to seek the remission or return of the proceeds of a forfeited bond from a court. The bill also subjects any person, corporation, or other entity that charges a fee to *facilitate* the release of a defendant awaiting trial through the posting of a cash or surety bail bond to the same licensure requirements as bail bond agents.

Current law requires a court to discharge a forfeiture within 60 days if the court determines that at the scheduled day and time of the appearance:

¹⁴ Section 903.28(2), F.S.

¹⁵ Section 903.28, F.S.

¹⁶ Section 903.31(1), F.S.

¹⁷ Section 142.01, F.S.

¹⁸ Section 142.01(1)(d), F.S.

- Circumstances beyond the defendant's control made it impossible for the defendant to appear;
- The defendant was adjudicated insane and confined in an institution or hospital;
- The defendant was incarcerated; or
- The defendant has surrendered or has been arrested and the delay has not compromised the ability of the state to properly prosecute the defendant.

This bill requires a court to consider the circumstances of the defendant not just on the original scheduled date to appear but also within 60 days after the scheduled appearance. The bill also provides that to qualify for a discharge based on the surrender or arrest of the defendant, surrender or arrest may take place at any county, state, or federal jail or prison, and upon a hold being placed to return the defendant to the county. However, these actions must take place within 60 days after the defendant's required court appearance.

In addition to the increased timeframe, the bill requires the court to order the discharge of a forfeiture if:

- The defendant was confined in a county, state, federal, or immigration detention facility, or was deported;
- The defendant is deceased;
- The defendant posted a new bond in the case; or
- The state is unwilling to seek extradition of a fugitive defendant within 30 days after a bail bond agent requests extradition, provided that the agent agrees to pay all costs and the expenses incurred to return the defendant to the county.

Remission of a Forfeiture

Current law also authorizes a bail bond agent to recoup a bond that has been forfeited through a remission, in instances in which a defendant surrenders or is apprehended within a certain number of days after forfeiture. The court, under current law, has discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on those fixed percentages in existing law. For example, where existing law provides that the court may direct remission of up to, but not more than, 95 percent of a forfeiture, the bill requires the remission of 95 percent of the forfeiture.

Cancellation of a Bond

Current law requires the court to order the bond cancelled within 10 business days after the conditions of a bond are met. This bill provides that the conditions of the bond have also been met if 36 months have passed since the defendant posted the original bond.

The bill also replaces references to a "breach" of a bond, with a "forfeiture" of a bond. By changing the references, courts will be precluded from ordering the forfeiture of a bond if a defendant breaches a condition of pretrial release other than the failure to appear at a criminal proceeding.

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.

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

None.

B. Private Sector Impact:

Bail bond and surety companies will financially benefit from this bill, due to the additional bases authorized for a discharge of a forfeiture, remission of fixed percentages of a forfeiture, and the cancellation of a bond if 36 months have passed from the original posting of the bond. In addition the licensing requirements for those who charge a fee or premium to facilitate the pretrial release of a defendant may reduce competition in the bail bond industry but may also provide other consumer protections.

C. Government Sector Impact:

To the extent that the bill reduces forfeitures of bail bonds or requires the remission of forfeited amounts, the bill may require the Legislature to provide additional funding to the clerks of court for their court-related functions.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear if businesses who charge a fee to process credit cards or transfer cash for the payment of bail currently fall under the licensure requirements of money transmitters²⁰ under ch. 560, F.S.

¹⁹ See s. 142.01(1)(d), F.S.

²⁰ A “money transmitter” is “a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill

Section 215.322, F.S., allows state agencies, the judicial branch, and units of local government, to accept credit cards, charge cards, debit cards, or electronic funds transfers in payment for goods and services. Additionally, section 215.322, F.S., allows state agencies, the judicial branch, and local governments may contract with financial institutions or other appropriate intermediaries to facilitate such payments. There appears to be no requirement that such entities contracted with must be licensed under ch. 560, F.S. However, such contracts must be approved by the Chief Financial Officer, who it would appear could choose to impose such a requirement, even though not expressly required in statute.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.045, 903.26, 903.28, and 903.31.

IX. Additional Information:

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

CS/CS by Banking and Insurance on April 3, 2017:

Prohibits any person not licensed pursuant to ch. 648, F.S., corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash bail bond, from using the term “bail” in any advertisements or printed materials. Such advertisements and printed materials must disclose their services do not facilitate a surety bail bond.

CS by Judiciary on March 22, 2017:

The CS provides that to qualify for a discharge of a forfeiture:

- Based on the surrender or arrest of the defendant, the surrender or arrest may be at any county, state, or federal jail or prison, upon a hold being placed to return the defendant to the county; or
- Based on a determination that the state is unwilling to extradite a fugitive defendant, the number of days after which the surety agent requests extradition is increased from 10 to 30 days, and the surety agent must pay all costs and expenses incurred to return the defendant, not just transportation costs.

- B. **Amendments:**

None.

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



751988

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 34 - 38
and insert:
proceedings for which the surety bond is posted. A person,
corporation, company, or other entity that charges a fee to
facilitate the release of an accused defendant from jail through
the posting of a cash bond may not use the term "bail" in any
advertisement for such services or in any of its printed
materials posted in a jail, and any such materials must include



751988

a disclaimer stating that the service is not to facilitate a
surety bail bond and otherwise fulfills all

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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

prohibiting a person or entity that charges a fee for
facilitating the release of a defendant through the
posting of a cash bond from using the term "bail" in
advertisements and printed materials posted in a jail;
requiring a certain disclaimer in such materials;
deleting a provision relating to



932932

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (751988)

Delete line 5
and insert:
proceedings for which the surety bond is posted. A person not
licensed under chapter 648, a



204770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with directory amendment)

Delete lines 111 - 116
and insert:

(7) The payment by a surety of a forfeiture under ~~the~~
~~provisions of~~ this law shall have the same effect on the bond as
payment of a judgment.

(8) If the defendant is arrested and returned to the

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



204770

11 And the directory clause is amended as follows:
12 Delete line 43
13 and insert:
14 Section 2. Subsections (2), (5), (7), and (8) of

By the Committee on Judiciary; and Senators Baxley and Garcia

590-02726-17

2017680c1

A bill to be entitled

An act relating to bail bonds; amending s. 903.045, F.S.; revising legislative intent concerning the obligations of a bail bond agent; revising the commitments and obligations of a bail bond agent; requiring that anyone charging a fee or premium to post a cash or surety bail bond be licensed under specified provisions; deleting a provision relating to circumstances that constitute a breach by the bail bond agent; amending s. 903.26, F.S.; revising the circumstances under which a surety bond deposited as bail must be forfeited; revising the circumstances that require a forfeiture to be discharged; amending s. 903.28, F.S.; revising the amount of forfeiture to be remitted under specified conditions; amending s. 903.31, F.S.; specifying that certain provisions concerning cancellation of a bond do not apply if the bond is forfeited within a specified period after it has been posted; providing that an original appearance bond does not guarantee placement in a court-ordered program; providing an effective date.

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

Section 1. Section 903.045, Florida Statutes, is amended to read:

903.045 Nature of criminal surety bail bonds.—It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent

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

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licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all ~~subsequent~~ criminal proceedings for which the surety bond was posted. A person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond must be licensed pursuant to chapter 648 and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.

Section 2. Subsections (2), (5), (6), (7), and (8) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.—

(2) (a) If there is a failure of the defendant to appear as required ~~breach of the bond~~, the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail or electronically transmit a notice to the surety agent and surety company within 5 days after the forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed or electronically transmitted on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing or electronic transmission was properly accomplished as indicated therein. If such mailing or electronic transmission was properly accomplished as

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

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evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such notice shall not constitute a defense to such forfeiture and shall not be grounds for discharge, remission, reduction, set aside, or continuance of such forfeiture. The forfeiture shall be paid within 60 days after ~~of~~ the date the notice was mailed or electronically transmitted.

(b) Failure of the defendant to appear at the time, date, and place of required appearance shall result in forfeiture of the bond. Such forfeiture shall be automatically entered by the clerk upon such failure to appear, and the clerk shall follow the procedures ~~outlined~~ in paragraph (a). However, the court may determine, in its discretion, in the interest of justice, that an appearance by the defendant on the same day as required does not warrant forfeiture of the bond; and the court may direct the clerk to set aside any such forfeiture which may have been entered. Any appearance by the defendant later than the required day constitutes forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the clerk.

(c) If there is a forfeiture breach of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent or surety company.

(5) The court shall discharge a forfeiture within 60 days upon:

(a) A determination that it was impossible for the defendant to appear as required or within 60 days after the date of the required appearance due to circumstances beyond the defendant's control. The potential adverse economic consequences of appearing as required may ~~shall~~ not be considered as

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constituting a ground for such a determination;

(b) A determination that, at the time of the required appearance or within 60 days after the date of the required appearance, the defendant was ~~adjudicated insane and~~ confined in an institution or hospital; ~~or~~ was confined in any county, state, federal, or immigration detention facility; was deported; or is deceased a jail or prison;

(c) Surrender or arrest of the defendant at the time of the required appearance or within 60 days after the date of the required appearance in any county, state, or federal jail or prison and upon a hold being placed to return the defendant to the jurisdiction of the court if the delay has not thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court; or

(d) A determination that the state is unwilling to seek extradition of the fugitive defendant within 30 days after a request by the surety agent to do so, and contingent upon the surety agent's consent to pay all costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond.

~~(6) The discharge of a forfeiture shall not be ordered for any reason other than as specified herein.~~

~~(6)(7)~~ The payment by a surety of a forfeiture under ~~the provisions of~~ this law shall have the same effect on the bond as payment of a judgment.

~~(7)(8)~~ If the defendant is arrested and returned to the

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county of jurisdiction of the court or has posted a new bond for
the case at issue before ~~prior to~~ judgment, the clerk, upon
 affirmation by the sheriff or the chief correctional officer,
 shall, without further hearing or order of the court, discharge
 the forfeiture of the bond. However, if the surety agent fails
 to pay the costs and expenses incurred in returning the
 defendant to the county of jurisdiction, the clerk shall not
 discharge the forfeiture of the bond. If the surety agent and
 the sheriff fail to agree on the amount of said costs, then the
 court, after notice to the sheriff and the state attorney, shall
 determine the amount of the costs.

Section 3. Subsections (2), (3), (4), (5), and (6) of
 section 903.28, Florida Statutes, are amended to read:

903.28 Remission of forfeiture; conditions.-

(2) If the defendant surrenders or is apprehended within 90
 days after forfeiture, the court, on motion at a hearing upon
 notice having been given to the clerk of the circuit court and
 the state attorney as required in subsection (8), shall direct
 remission of ~~up to, but not more than,~~ 100 percent of a
 forfeiture if the surety apprehended and surrendered the
 defendant or if the apprehension or surrender of the defendant
 was substantially procured or caused by the surety, or the
 surety has substantially attempted to procure or cause the
 apprehension or surrender of the defendant, and the delay has
 not thwarted the proper prosecution of the defendant. In
 addition, remission shall be granted when the surety did not
 substantially participate or attempt to participate in the
 apprehension or surrender of the defendant when the costs of
 returning the defendant to the jurisdiction of the court have

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been deducted from the remission and when the delay has not
 thwarted the proper prosecution of the defendant.

(3) If the defendant surrenders or is apprehended within
 180 days after forfeiture, the court, on motion at a hearing
 upon notice having been given to the clerk of the circuit court
 and the state attorney as required in subsection (8), shall
 direct remission of ~~up to, but not more than,~~ 95 percent of a
 forfeiture if the surety apprehended and surrendered the
 defendant or if the apprehension or surrender of the defendant
 was substantially procured or caused by the surety, or the
 surety has substantially attempted to procure or cause the
 apprehension or surrender of the defendant, and the delay has
 not thwarted the proper prosecution of the defendant. In
 addition, remission shall be granted when the surety did not
 substantially participate or attempt to participate in the
 apprehension or surrender of the defendant when the costs of
 returning the defendant to the jurisdiction of the court have
 been deducted from the remission and when the delay has not
 thwarted the proper prosecution of the defendant.

(4) If the defendant surrenders or is apprehended within
 270 days after forfeiture, the court, on motion at a hearing
 upon notice having been given to the clerk of the circuit court
 and the state attorney as required in subsection (8), shall
 direct remission of ~~up to, but not more than,~~ 90 percent of a
 forfeiture if the surety apprehended and surrendered the
 defendant or if the apprehension or surrender of the defendant
 was substantially procured or caused by the surety, or the
 surety has substantially attempted to procure or cause the
 apprehension or surrender of the defendant, and the delay has

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not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 85 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 50 percent of a

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forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

Section 4. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.—

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall mail or electronically furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence ~~or,~~ an acquittal, if a period of 36 months has passed since the original bond was posted, or a withholding of an adjudication of guilt shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited before the 36-month expiration.

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(2) The original appearance bond does not guarantee a deferred ~~sentence; sentences~~, appearance during or after a presentence investigation; ~~or~~ appearance during or after appeals; ~~or~~ conduct during or appearance after admission to a pretrial intervention program; placement in a court-ordered program, including a residential mental health facility; ~~or~~ payment of fines; ~~or~~ attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

(3) ~~If in any case where~~ no formal charges are ~~have been~~ brought against the defendant within 365 days after arrest, the court shall order the bond canceled unless good cause is shown by the state.

Section 5. 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)

4/3/17
Meeting Date

680
Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name Matthew Jones

Job Title Bail Agent

Address 312 Main St
Street

Phone 239-896-2811

Punta Gorda FL 33950
City State Zip

Email matthew@pfbailbonds.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Bail Bonds Industry

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/03/17

Meeting Date

680

Bill Number (if applicable)

Topic BAIL BONDS

Amendment Barcode (if applicable)

Name MICHAEL A. NEFZGER

Job Title LEGISLATIVE LIAISON

Address 424 S. CONGRESS

Phone 561-215-8192

Street

WEST PALM BCH FL 33406

City

State

Zip

Email MNEFZGER@PALMETTOSURETY

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PALMETTO SURETY INSURANCE

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)

4/3/17

Meeting Date

680

Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name Mia Spath Hodgson

Job Title Bail Agent

Address 916 S. Andrews Ave.

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Phone 954 868-1034

Fort Lauderdale Fl. 33316

City

State

Zip

Email mia@brandybailbonds.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ~~Bail Industry~~ Florida Bail Agents 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 April 2017
Meeting Date

680
Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name David Griffin

Job Title of Counsel

Address 301 S. Bronough St. Suite 600
Street

Phone 850-322-8856

Tall FL 32301
City State Zip

Email david.griffin@gray-robinson.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Government Processing 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 724

INTRODUCER: Banking and Insurance Committee; Judiciary Committee; and Senator Passidomo

SUBJECT: Estates

DATE: April 4, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Fav/CS
2. Billmeier	Knudson	BI	Fav/CS
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 724 modifies several sections of the Florida Probate Code relating to the “elective share”—that is, the 30 percent portion of a decedent’s estate that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent’s testamentary plan.

Current law does not include homestead property in the elective estate, the part of the property from which the surviving spouse can take 30 percent. The bill expressly includes the decedent’s protected homestead in the elective estate. For the purpose of this calculation, homestead is valued differently depending on the interest that the surviving spouse would have in the homestead. The bill provides that if the surviving spouse receives a full, outright (“fee simple”) interest, the homestead is valued at its fair market value as of the decedent’s death.

Current law allows the surviving spouse to take a life estate in the homestead or take undivided one-half interest in the homestead. The bill provides that if the surviving spouse elects to take a life estate in the homestead or if the surviving spouse elects to take a one-half interest in the homestead, the homestead is valued at one-half of its fair market value on the decedent’s date of death.

Current law authorizes an award of attorneys’ fees and costs only where an election is made or attempted in bad faith. The bill expands the prospect of recovering these fees and costs in two ways. First, the bill expands the types of actions in which fees and costs may be granted. Second, an award of fees and costs no longer must be predicated on bad faith.

The bill extends the time in which a surviving spouse may move for an extension to choose the elective share, expands the application of interest penalties for late payment by those who are liable to contribute to the elective share, and adds a clause designed to “save” trusts that would qualify as “elective share trusts” if not for a particular deficiency.

II. Present Situation:

Elective Share

The law affords people broad authority to determine what will happen to their assets when they die. To exercise this authority, people may use one or more of a host of available tools, perhaps the best-known of which is a will. Other tools include trusts, beneficiary designations on bank accounts and any number of other items, and life insurance policies.

However, the authority of a person to determine the destination of his or her property upon his or her death is subject to a host of limitations. One of these limitations, which applies to people who are married at the time of their death, is called the “elective share.” This provision of Florida law entitles a decedent’s spouse to elect to receive a certain percentage of the estate, *regardless of what a will or other testamentary instrument says*. This percentage is called the “elective share.”

The elective share is 30 percent of the net value of the “elective estate.” Section 732.2035, F.S., lists the decedent’s assets that are included in the elective estate. These assets include the probate estate, as well as several categories of assets that do not pass through probate.

Homestead Not Included in Elective Estate

In Florida, the basic concept of a homestead is a home that is protected from most creditors and actions of courts. Homestead includes \$2,000 of personal property, but its main component is real property. Homestead property is specifically excluded from the elective estate.¹ As such, when calculating the elective estate, the value of the homestead is not included.

The Florida Constitution provides that the “homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner’s spouse if there be no minor child.”² A purpose of this provision is to prevent a surviving spouse from losing a home when a spouse dies. Section 732.401, F.S., implements this provision. It provides that a homestead is not devised according to law, the homestead is passed on as if the decedent died without a will. If a decedent is survived by a spouse and one or more descendants, the spouse can take a life estate in the homestead and the other descendants take per stirpes.³ The surviving spouse can opt to take an undivided one-half interest in the homestead in lieu of the life estate.⁴

¹ Section 732.2045(1)(i), F.S.

² Art. X, s. 4(c), Fla. Const.

³ Section 732.401(1), F.S.

⁴ Section 732.401(2), F.S.

Deadlines to Choose the Elective Share

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration or 2 years after the death of the surviving spouse.⁵ Within these timeframes, the surviving spouse may petition the court for good cause for an extension of time to make the election.⁶

Contribution to the Elective Share

The elective share is available to a surviving spouse, even to one whom the decedent purposefully did not provide for in the decedent's testamentary plan. In a case in which a surviving spouse is not left assets equal to at least 30 percent of the elective estate in the testamentary plan, the amounts due the surviving spouse will need to come from assets that may be allocated to other persons. The statutes require this money to be paid from a progression of different asset types until the elective share is satisfied. These classes of assets are as follows:⁷

Class 1.—The decedent's probate estate and revocable trusts.

Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(2), (3), or (6), F.S. and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(5) and (7), F.S.

Class 3.—Recipients of all other property interests, other than protected charitable interests, included in the elective estate.

For purposes of [these classes], a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.⁸

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as "direct recipients,"⁹ are liable to contribute to satisfying the elective share.¹⁰ These persons may have received property, rather than money, from the decedent's estate.

Instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to

⁵ Section 732.2135(1), F.S.

⁶ Section 732.2135(2), F.S.

⁷ Section 732.2075(2), F.S.

⁸ As an example, assume these simplistic facts: a man dies with two adult children, \$1,000,000 probate assets, no house, and a will that leaves his entire estate to his two children in equal parts. Also, assume that the assets are elective share assets, and that the wife files for her elective share. Here, the children, who would otherwise get \$500,000 each, will each need to contribute \$150,000 to satisfy the wife's elective share.

⁹ "Direct recipient" is defined to include "the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . . , by right of survivorship, or by beneficiary designation under a governing instrument." Section 732.2025(1), F.S.

¹⁰ Section 732.2085(1), F.S.

any property interest received before the date of the court's order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before the date the spouse's election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.¹¹

Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,¹² no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe. Accordingly, the balance is then reapportioned among the other members of the class.¹³

Ultimately, it is the duty of the court to determine the elective share and all necessary contribution. And those who owe a contribution must pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order.

Elective Share Trusts

The law grants a decedent's estate several options as to the form of the transfer of an elective share. One option, of course, is to give the surviving spouse assets outright. But, in lieu of giving assets to the spouse outright, the law permits the decedent's estate to satisfy the elective share by merely placing assets into a trust for the benefit of the surviving spouse—an elective share trust. And the law seeks to ensure that the trust *actually* benefits the surviving spouse.

Accordingly, by definition, an elective share trust must authorize the surviving spouse to require the trustee either to make non-productive trust property productive or to convert it within a reasonable time.¹⁴

But even if a trust was intended to be an elective share trust and contains the other two elements of an elective share trust, the law contains no mechanism to allow the surviving spouse to nonetheless convert non-productive trust assets, thus “saving” the trust from failing the test. This type of savings mechanism exists in Florida law for a marital deduction trust.¹⁵

Attorney's Fees and Costs for Bad-Faith Elections

If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.¹⁶

III. Effect of Proposed Changes:

Homestead is Included in the Elective Estate

A homestead as provided in Article X, s. 4 of the State Constitution is designed to protect one's home from most creditors and court actions. Homestead includes \$2,000 of personal property, but its main component is real property.

¹¹ Section 732.2085(2), F.S.

¹² That is, in the manner described in s. 732.2085(2)(b), F.S.

¹³ Section 732.2085(3)(a), F.S.

¹⁴ Section 732.2025(2), F.S.

¹⁵ Section 738.606, F.S.

¹⁶ Section 732.2135, F.S.

Under current law, homestead property is specifically excluded from the elective estate.¹⁷ As such, the value of the homestead is not factored in when calculation of the elective estate. The bill expressly includes homestead property in the elective estate, unless the surviving spouse has waived his or her homestead rights.

Valuation of Homestead for the Purpose of Valuation of the Elective Estate

The bill provides that if the homestead passes to the surviving spouse in fee simple, the homestead is valued at its fair market value¹⁸ on the date of the decedent's death.

If the surviving spouse takes a life estate or an undivided one-half interest in the homestead,¹⁹ the homestead is valued at one-half of its fair market value on the decedent's death date.

Deadline to Choose the Elective Share

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration, or 2 years after the death of the surviving spouse.²⁰ Under current law, the surviving spouse may, *within these timeframes*, petition the court for good cause for an extension of time to make the election.²¹ The bill modifies this scheme.

The bill maintains that the surviving spouse may move for an extension with the same timeframes, and the bill maintains the 2-year absolute outer limit. However, the bill also permits a surviving spouse to move for an extension within 40 days after the termination of the proceedings specified in the bill.

Contribution to the Elective Share

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as "direct recipients,"²² are liable to contribute to satisfying the elective share, both under current law and under the bill.²³ These persons may have received property, rather than money, from the decedent's estate.

Under the bill, as under current law, instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to any property interest received before the

¹⁷ Section 732.2045(1)(i), F.S.

¹⁸ The bill provides that "fair market value shall be calculated by deducting from the total value of the property all mortgages, liens, and security interests to which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate."

¹⁹ Sections 732.401(1) and 732.401(2), F.S.

²⁰ Section 732.2135(1), F.S.

²¹ Section 732.2135(2), F.S.

²² "Direct recipient" is defined to include "the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . . , by right of survivorship, or by beneficiary designation under a governing instrument." Section 732.2025(1), F.S.

²³ Section 732.2085(1), F.S.

date of the court's order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before the date the spouse's election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.²⁴ Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,²⁵ no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe.²⁶

However, under the bill, if this person's required contribution is not fully paid by 2 years after the date of the death of the decedent, the person must pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Ultimately, it is the duty of the court to determine the elective share and all necessary contributions. And those who owe a contribution must, as a general matter, pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order under current law. The bill maintains this provision, but also imposes interest on any amount of the elective share not satisfied within 2 years of the date of the decedent's death, *regardless of whether an order of contribution was entered*.

Attorney's Fees and Costs

In current law, if the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.²⁷ The bill significantly expands the scope of this provision. The bill removes the bad faith requirement, and the bill does not limit assessments of attorney's fees and costs to instances where someone makes or pursues an election.

Under the bill, the court may award fees and costs in *any proceeding* under the elective share statutes in which there is a dispute over:

- The entitled to of the amount of the elective share;
- The property interests included in the elective or its value; or
- The satisfaction of the elective share.

Moreover, the bill specifies that when the court award costs and fees, it may do one or more of the following:

- Direct payment from the estate;
- Direct payment from a party's interest in the elective share or the elective estate; or
- Enter a judgment that can be satisfied from other property of a party.

If the personal representative fails to file a petition to determine the amount of the elective share, as required by the Probate Rules, he or she may be liable for additional costs. Specifically, if the electing spouse or any of the other persons mentioned in the bill file the petition that the personal

²⁴ Section 732.2085(2), F.S.

²⁵ That is, in the manner described in s. 732.2085(2)(b), F.S.

²⁶ Accordingly, the balance is then reapportioned among the other members of the class. Section 732.2085(3)(a), F.S.

²⁷ Section 732.2135, F.S.

representative failed to file, he or she may be awarded the reasonable costs, including attorney's fees, incurred in connection with the preparation and filing of the petition.²⁸

The changes to the attorney fee provisions apply to all proceedings commenced after July 1, 2017.

Elective Share Trusts

By definition, elective share trusts must provide the surviving spouse with the ability to have non-productive trust assets converted to productive assets. However, current law does not provide a way to “save” a trust that fails to meet this requirement, though the trust otherwise meets the definition of an elective share trust and was intended to be an elective share trust. The bill changes this.

The bill authorizes a surviving spouse who is intended to benefit from an elective share trust to force the trustee to make the trust productive. Thus, the bill “saves” trusts that do not otherwise give the spouse this authority, but that are otherwise legally sufficient.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁸ The removal of the bad-faith requirement, the expansion of the types of people who may seek fees and costs, and the expansion of the types of proceedings for which the non-prevailing party may have to pay costs could encourage settlement of these matters. Additionally, it could discourage the very initiation of some proceedings, given the associated risk of being the non-prevailing party and having to pay fees and costs.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 732.2025, 732.2035, 732.2045, 732.2055, 732.2075, 732.2085, 732.2095, 732.2115, 732.2135, 732.2145, and 738.606.

This bill creates section 732.2151, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Banking and Insurance on April 3, 2017:

Clarifies the method of calculating the fair market value of homestead property.

CS by Judiciary on March 14, 2017:

The bill created a tiered-rate structure, depending on the length of the marriage, to determine the amount of the elective share. These rates varied from 10 percent of the elective estate to 40 percent of the elective estate. The committee substitute removes this structure, returning to the current law's 30 percent, flat rate.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 232 - 234
and insert:

(b) For purposes of this subsection, fair market value shall be calculated by deducting from the total value of the property all mortgages, liens, and security

By the Committee on Judiciary; and Senator Passidomo

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1 A bill to be entitled
 2 An act relating to estates; amending s. 732.2025,
 3 F.S.; conforming cross-references; amending s.
 4 732.2035, F.S.; providing that a decedent's property
 5 interest in the protected homestead is included in the
 6 elective estate; amending s. 732.2045, F.S.; revising
 7 the circumstances under which the decedent's property
 8 interest in the protected homestead is excluded from
 9 the elective estate; amending s. 732.2055, F.S.;
 10 providing for the valuation of the decedent's
 11 protected homestead under certain circumstances;
 12 amending s. 732.2075, F.S.; conforming cross-
 13 references; amending s. 732.2085, F.S.; requiring the
 14 payment of interest on any unpaid portion of a
 15 person's required contribution toward the elective
 16 share with respect to certain property; amending s.
 17 732.2095, F.S.; revising provisions relating to the
 18 valuation of a surviving spouse's interest in property
 19 to include protected homestead; conforming cross-
 20 references; amending s. 732.2115, F.S.; conforming a
 21 cross-reference; amending s. 732.2135, F.S.; revising
 22 the period within which a specified person may
 23 petition the court for an extension of time for making
 24 an election; removing a provision authorizing
 25 assessment of attorney fees and costs if an election
 26 is made in bad faith; amending s. 732.2145, F.S.;
 27 requiring the payment of interest on any unpaid
 28 portion of a person's required contribution toward the
 29 elective share after a certain date; creating s.

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

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30 732.2151, F.S.; providing for the award of fees and
 31 costs in certain elective share proceedings; providing
 32 that a court may direct payment from certain sources;
 33 providing applicability; amending s. 738.606, F.S.;
 34 providing that a surviving spouse may require a
 35 trustee of a marital or elective share trust to make
 36 property productive of income; providing
 37 applicability; providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Subsections (1) and (9) of section 732.2025,
 42 Florida Statutes, are amended to read:
 43 732.2025 Definitions.—As used in ss. 732.2025-732.2155, the
 44 term:
 45 (1) "Direct recipient" means the decedent's probate estate
 46 and any other person who receives property included in the
 47 elective estate by transfer from the decedent, including
 48 transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right
 49 of survivorship, or by beneficiary designation under a governing
 50 instrument. For this purpose, a beneficiary of an insurance
 51 policy on the decedent's life, the net cash surrender value of
 52 which is included in the elective estate, is treated as having
 53 received property included in the elective estate. In the case
 54 of property held in trust, "direct recipient" includes the
 55 trustee but excludes the beneficiaries of the trust.
 56 (9) "Revocable trust" means a trust that is includable in
 57 the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.
 58 Section 2. Section 732.2035, Florida Statutes, is amended

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59 to read:

60 732.2035 Property entering into elective estate.—Except as
61 provided in s. 732.2045, the elective estate consists of the sum
62 of the values as determined under s. 732.2055 of the following
63 property interests:

64 (1) The decedent's probate estate.

65 (2) The decedent's interest in property which constitutes
66 the protected homestead of the decedent.

67 (3) The decedent's ownership interest in accounts or
68 securities registered in "Pay On Death," "Transfer On Death,"
69 "In Trust For," or coownership with right of survivorship form.
70 For this purpose, "decedent's ownership interest" means, in the
71 case of accounts or securities held in tenancy by the entirety,
72 one-half of the value of the account or security, and in all
73 other cases, that portion of the accounts or securities which
74 the decedent had, immediately before death, the right to
75 withdraw or use without the duty to account to any person.

76 (4)~~(3)~~ The decedent's fractional interest in property,
77 other than property described in subsection (3)~~(2)~~ or subsection
78 (8)~~(7)~~, held by the decedent in joint tenancy with right of
79 survivorship or in tenancy by the entirety. For this purpose,
80 "decedent's fractional interest in property" means the value of
81 the property divided by the number of tenants.

82 (5)~~(4)~~ That portion of property, other than property
83 described in subsection (2) and subsection (3), transferred by
84 the decedent to the extent that at the time of the decedent's
85 death the transfer was revocable by the decedent alone or in
86 conjunction with any other person. This subsection does not
87 apply to a transfer that is revocable by the decedent only with

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88 the consent of all persons having a beneficial interest in the
89 property.

90 (6) (a) ~~(5) (a)~~ That portion of property, other than property
91 described in subsection (2)~~(3)~~, subsection (4), subsection (5),
92 or subsection (8)~~(7)~~, transferred by the decedent to the extent
93 that at the time of the decedent's death:

94 1. The decedent possessed the right to, or in fact enjoyed
95 the possession or use of, the income or principal of the
96 property; or

97 2. The principal of the property could, in the discretion
98 of any person other than the spouse of the decedent, be
99 distributed or appointed to or for the benefit of the decedent.

100 In the application of this subsection, a right to payments under
101 a commercial or private annuity, an annuity trust, a unitrust,
102 or a similar arrangement shall be treated as a right to that
103 portion of the income of the property necessary to equal the
104 annuity, unitrust, or other payment.

105 (b) The amount included under this subsection is:

106 1. With respect to subparagraph (a)1., the value of the
107 portion of the property to which the decedent's right or
108 enjoyment related, to the extent the portion passed to or for
109 the benefit of any person other than the decedent's probate
110 estate; and

111 2. With respect to subparagraph (a)2., the value of the
112 portion subject to the discretion, to the extent the portion
113 passed to or for the benefit of any person other than the
114 decedent's probate estate.

115 (c) This subsection does not apply to any property if the
116

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117 decedent's only interests in the property are that:

118 1. The property could be distributed to or for the benefit
119 of the decedent only with the consent of all persons having a
120 beneficial interest in the property; or

121 2. The income or principal of the property could be
122 distributed to or for the benefit of the decedent only through
123 the exercise or in default of an exercise of a general power of
124 appointment held by any person other than the decedent; or

125 3. The income or principal of the property is or could be
126 distributed in satisfaction of the decedent's obligation of
127 support; or

128 4. The decedent had a contingent right to receive
129 principal, other than at the discretion of any person, which
130 contingency was beyond the control of the decedent and which had
131 not in fact occurred at the decedent's death.

132 (7)~~(6)~~ The decedent's beneficial interest in the net cash
133 surrender value immediately before death of any policy of
134 insurance on the decedent's life.

135 (8)~~(7)~~ The value of amounts payable to or for the benefit
136 of any person by reason of surviving the decedent under any
137 public or private pension, retirement, or deferred compensation
138 plan, or any similar arrangement, other than benefits payable
139 under the federal Railroad Retirement Act or the federal Social
140 Security System. In the case of a defined contribution plan as
141 defined in s. 414(i) of the Internal Revenue Code of 1986, as
142 amended, this subsection shall not apply to the excess of the
143 proceeds of any insurance policy on the decedent's life over the
144 net cash surrender value of the policy immediately before the
145 decedent's death.

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146 (9)~~(8)~~ Property that was transferred during the 1-year
147 period preceding the decedent's death as a result of a transfer
148 by the decedent if the transfer was either of the following
149 types:

150 (a) Any property transferred as a result of the termination
151 of a right or interest in, or power over, property that would
152 have been included in the elective estate under subsection
153 (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest, or power had
154 not terminated until the decedent's death.

155 (b) Any transfer of property to the extent not otherwise
156 included in the elective estate, made to or for the benefit of
157 any person, except:

158 1. Any transfer of property for medical or educational
159 expenses to the extent it qualifies for exclusion from the
160 United States gift tax under s. 2503(e) of the Internal Revenue
161 Code, as amended; and

162 2. After the application of subparagraph 1., the first
163 annual exclusion amount of property transferred to or for the
164 benefit of each donee during the 1-year period, but only to the
165 extent the transfer qualifies for exclusion from the United
166 States gift tax under s. 2503(b) or (c) of the Internal Revenue
167 Code, as amended. For purposes of this subparagraph, the term
168 "annual exclusion amount" means the amount of one annual
169 exclusion under s. 2503(b) or (c) of the Internal Revenue Code,
170 as amended.

171 (c) Except as provided in paragraph (d), for purposes of
172 this subsection:

173 1. A "termination" with respect to a right or interest in
174 property occurs when the decedent transfers or relinquishes the

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right or interest, and, with respect to a power over property, a termination occurs when the power terminates by exercise, release, lapse, default, or otherwise.

2. A distribution from a trust the income or principal of which is subject to subsection ~~(5)(4)~~, subsection ~~(6)(5)~~, or subsection ~~(10)(9)~~ shall be treated as a transfer of property by the decedent and not as a termination of a right or interest in, or a power over, property.

(d) Notwithstanding anything in paragraph (c) to the contrary:

1. A "termination" with respect to a right or interest in property does not occur when the right or interest terminates by the terms of the governing instrument unless the termination is determined by reference to the death of the decedent and the court finds that a principal purpose for the terms of the instrument relating to the termination was avoidance of the elective share.

2. A distribution from a trust is not subject to this subsection if the distribution is required by the terms of the governing instrument unless the event triggering the distribution is determined by reference to the death of the decedent and the court finds that a principal purpose of the terms of the governing instrument relating to the distribution is avoidance of the elective share.

~~(10)(9)~~ Property transferred in satisfaction of the elective share.

Section 3. Paragraph (i) of subsection (1) of section 732.2045, Florida Statutes, is amended to read:

732.2045 Exclusions and overlapping application.—

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(1) EXCLUSIONS.—Section 732.2035 does not apply to:

(i) Property which constitutes the protected homestead of the decedent if the surviving spouse validly waived his or her homestead rights as provided under s. 732.702, or otherwise under applicable law, and such spouse did not receive any interest in the protected homestead upon the decedent's death whether held by the decedent or by a trust at the decedent's death.

Section 4. Section 732.2055, Florida Statutes, is amended to read:

732.2055 Valuation of the elective estate.—For purposes of s. 732.2035, "value" means:

(1)(a) In the case of protected homestead:

1. If the surviving spouse receives a fee simple interest, the fair market value of the protected homestead on the date of the decedent's death.

2. If the spouse takes a life estate as provided in s. 732.401(1), or validly elects to take an undivided one-half interest as a tenant in common as provided in s. 732.401(2), one-half of the fair market value of the protected homestead on the date of the decedent's death.

3. If the surviving spouse validly waived his or her homestead rights as provided under s. 732.702 or otherwise under applicable law, but nevertheless receives an interest in the protected homestead, other than an interest described in s. 732.401, including an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(b) For purposes of this subsection, the term "fair market

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value" means the net of the aggregate amount, as of the date of the decedent's death, of all mortgages, liens, and security interests to which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate.

(2) In the case of any policy of insurance on the decedent's life includable under s. 732.2035(5), (6), or (7) ~~s. 732.2035(4), (5), or (6)~~, the net cash surrender value of the policy immediately before the decedent's death.

(3)~~(2)~~ In the case of any policy of insurance on the decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8)~~, the net cash surrender value of the policy on the date of the termination or transfer.

(4)~~(3)~~ In the case of amounts includable under s. 732.2035(8) ~~s. 732.2035(7)~~, the transfer tax value of the amounts on the date of the decedent's death.

(5)~~(4)~~ In the case of other property included under s. 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the property on the date of the termination or transfer, computed after deducting any mortgages, liens, or security interests on the property as of that date.

(6)~~(5)~~ In the case of all other property, the fair market value of the property on the date of the decedent's death, computed after deducting from the total value of the property:

(a) All claims paid or payable from the elective estate; and

(b) To the extent they are not deducted under paragraph (a), all mortgages, liens, or security interests on the

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property.

Section 5. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (c) of subsection (3) of section 732.2075, Florida Statutes, are amended to read:

732.2075 Sources from which elective share payable; abatement.—

(1) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the following are applied first to satisfy the elective share:

(b) To the extent paid to or for the benefit of the surviving spouse, amounts payable under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~.

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one class of direct recipients of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(b) Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~ and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

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For purposes of this subsection, a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied as follows:

(c) If there is more than one trust to which this subsection could apply, unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the unsatisfied balance shall be apportioned pro rata to all such trusts in proportion to the value, as determined under s. 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's beneficial interests in the trusts.

Section 6. Paragraph (a) of subsection (3) of section 732.2085, Florida Statutes, is amended to read:

732.2085 Liability of direct recipients and beneficiaries.—

(3) If a person pays the value of the property on the date of a sale or exchange or contributes all of the property received, as provided in paragraph (2)(b):

(a) No further contribution toward satisfaction of the elective share shall be required with respect to that property. However, if a person's required contribution is not fully paid by 2 years after the date of the death of the decedent, such person must also pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

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Section 7. Section 732.2095, Florida Statutes, is amended to read:

732.2095 Valuation of property used to satisfy elective share.—

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

(a) "Applicable valuation date" means:

1. In the case of transfers in satisfaction of the elective share, the date of the decedent's death.

2. In the case of property held in a qualifying special needs trust on the date of the decedent's death, the date of the decedent's death.

3. In the case of other property irrevocably transferred to or for the benefit of the surviving spouse during the decedent's life, the date of the transfer.

4. In the case of property distributed to the surviving spouse by the personal representative, the date of distribution.

5. Except as provided in subparagraphs 1., 2., and 3., in the case of property passing in trust for the surviving spouse, the date or dates the trust is funded in satisfaction of the elective share.

6. In the case of property described in s. 732.2035(2), (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's death.

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent's death.

8. In the case of amounts payable to the surviving spouse under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the date of the decedent's death.

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9. In all other cases, the date of the decedent's death or the date the surviving spouse first comes into possession of the property, whichever occurs later.

(b) "Qualifying power of appointment" means a general power of appointment that is exercisable alone and in all events by the decedent's spouse in favor of the spouse or the spouse's estate. For this purpose, a general power to appoint by will is a qualifying power of appointment if the power may be exercised by the spouse in favor of the spouse's estate without the consent of any other person.

(c) "Qualifying invasion power" means a power held by the surviving spouse or the trustee of an elective share trust to invade trust principal for the health, support, and maintenance of the spouse. The power may, but need not, provide that the other resources of the spouse are to be taken into account in any exercise of the power.

(2) Except as provided in this subsection, the value of property for purposes of s. 732.2075 is the fair market value of the property on the applicable valuation date.

(a) If the surviving spouse has a life interest in property not in trust that entitles the spouse to the use of the property for life, including, without limitation, a life estate in protected homestead as provided in s. 732.401(1), the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.

(b) If the surviving spouse elects to take an undivided one-half interest in protected homestead as a tenant in common as provided in s. 732.401(2), the value of the spouse's interest is one-half of the value of the property on the applicable

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valuation date.

(c) If the surviving spouse validly waived his or her homestead rights as provided in s. 732.702 or otherwise under applicable law but nevertheless receives an interest in protected homestead, other than an interest described in s. 732.401, including, without limitation, an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(d) ~~(b)~~ If the surviving spouse has an interest in a trust, or portion of a trust, which meets the requirements of an elective share trust, the value of the spouse's interest is a percentage of the value of the principal of the trust, or trust portion, on the applicable valuation date as follows:

1. One hundred percent if the trust instrument includes both a qualifying invasion power and a qualifying power of appointment.

2. Eighty percent if the trust instrument includes a qualifying invasion power but no qualifying power of appointment.

3. Fifty percent in all other cases.

(e) ~~(e)~~ If the surviving spouse is a beneficiary of a trust, or portion of a trust, which meets the requirements of a qualifying special needs trust, the value of the principal of the trust, or trust portion, on the applicable valuation date.

(f) ~~(d)~~ If the surviving spouse has an interest in a trust that does not meet the requirements of either an elective share trust or a qualifying special needs trust, the value of the spouse's interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of

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all of the spouse's interests in the trust shall not exceed one-half of the value of the trust principal on the applicable valuation date.

~~(g)(e)~~ In the case of any policy of insurance on the decedent's life the proceeds of which are payable outright or to a trust described in paragraph ~~(d)(b)~~, paragraph ~~(e)(e)~~, or paragraph ~~(f)(d)~~, the value of the policy for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~ is the net proceeds.

~~(h)(f)~~ In the case of a right to one or more payments from an annuity or under a similar contractual arrangement or under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the value of the right to payments for purposes of s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~ is the transfer tax value of the right on the applicable valuation date.

Section 8. Section 732.2115, Florida Statutes, is amended to read:

732.2115 Protection of payors and other third parties.— Although a property interest is included in the decedent's elective estate under s. 732.2035(3)-(9) ~~s. 732.2035(2)-(8)~~, a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument.

Section 9. Section 732.2135, Florida Statutes, is amended to read:

732.2135 Time of election; extensions; withdrawal.—

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(1) Except as provided in subsection (2), the election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

(2) Within the period provided in subsection (1), or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months after the decedent's death and before the court's order of contribution.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

~~(5) If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.~~

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Section 10. Subsection (1) of section 732.2145, Florida Statutes, is amended to read:

732.2145 Order of contribution; personal representative's duty to collect contribution.—

(1) The court shall determine the elective share and contribution. Any amount of the elective share not satisfied within 2 years of the date of death of the decedent shall bear interest at the statutory rate until fully satisfied, even if an order of contribution has not yet been entered. Contributions shall bear interest at the statutory rate beginning 90 days after the order of contribution. The order is prima facie correct in proceedings in any court or jurisdiction.

Section 11. Section 732.2151, Florida Statutes, is created to read:

732.2151 Award of fees and costs in elective share proceedings.—

(1) The court may award taxable costs as in chancery actions, including attorney fees, in any proceeding under this part in which there is an objection to or dispute over:

(a) The entitlement to or the amount of the elective share;

(b) The property interests included in the elective estate, or its value; or

(c) The satisfaction of the elective share.

(2) When awarding taxable costs or attorney fees, the court may do one or more of the following:

(a) Direct payment from the estate.

(b) Direct payment from a party's interest in the elective share or the elective estate.

(c) Enter a judgement that can be satisfied from other

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property of the party.

(3) In addition to any of the fees that may be awarded under subsections (1) and (2), if the personal representative does not file a petition to determine the amount of the elective share as required by the Florida Probate Rules, the electing spouse or the attorney in fact, guardian of the property, or personal representative of the electing spouse may be awarded from the estate reasonable costs, including attorney fees, incurred in connection with the preparation and filing of the petition.

(4) This section applies to all proceedings commenced on or after July 1, 2017, without regard to the date of the decedent's death.

Section 12. Subsection (1) of section 738.606, Florida Statutes, is amended to read:

738.606 Property not productive of income.—

(1) If a marital deduction under the Internal Revenue Code or comparable law of any state is allowed for all or part of a trust, or if assets are transferred to a trust that satisfies the requirements of s. 732.2025(2) (a) and (c), and such assets have been used in whole or in part to satisfy an election by a surviving spouse under s. 732.2125 ~~and the income of which must be distributed to the grantor's spouse and the assets of which~~ consist ~~substantially~~ of property that, in the aggregate, does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment

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523 required to obtain the marital deduction, even though, in the
524 case of an elective share trust, a marital deduction is not made
525 or is only partially made, the spouse may require the trustee of
526 such marital trust or elective share trust to make property
527 productive of income, convert property within a reasonable time,
528 or exercise the power conferred by ss. 738.104 and 738.1041. The
529 trustee may decide which action or combination of actions to
530 take.

531 Section 13. Applicability.~~Except as otherwise provided in~~
532 this act, the amendments made by this act apply to decedents
533 whose death occurred on or after July 1, 2017.

534 Section 14. 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)

4-3-17

Meeting Date

SB 724

Bill Number (if applicable)

Topic Support the Estates bill

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title Attorney

Address 215 So. Monroe Street #815
Street

Phone 850-999-4100

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City

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State

32301
Zip

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate + Trust + Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 922

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Insurance Adjusters

DATE: April 5, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 922 amends various statutes relating to insurance adjusters. The bill eliminates licensure for public adjuster apprentices and requires a public adjuster apprentice to be licensed as an all-lines adjuster and appointed as a public adjuster apprentice.

Current law authorizes, but does not require, licensure of adjusting firms, unless the person operating the firm fails to designate a primary adjuster within specified timeframes. The bill requires licensure for adjusting firms and provides application requirements and background checks for firm owners and officers.

In addition, the bill:

- Eliminates the temporary license, which is not currently used;
- Revises the requirements for public adjusters to expressly prohibit unlicensed public adjusting that is done directly or indirectly;
- Deletes a provision of law held unconstitutional by the Florida Supreme Court;
- Excludes deductibles from the calculation of an adjuster's fee; and
- Reduces the time a public adjuster apprentice must be supervised before becoming eligible for licensure as a public adjuster.

In addition, the bill makes numerous changes to part VI of ch. 626, F.S., and other statutes applicable to adjusters to improve the efficiency of licensure and enforcement.

II. Present Situation:

Insurance Adjusters

Part VI, ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. A “public adjuster” is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.¹ An “independent adjuster” is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A “company employee adjuster” is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.

A policyholder who has sustained an insured loss may hire a public adjuster. The public adjuster will inspect the loss site, analyze the damages, assemble claim support data, review the insured’s coverage, determine current replacement costs, and confer with the insurer’s representatives to adjust the claim. Public adjuster fees are capped at 10-20 percent of the insurance claim payments.²

Public adjusters are licensed by the Department of Financial Services (DFS) after meeting pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction, and submitting fingerprints.

Adjusting Firms

Adjusting firms are not required to be licensed by the DFS. If a firm chooses to obtain a license, it lasts for 3 years and costs \$60.³ An application for licensure must include:

- The name and address of each majority owner, partner, officer, and director of the adjusting firm;
- The name of the adjusting firm and its principal business address; and
- The location of each adjusting firm office and the name under which each office conducts or will conduct business.⁴

Solicitation by Public Adjusters

In 2008, the Legislature prohibited public adjusters from directly or indirectly through any other person or entity initiating contact or engaging in face-to-face or telephonic solicitation with any insured until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy.⁵ In 2012, the Florida Supreme Court held the law violated a public

¹ s. 626.854(1), F.S.

² s. 626.854 (11), F.S.

³ s. 624.501(20), F.S.

⁴ s. 626.8696, F.S.

⁵ ch. 2008-220, L.O.F.

adjuster's right to free speech because the statute regulated commercial speech and was more extensive than necessary to serve the state's interest.⁶

Public Adjuster Apprentices

A "public adjuster apprentice" is any person who:

- Is not a licensed public adjuster;
- Is employed by or has a contract with a licensed and appointed public adjuster or a public adjusting firm to assist a public adjuster in conducting business under the license; and
- Satisfies the licensing and character requirements of s. 626.8651, F.S.

A public adjuster apprentice must complete a minimum of 100 hours per month of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster.⁷

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices.⁸ A supervising public adjuster may only be responsible for three public adjuster apprentices. An apprentice has the same authority as a public adjuster except that an apprentice may not execute contracts for services of a public adjuster except under the direct supervision of a public adjuster.⁹

III. Effect of Proposed Changes:

Adjusting Firms (Sections 1, 3, 4, 14, 15)

The bill requires an entity acting as an adjusting firm to have a license from the DFS for each place of business¹⁰ where it engages in activities that may only be performed by a licensed adjuster. The bill exempts individual adjusters operating in their own names and insurance companies that directly appoint adjusters from the firm's licensing requirements. The bill provides for fines of up to \$10,000 if a firm is required to be licensed but does not file an application.

The bill revises the application process for an adjusting firm license. It allows a third party to sign the application on the firm's behalf but the applicant is accountable for any errors or misstatements. It requires the names of the president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the firm. It requires fingerprint background checks on all persons named in the application. The application also requires the email address of the firm and the name, address, and email address of the person authorized to accept service of process on the adjusting firm's behalf. The application must include the name of the primary adjuster at the firm. The bill provides that a

⁶ *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).

⁷ s. 626.8651(6), F.S.

⁸ s. 626.8651(7), F.S.

⁹ s. 626.8651(11), F.S.

¹⁰ The bill allows an adjusting firm to have "branch" places of business that operate under the same license. A branch place of business must transact business under the same tax identification numbers as the licensed firm, must have a designated primary adjuster, and submit contact information to the DFS within 30 days after insurance transactions begin at the location.

license will be issued at no charge and will remain in force unless canceled, suspended, or revoked. The bill removes the current \$60 fee for initial and renewal licensure.

The bill requires each business location established by an adjuster to designate a primary adjuster for that location. It also requires adjusting firms and branch locations of the adjusting firms to name primary adjusters. The primary adjuster is responsible for the supervision of the adjusters at that location. The primary adjuster is accountable for misconduct by those under his or her direct supervision. If a primary adjuster ends his or her affiliation with the firm and the firm does not designate another primary adjuster within 90 days, the firm's license expires on the 91st day.

Adjusters (Sections 2, 7, 11, 16, 17, 18, 19)

The bill defines "adjuster" as a public adjuster or an all-lines adjuster. It allows an "all-lines adjuster" to act on behalf of a public adjuster. This conforms to the elimination of the licensure classification for public adjuster apprentices and their reclassification as licensed all-lines adjusters appointed and employed by a public adjuster or public adjusting firm.

It redefines an "all-lines adjuster" as "a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include paid spokespersons used as part of a written or an electronic advertisement. The term does not apply to life insurance or annuity contracts."

The bill amends s. 626.864, F.S., to provide that an all-lines adjuster may be appointed as an independent adjuster, a public adjuster apprentice, or a company employee adjuster but not more than one concurrently.

The bill provides that an individual licensed as a public adjuster may not be simultaneously licensed as an all-lines adjuster. It further provides that an individual licensed as an all-lines adjuster and appointed as a company adjuster or a public adjuster apprentice may not be simultaneously appointed or employed in a different adjuster capacity that would require an additional appointment type.

The bill also:

- Repeals s. 626.872, F.S., creating temporary licenses for all-lines adjusters.
- Clarifies that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during a catastrophe.
- Requires adjusters to maintain records relating to claims for 5 years instead of the current 3 years.

Public Adjusters (Sections 5, 12)

The bill repeals the restrictions in s. 626.854(6), F.S., on public adjuster solicitations within 48 hours after an event that may be the subject of an insurance claim.

The bill amends s. 626.854, F.S., to expand the definition of “public adjuster” to include persons who directly or indirectly prepare, complete, or file an insurance claim for an insured. The definition is further expanded to include persons who directly or indirectly solicit or perform specified other duties on behalf of a public adjuster, an insured, or a third-party claimant. It removes a limitation that requires a consumer wishing to cancel a public adjuster contract to do so in writing or by phone.

The bill prohibits public adjusters from charging a fee based on policy deductibles.

The bill prohibits a contract provision that allows a public adjuster, public adjuster apprentice, or person acting on behalf of an adjuster or apprentice to choose the person that will perform salvage, repair, or other work on a property insurance claim.

The bill creates a new paragraph to more specifically define what a person is prohibited from doing unless the person is a public adjuster or an attorney. A person who is not a public adjuster or attorney may not, for money or commission:

- Prepare, complete, or file an insurance claim for an insured or a third-party claimant;
- Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- Advertise for employment as a public adjuster; or
- Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Current law requires a public adjuster apprentice to serve as a public adjuster apprentice for 1 year before becoming a public adjuster. The bill reduces the time to 6 months.

Public Adjuster Apprentices (Sections 6, 8, 13)

The bill repeals the current law creating the license for public adjuster apprentices. The bill defines a public adjuster apprentice as a person licensed as an all-lines adjuster who is appointed and employed by a public adjuster or public adjusting firm. The apprentice assists the public adjuster in determining the amount of any claim, loss or damage payable under an insurance contract. The bill provides the DFS will issue an appointment as a public adjuster apprentice to licensee who:

- Is licensed as an all-lines adjuster;
- Has filed with the DFS a bond¹¹ executed and issued by a surety insurer in the amount of \$50,000, which is conditioned upon the faithful performance of duties as a public adjuster apprentice; and
- Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

¹¹ The bond must be executed in favor of the DFS and must authorize recovery of the damages sustained if the licensee commits fraud or unfair practices. The aggregate liability of the surety may not exceed the amount of the bond and the bond may not be terminated without giving notice to the licensee and the DFS.

The bill provides that an appointing public adjusting firm may maintain no more than four public adjuster apprentices and that a supervising public adjuster may supervise no more than one apprentice at a time.

The bill removes the limitation on solicitation of contracts by public adjuster apprentices.

Miscellaneous Provisions

Section 9 amends s. 626.8584, F.S., to provide that a nonresident all-lines adjuster can be appointed by a public adjuster or a public adjusting firm.

Section 10 amends s. 626.861, F.S., to provide that an employee of an insurer handling claims with respect to residential property insurance can adjust such claims if the coverage does not exceed \$500.

Section 20 repeals s. 626.879, F.S., which allows the DFS to have a pool of adjusters in case of declarations of emergency. The DFS has not used the pool in a number of years and does not believe the statute is needed.

Section 21 makes a technical change.

Section 22 provides an effective date of 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:

Unknown.

C. Government Sector Impact:

The DFS anticipates \$2,500 per year in recurring revenue from penalties imposed for failing to obtain a license as an adjusting firm.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.501, 626.015, 626.022, 626.112, 626.854, 626.8541, 626.8548, 626.8561, 626.8584, 626.861, 626.864, 626.865, 626.8651, 626.8695, 626.8696, 626.874, 626.875, 626.876, and 626.9953.

This bill repeals the following sections of the Florida Statutes: 626.872 and 626.879.

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 April 3, 2017:

- Creates a minimum \$2,500 penalty if a firm is required to be licensed but does not apply for a license;
- Removes a requirement that adjuster websites contain certain disclosures;
- Clarifies that paid spokespersons are exempt from licensure when promoting services; and
- Makes technical changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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 (20) of section 624.501, Florida
Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous
fees.—The department, commission, or office, as appropriate,
shall collect in advance, and persons so served shall pay to it
in advance, fees, licenses, and miscellaneous charges as



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follows:

~~(20) Adjusting firm, original or renewal 3-year license~~
~~_____ \$60.00~~

Section 2. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854, ~~a public adjuster apprentice as defined in s. 626.8541,~~ or an all-lines adjuster as defined in s. 626.8548.

Section 3. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, adjusting firms, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s.



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473.302, provided that the activities of the certified public accountant are limited to advising a client of the necessity of obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 4. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

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

(7)(a) An individual, firm, partnership, corporation, association, or other entity may ~~shall~~ not act in its own name or under a trade name, directly or indirectly, as an insurance agency unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an activity that may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is ~~shall be~~ exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has designated with the department a licensed agent in charge of the branch location as required by



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s. 626.0428 and the address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location.

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

(d) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed so long as:

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

2. It has designated with the department a licensed primary adjuster in charge of the branch firm as required by s. 626.8695; and

3. Within 30 days after insurance transactions begin at the branch firm, the address and telephone number of the branch firm are submitted to the department for inclusion in the licensing record of the licensed adjusting firm.



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(e)~~(e)~~ If an agency or firm is required to be licensed but fails to file an application for licensure in accordance with this section, the department must ~~shall~~ impose on the agency or firm an administrative penalty of up to \$2,500 for a first violation and up to \$10,000 for any subsequent violation.

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

Section 5. Present subsections (7) through (19) of section 626.854, Florida Statutes, are renumbered as subsections (6) through (18), respectively, subsection (1) and present subsections (6), (7), (11), (18), and (19) are amended, and a new subsection (19) is added to that section, to read:

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

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim ~~form~~ for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts



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such claims on behalf of a public adjuster, an insured, or a third-party claimant, unless such person is performing duties under another professional license.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

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

(10) (a) ~~(11) (a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim



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that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.



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~~(d)-(e)~~ Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

~~(17)-(18)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform salvage, repair, or any other work in a property insurance claim.

~~(18)-(19)~~ Subsections (5)-(17) ~~(5)-(18)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 6. Section 626.8541, Florida Statutes, is repealed.

Section 7. Section 626.8548, Florida Statutes, is amended



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to read:

626.8548 "All-lines adjuster" defined.—An "all-lines adjuster" is a person who, for money, commission, or any other thing of value, directly or indirectly ~~is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who~~ undertakes on behalf of a public adjuster or an insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include paid spokespersons used as part of a written or an electronic advertisement. The term does not apply to life insurance or annuity contracts.

Section 8. Section 626.8561, Florida Statutes, is created to read:

626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 9. Subsection (3) of section 626.8584, Florida



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Statutes, is amended to read:

626.8584 "Nonresident all-lines adjuster" defined.—A
"nonresident all-lines adjuster" means a person who:

(3) Is licensed as an all-lines adjuster and self-appointed
or appointed and employed or contracted by an independent
adjusting firm or other independent adjuster, by an insurer
admitted to do business in this state or a wholly owned
subsidiary of an insurer admitted to do business in this state,
or by a public adjuster or a public adjusting firm ~~other~~
~~insurers under the common control or ownership of such insurer.~~

Section 10. Subsection (1) of section 626.861, Florida
Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal
insurer's representatives; adjustments by.—

(1) ~~Nothing in~~ This part may not ~~shall~~ be construed to
prevent an executive officer of any insurer, an ~~or a regularly~~
~~salaried~~ employee of an insurer handling claims with respect to
health insurance, an employee of an insurer handling claims with
respect to residential property insurance in which the amount of
coverage for the applicable type of loss is contractually
limited to \$500 or less, or the duly designated attorney or
agent authorized and acting for subscribers to reciprocal
insurers, from adjusting any claim loss or damage under any
insurance contract of such insurer.

Section 11. Subsection (3) of section 626.864, Florida
Statutes, is amended to read:

626.864 Adjuster license types.—

(3) An all-lines adjuster may be appointed as an
independent adjuster, public adjuster apprentice, or company



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employee adjuster, but not more than one of these ~~both~~
concurrently.

Section 12. Paragraphs (d) and (e) of subsection (1) of
section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant
for a public adjuster's license upon determining that the
applicant has paid the applicable fees specified in s. 624.501
and possesses the following qualifications:

(d) Has had sufficient experience, training, or instruction
concerning the adjusting of damages or losses under insurance
contracts, other than life and annuity contracts, is
sufficiently informed as to the terms and effects of the
provisions of those types of insurance contracts, and possesses
adequate knowledge of the laws of this state relating to such
contracts as to enable and qualify him or her to engage in the
business of insurance adjuster fairly and without injury to the
public or any member thereof with whom the applicant may have
business as a public adjuster, ~~or has been licensed and employed
as a resident insurance company adjuster or independent adjuster
in this state on a continual basis for the past year.~~

(e) Has been licensed in this state as an all-lines
adjuster, and has been appointed on a continual basis for the
previous 6 months ~~Is licensed~~ as a public adjuster apprentice
under s. 626.8561, as an independent adjuster under s. 626.855,
or as a company employee adjuster under s. 626.856 ~~under s.
626.8651 and complies with the requirements of that license
throughout the licensure period.~~

Section 13. Section 626.8651, Florida Statutes, is amended



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to read:

626.8651 Public adjuster apprentice appointment ~~license~~;
qualifications.—

(1) ~~(a)~~ The department shall issue an appointment ~~a license~~
as a public adjuster apprentice to a licensee ~~an applicant~~ who
~~is~~:

1. Is licensed as an all-lines adjuster under s. 626.866;
2. Has filed with the department a bond executed and issued
by a surety insurer that is authorized to transact such business
in this state in the amount of \$50,000, which is conditioned
upon the faithful performance of his or her duties as a public
adjuster apprentice; and
3. Maintains such bond unimpaired throughout the existence
of the appointment and for at least 1 year after termination of
the appointment.

(b) The bond must be in favor of the department and must
specifically authorize recovery by the department of the damages
sustained in case the licensee commits fraud or unfair practices
in connection with his or her business as a public adjuster
apprentice. The aggregate liability of the surety for all such
damages may not exceed the amount of the bond, and the bond may
not be terminated by the issuing insurer unless written notice
of at least 30 days is given to the licensee and filed with the
department.

~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses~~
~~work authorization from the United States Bureau of Citizenship~~
~~and Immigration Services.~~

~~(c) Trustworthy and has such business reputation as would~~



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~~reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of \$50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The~~



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~~aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.~~

~~(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.~~

~~(2)(7)~~ An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment; is surrendered by the licensee; is terminated, suspended, or revoked by the department; or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who~~



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~~has held such a license in this state within 2 years after
expiration, surrender, termination, revocation, or cancellation
of the license.~~

~~(9) After completing the requirements for employment as a
public adjuster apprentice, the licensee may file an application
for a public adjuster license. The applicant and supervising
public adjuster or public adjusting firm must each file a sworn
affidavit, on a form prescribed by the department, verifying
that the employment of the public adjuster apprentice meets the
requirements of this section.~~

~~(10) In no event shall A public adjuster apprentice
licensed under this section perform any of the functions for
which a public adjuster's license is required after expiration
of the public adjuster apprentice license without having
obtained a public adjuster license.~~

~~(3)(11)~~ A public adjuster apprentice has the same authority
as the licensed public adjuster or public adjusting firm that
employs the apprentice except that an apprentice may not execute
contracts for the services of a public adjuster or public
adjusting firm ~~and may not solicit contracts for the services
except under the direct supervision and guidance of the
supervisory public adjuster.~~ An individual may not be, act as,
or hold himself or herself out to be a public adjuster
apprentice unless the individual is licensed as an all-lines
adjuster and holds a current appointment by a licensed public
all-lines adjuster or a public adjusting firm that employs a
licensed ~~all-lines~~ public adjuster.

Section 14. Section 626.8695, Florida Statutes, is amended
to read:



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626.8695 Primary adjuster.—

(1) Each business location established by an adjuster,
~~person operating an adjusting firm, a corporation, or an~~
~~association and each location of a multiple location adjusting~~
~~firm~~ must designate with the department a primary adjuster who
is licensed and appointed to adjust the insurance claims
adjusted by the business location.

(2) An adjusting firm and each of its branch firms shall
designate a primary adjuster ~~for each such firm or location~~ and
~~must~~ file with the department, at the department's designated
website, the name and license number of such primary adjuster
and the physical address of the adjusting firm or branch firm
location where he or she is the primary adjuster, ~~on a form~~
~~approved by the department.~~ The designation of the primary
adjuster may be changed at the option of the adjusting firm. Any
such change is effective upon notification to the department.
Notice of change must be provided ~~sent~~ to the department within
30 days after such change.

~~(3)(2)(a)~~ For purposes of this section, a "primary
adjuster" is the licensed adjuster who is responsible for the
~~hiring and~~ supervision of all individuals within an adjusting
firm location who act ~~deal with the public and who acts in the~~
capacity of ~~a public adjuster as defined in s. 626.854, or an~~
~~independent~~ adjuster as defined in this chapter ~~s. 626.855.~~ An
adjuster may be designated as a primary adjuster for more than
~~only~~ one adjusting firm location provided no person engages in
activity requiring licensure as an adjuster at any location when
an adjuster is not physically present.

~~(4)(b)~~ For purposes of this section, an "adjusting firm" is



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a location where an independent or public adjuster is engaged in the business of insurance.

(5)~~(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

(6)~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm, ~~or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person~~ criminally liable for an ~~or~~ subject to any disciplinary proceedings for any act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

(7)~~(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

(8)~~(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the Failure



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~~of the person operating the adjusting firm to designate a primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with for the firm, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696.~~

~~(9)(7)~~ Any adjusting firm may determine a request, ~~on a form prescribed by the department, verification from the department of any person's current licensure status by submitting an appointment request. If a request is mailed to the office~~ within 5 working days after the date an adjuster is hired. ~~If, and~~ the department subsequently notifies the adjusting firm that its appointee's ~~an employee's~~ license is currently suspended, revoked, or has been denied, the license of the primary adjuster may ~~shall~~ not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 15. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The department may issue an adjusting firm license to a person only after the person files a written application with the department and qualifies for such license.



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(2) An application for an adjusting firm license must be signed by an individual required to be listed in the application under paragraph (a). An adjusting firm may authorize a third party to complete, submit, and sign an application on the firm's behalf. However, the firm must ensure that the information on the application is true and correct, and the firm is accountable for any misstatement or misrepresentation. The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name, ~~of the adjusting firm and its~~ principal business street address, and valid e-mail address of the adjusting firm, and the name, street address, and valid e-mail address of the firm's registered agent, person, or company authorized to accept service on behalf of the firm.

(d) The physical address ~~location~~ of each branch adjusting firm, including its name, valid e-mail address, and telephone number, and the date that the branch firm began transacting insurance business ~~office and the name under which each office conducts or will conduct business.~~

(e) The name of the primary adjuster in full-time charge of the adjusting firm office, including branch firms, and his or her corresponding location.

(f) The fingerprints of each of the following:

1. A sole proprietor, if the applicant is a sole



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proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department, must be accompanied by the fingerprint processing fee specified in s. 624.501, and must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g)(e) Such Any additional information that the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for such persons.

~~(2) An application for an adjusting firm license must be signed by each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation.~~

~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

(3)(5) The license of an adjusting firm continues in force



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until it is canceled, ~~required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended, or revoked or until it is otherwise terminated or expires by operation of law.~~ The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.

Section 16. Section 626.872, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters ~~by all lines resident adjusters,~~ by an authorized insurer, ~~or by a licensed general lines agent~~ to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

Section 18. Subsection (2) of section 626.875, Florida



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Statutes, is amended to read:

626.875 Office and records.—

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 ~~3~~ years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

Section 19. Section 626.876, Florida Statutes, is amended to read:

626.876 Exclusive employment; public adjusters, all-lines ~~independent~~ adjusters.—

(1) An individual licensed ~~and appointed~~ as a public adjuster may not be simultaneously licensed as an all-lines adjuster ~~employed during the same period by more than one public adjuster or public adjuster firm or corporation.~~

(2) An individual licensed as an all-lines adjuster and appointed as an independent adjuster, a company employee adjuster, or a public adjuster apprentice may not be simultaneously appointed, contracted, or employed as an adjuster that requires a different appointment type ~~during the same period by more than one independent adjuster or independent adjuster firm or corporation.~~

Section 20. Section 626.879, Florida Statutes, is repealed.

Section 21. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—



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(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 22. 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 insurance adjusters; amending s.
624.501, F.S.; deleting a fee for an original or
renewal license for an adjusting firm; amending s.
626.015, F.S.; conforming a cross-reference; amending
s. 626.022, F.S.; revising applicability of the
Licensing Procedures Law to include adjusting firms;
amending s. 626.112, F.S.; prohibiting certain
entities from acting as insurance adjusting firms
without specified licenses; providing an exemption;



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providing construction; specifying that an unlicensed firm is subject to a certain administrative penalty; deleting a requirement for the Department of Financial Services to automatically convert a certain registration to an insurance agency license as of a certain date; amending s. 626.854, F.S.; redefining the term "public adjuster"; deleting a certain prohibited act of a public adjuster; deleting a provision specifying the method for an insured or claimant to provide certain notice to an insurer; providing construction relating to certain limitations on insurance claim payments and public adjuster compensation; revising a prohibition against certain entities relating to a contract or power of attorney that vests certain authority in a property insurance claim; conforming a cross-reference; prohibiting persons from conducting certain activities relating to insurance claims; providing an exception for attorneys and public adjusters; repealing s. 626.8541, F.S., relating to public adjuster apprentices; amending s. 626.8548, F.S.; redefining the term "all-lines adjuster"; creating s. 626.8561, F.S.; defining the term "public adjuster apprentice"; amending s. 626.8584, F.S.; redefining the term "nonresident all-lines adjuster"; amending s. 626.861, F.S.; revising construction relating to employees of an insurer; amending s. 626.864, F.S.; revising the permissible appointments of all-lines adjusters; amending s. 626.865, F.S.; revising the qualifications for



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licensure for public adjusters; amending s. 626.8651, F.S.; requiring public adjuster apprentices to be appointed, rather than licensed, by the department; specifying qualifications for such appointments; revising requirements and limitations for public adjusting firms and public adjusters who supervise public adjuster apprentices; revising certain prohibited acts and exceptions to such acts of public adjuster apprentices; conforming provisions to changes made by the act; amending s. 626.8695, F.S.; revising requirements for designating primary adjusters; redefining the term "primary adjuster"; revising the accountability of a primary adjuster for persons under his or her supervision; revising a prohibition against an adjusting firm location conducting insurance business under certain circumstances; revising procedures for an adjusting firm to determine a person's current licensure status; amending s. 626.8696, F.S.; revising conditions for the issuance of an adjusting firm license; revising application requirements for such license; providing rulemaking authority of the department; prohibiting the department from requiring certain information on an application; providing for expiration of such license; repealing s. 626.872, F.S., relating to all-lines adjuster temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue adjuster licenses in the event of catastrophes or emergencies; amending s. 626.875, F.S.; revising the



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707 minimum time period in a records retention requirement
708 for adjusters; amending s. 626.876, F.S.; revising
709 certain prohibitions relating to exclusive employment
710 of public adjusters and all-lines adjusters and
711 appointed independent adjusters; repealing s. 626.879,
712 F.S., relating to pools of insurance adjusters;
713 amending s. 626.9953, F.S.; conforming a cross-
714 reference; providing an effective date.

By Senator Garcia

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1 A bill to be entitled
 2 An act relating to insurance adjusters; amending s.
 3 624.501, F.S.; deleting a fee for an original or
 4 renewal license for an adjusting firm; amending s.
 5 626.015, F.S.; redefining the term "adjuster";
 6 amending s. 626.022, F.S.; revising applicability of
 7 the Licensing Procedures Law to include adjusting
 8 firms; amending s. 626.112, F.S.; prohibiting certain
 9 entities from acting as insurance adjusting firms
 10 without specified licenses; providing an exemption;
 11 providing construction; specifying that an unlicensed
 12 firm is subject to a certain administrative penalty;
 13 deleting a requirement for the Department of Financial
 14 Services to automatically convert a certain
 15 registration to an insurance agency license as of a
 16 certain date; amending s. 626.854, F.S.; redefining
 17 the term "public adjuster"; deleting a certain
 18 prohibited act of a public adjuster; deleting a
 19 provision specifying the method for an insured or
 20 claimant to provide certain notice to an insurer;
 21 redefining the term "written advertisement"; providing
 22 construction relating to a certain limitation on
 23 public adjuster compensation; revising a prohibition
 24 against certain entities relating to a contract or
 25 power of attorney that vests certain authority in a
 26 property insurance claim; conforming a cross-
 27 reference; repealing s. 626.8541, F.S., relating to
 28 public adjuster apprentices; amending s. 626.8548,
 29 F.S.; redefining the term "all-lines adjuster";

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

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30 creating s. 626.8561, F.S.; defining the term "public
 31 adjuster apprentice"; amending s. 626.8584, F.S.;
 32 redefining the term "nonresident all-lines adjuster";
 33 amending s. 626.861, F.S.; revising construction;
 34 amending s. 626.864, F.S.; revising the permissible
 35 appointments of all-lines adjusters; amending s.
 36 626.865, F.S.; revising the qualifications for
 37 licensure for public adjusters; amending s. 626.8651,
 38 F.S.; replacing public adjuster apprentice licensing
 39 provisions with public adjuster apprentice appointment
 40 provisions; specifying qualifications for such
 41 appointments; revising requirements and limitations
 42 for public adjusting firms and public adjusters that
 43 supervise public adjuster apprentices; revising
 44 certain prohibited acts and exceptions to such acts of
 45 a public adjuster apprentice; conforming provisions to
 46 changes made by the act; amending s. 626.8695, F.S.;
 47 revising requirements for certain entities in
 48 designating primary adjusters; redefining the term
 49 "primary adjuster"; revising the accountability of a
 50 primary adjuster for persons under his or her
 51 supervision; revising a prohibition against an
 52 adjusting firm location conducting insurance business
 53 under certain circumstances; providing for
 54 construction relating to expiration of a firm license
 55 under certain circumstances; revising procedures for
 56 an adjusting firm to determine a person's current
 57 licensure status; conforming a provision to changes
 58 made by the act; amending s. 626.8696, F.S.; revising

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conditions for an adjusting firm license; revising application requirements for such license; providing rulemaking authority of the department; prohibiting the department from requiring certain information on an application; providing construction; repealing s. 626.872, F.S., relating to temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue licenses for catastrophe or emergency adjusters; amending s. 626.875, F.S.; revising the minimum time period in a records retention requirement for adjusters; amending s. 626.876, F.S.; revising certain prohibitions relating to exclusive employment of public adjusters and certain all-lines adjusters; repealing s. 626.879, F.S., relating to pools of insurance adjusters; amending s. 626.9953, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3 year~~
~~license.....\$60.00~~

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Section 2. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854, an independent adjuster as defined in s. 626.855, a company employee adjuster as defined in s. 626.856, or a public adjuster apprentice as defined in s. 626.8561 ~~s. 626.8541, or an all-lines adjuster as defined in s. 626.8548.~~

Section 3. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, adjusting firms, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s. 473.302, provided that the activities of the certified public

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accountant are limited to advising a client of the necessity of obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 4. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

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

(7)(a) An individual, firm, partnership, corporation, association, or other entity may ~~shall~~ not act in its own name or under a trade name, directly or indirectly, as an insurance agency unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an activity that may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is ~~shall be~~ exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has designated with the department a licensed agent in charge of the branch location as required by s. 626.0428 and the address and telephone number of the branch

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location have been submitted to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location.

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

(d) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed so long as:

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

2. It has designated with the department a licensed primary adjuster in charge of the branch location as required by s. 626.8695; and

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

(e)-(e) If an agency or firm is required to be licensed but

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fails to file an application for licensure in accordance with this section, the department ~~must~~ shall impose on the agency or firm an administrative penalty of up to \$10,000.

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

Section 5. Present subsections (7) through (19) of section 626.854, Florida Statutes, are redesignated as subsections (6) through (18), respectively, subsection (1), present subsections (6) and (7), paragraph (b) of present subsection (8), and present subsections (18) and (19) of that section are amended, present paragraph (c) of present subsection (11) of that section is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

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

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of

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value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face to face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

~~(6)(7)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, ~~by phone or in writing~~, whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

~~(7)(8)~~ It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion,

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representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, ~~and~~ bulk mailers, and websites. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(10)-(11)

(c) For purposes of paragraph (b), insurance claim payments by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(17)-(18) A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform salvage, repair, or any other work in a property insurance claim.

(18)-(19) Subsections (5)-(17) ~~(5)-(18)~~ apply only to

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residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

Section 6. Section 626.8541, Florida Statutes, is repealed.

Section 7. Section 626.8548, Florida Statutes, is amended to read:

626.8548 "All-lines adjuster" defined.—An "all-lines adjuster" is a person who, for money, commission, or any other thing of value, directly or indirectly ~~is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who~~ undertakes on behalf of a public adjuster or an insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster. The term does not apply to life insurance or annuity contracts.

Section 8. Section 626.8561, Florida Statutes, is created to read:

626.8561 "Public adjuster apprentice" defined.—A "public adjuster apprentice" is a person licensed as an all-lines adjuster who:

(1) Is appointed and employed by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to

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291 effect settlement of such claim, loss, or damage; and
 292 (3) Satisfies the requirements of s. 626.8651.
 293 Section 9. Section 626.8584, Florida Statutes, is amended
 294 to read:
 295 626.8584 "Nonresident all-lines adjuster" defined.—A
 296 "nonresident all-lines adjuster" means a person who:
 297 (1) Is not a resident of this state;
 298 (2) Is currently licensed as an adjuster in his or her
 299 state of residence for all lines of insurance except life and
 300 annuities or, if a resident of a state that does not license
 301 such adjusters, meets the qualifications prescribed in s.
 302 626.8734; and
 303 (3) Is licensed as an all-lines adjuster and self-appointed
 304 or appointed and employed by an independent adjusting firm or
 305 other independent adjuster, by an insurer admitted to do
 306 business in this state or a wholly owned subsidiary of an
 307 insurer admitted to do business in this state, or by a public
 308 adjuster or a public adjusting firm ~~other insurers under the~~
 309 ~~common control or ownership of such insurer.~~
 310 Section 10. Subsection (1) of section 626.861, Florida
 311 Statutes, is amended to read:
 312 626.861 Insurer's officers, insurer's employees, reciprocal
 313 insurer's representatives; adjustments by.—
 314 (1) ~~Nothing in~~ This part may not ~~shall~~ be construed to
 315 prevent an executive officer of any insurer, ~~or~~ a regularly
 316 salaried employee of an insurer handling claims with respect to
 317 health insurance, a regularly salaried employee of an insurer
 318 handling claims with respect to residential property if the
 319 sublimit coverage does not exceed \$500, or the duly designated

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320 attorney or agent authorized and acting for subscribers to
 321 reciprocal insurers, from adjusting any claim loss or damage
 322 under any insurance contract of such insurer.
 323 Section 11. Subsection (3) of section 626.864, Florida
 324 Statutes, is amended to read:
 325 626.864 Adjuster license types.—
 326 (3) An all-lines adjuster may be appointed as an
 327 independent adjuster, public adjuster apprentice, or company
 328 employee adjuster, but not more than one of these ~~both~~
 329 concurrently.
 330 Section 12. Paragraphs (d) and (e) of subsection (1) of
 331 section 626.865, Florida Statutes, are amended to read:
 332 626.865 Public adjuster's qualifications, bond.—
 333 (1) The department shall issue a license to an applicant
 334 for a public adjuster's license upon determining that the
 335 applicant has paid the applicable fees specified in s. 624.501
 336 and possesses the following qualifications:
 337 (d) Has had sufficient experience, training, or instruction
 338 concerning the adjusting of damages or losses under insurance
 339 contracts, other than life and annuity contracts, is
 340 sufficiently informed as to the terms and effects of the
 341 provisions of those types of insurance contracts, and possesses
 342 adequate knowledge of the laws of this state relating to such
 343 contracts as to enable and qualify him or her to engage in the
 344 business of insurance adjuster fairly and without injury to the
 345 public or any member thereof with whom the applicant may have
 346 business as a public adjuster, ~~or has been licensed and employed~~
 347 ~~as a resident insurance company adjuster or independent adjuster~~
 348 ~~in this state on a continual basis for the past year.~~

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(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months ~~is licensed~~ as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, ~~or as a company employee adjuster under s. 626.856 s. 626.8651 and complies with the requirements of that license throughout the licensure period.~~

Section 13. Section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice appointment license; qualifications.—

(1)(a) The department shall issue an appointment a license as a public adjuster apprentice to a licensee who ~~an applicant who is:~~

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of \$50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

(b) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may

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not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department ~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.~~

~~(c) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of \$50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for~~

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which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.

(2)(7) An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual

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homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment, is surrendered by the licensee, is terminated, suspended, or revoked by the department, or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who has held such a license in this state within 2 years after expiration, surrender, termination, revocation, or cancellation of the license.~~

~~(9) After completing the requirements for employment as a public adjuster apprentice, the licensee may file an application for a public adjuster license. The applicant and supervising public adjuster or public adjusting firm must each file a sworn affidavit, on a form prescribed by the department, verifying that the employment of the public adjuster apprentice meets the requirements of this section.~~

~~(3)(10) In no event shall~~ A public adjuster apprentice appointed ~~licensed~~ under this section may not perform any of the functions for which a public adjuster's license is required ~~after expiration of the public adjuster apprentice license~~ without having obtained a public adjuster license.

~~(4)(11)~~ A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm ~~and may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster.~~ An individual may not be, act as,

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or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a licensed all-lines public adjuster.

Section 14. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each business location established by an adjuster, ~~person operating an adjusting firm and each location of a multiple location adjusting firm, a corporation, or an association~~ must designate with the department a primary adjuster who is licensed and appointed to adjust the insurance claims adjusted by the business location.

(2) An adjusting firm and each branch business location of an adjusting firm shall designate a primary adjuster for each such firm or location and must file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the firm or ~~location where he or she is the primary adjuster, on a form approved by the department.~~ The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided ~~sent~~ to the department within 30 days after such change.

~~(3)(2)(a)~~ For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the ~~hiring and~~ supervision of all individuals within an adjusting firm location who deal with the public and who acts in the

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capacity of a public adjuster as defined in s. 626.854, a public adjuster apprentice as defined in s. 626.8561, or an independent adjuster as defined in s. 626.855. An adjuster may be designated as a primary adjuster for only one adjusting firm location.

~~(4)(b)~~ For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

~~(5)(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed to perform clerical or administrative functions for which licensure is not required.

~~(6)(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm, ~~or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person~~ criminally liable for an ~~or~~ primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

~~(7)(5)~~ The department may suspend or revoke the license of any adjuster who is employed by a person whose license is

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currently suspended or revoked.

~~(8)(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. ~~If the Failure of the person operating the adjusting firm to designate a~~ primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), for 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with ~~for the firm, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s.~~ ~~626.8696.~~

~~(9)(7)~~ Any adjusting firm may determine a request, on a form prescribed by the department, verification from the department of any person's current licensure status by submitting an appointment request. If a request is mailed to the office within 5 working days after the date an adjuster is hired. ~~If, and~~ the department subsequently notifies the adjusting firm that ~~its appointee's an employee's~~ license is currently suspended, revoked, or has been denied, the license of the primary adjuster may ~~shall~~ not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 15. Section 626.8696, Florida Statutes, is amended to read:

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626.8696 Application for adjusting firm license.-

(1) The department may issue an insurance adjusting firm license to a person only after the person files a written application with the department and qualifies for such license.

~~(2)(4)~~ An application for an adjusting firm license must be signed by an individual required to be listed in the application under paragraph (a). An adjusting firm may authorize a third party to complete, submit, and sign an application on the firm's behalf. However, the firm must ensure that the information on the application is true and correct, and the firm is accountable for any misstatement or misrepresentation. The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, and director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name, ~~of the adjusting firm and its~~ principal business street address, and valid e-mail address of the adjusting firm, and the name, address, and e-mail address of the firm's registered agent, person, or company authorized to accept service on behalf of the firm.

(d) The physical address location of each ~~branch~~ adjusting firm, including its name, e-mail address, and telephone number, and the date that the branch location began transacting insurance business office and the name under which each office conducts or will conduct business.

(e) The name of the primary adjuster in full-time charge of

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the firm office, including branch firms, and his or her corresponding location.

(f) The fingerprints of each of the following:

1. A sole proprietor, if the applicant is a sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department, must be accompanied by the fingerprint processing fee specified in s. 624.501, and must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g)(e) Such ~~any~~ additional information that the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for such persons.

~~(2) An application for an adjusting firm license must be signed by each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation.~~

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~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

~~(3)(5) The license of an adjusting firm continues in force until it is canceled, required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is suspended, or revoked or until it is otherwise terminated or expires by operation of law. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.~~

Section 16. Section 626.872, Florida Statutes, is repealed.

Section 17. Section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters by ~~all-lines resident adjusters, by~~ an authorized insurer, ~~or by a licensed general lines agent~~ to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, or by the primary adjuster of an

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639 independent adjusting firm contracted with an authorized insurer
 640 to adjust claims on behalf of the insurer insurers. The fee for
 641 the license is as provided in s. 624.501(12)(c).

642 (2) If any person not a licensed adjuster who has been
 643 permitted to adjust such losses, claims, or damages under the
 644 conditions and circumstances set forth in subsection (1),
 645 engages in any of the misconduct described in or contemplated by
 646 ss. 626.611 and 626.621, the department, without notice and
 647 hearing, shall be authorized to issue its order denying such
 648 person the privileges granted under this section; and thereafter
 649 it shall be unlawful for any such person to adjust any such
 650 losses, claims, or damages in this state.

651 Section 18. Subsection (2) of section 626.875, Florida
 652 Statutes, is amended to read:

653 626.875 Office and records.—

654 (2) The records of the adjuster relating to a particular
 655 claim or loss shall be so retained in the adjuster's place of
 656 business for a period of not less than 5 3 years after
 657 completion of the adjustment. This provision shall not be deemed
 658 to prohibit return or delivery to the insurer or insured of
 659 documents furnished to or prepared by the adjuster and required
 660 by the insurer or insured to be returned or delivered thereto.

661 Section 19. Section 626.876, Florida Statutes, is amended
 662 to read:

663 626.876 Exclusive employment; public adjusters, all-lines
 664 ~~independent~~ adjusters.—

665 (1) An individual licensed ~~and appointed~~ as a public
 666 adjuster may not be simultaneously licensed as an all-lines
 667 adjuster employed during the same period by more than one public

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668 ~~adjuster or public adjuster firm or corporation.~~

669 (2) An individual licensed as an all-lines adjuster and
 670 appointed as an independent adjuster, a company adjuster, or a
 671 public adjuster apprentice may not be simultaneously appointed
 672 or employed in a different adjuster capacity that would require
 673 an additional adjuster appointment type during the same period
 674 ~~by more than one independent adjuster or independent adjuster~~
 675 ~~firm or corporation.~~

676 Section 20. Section 626.879, Florida Statutes, is repealed.

677 Section 21. Subsection (5) of section 626.9953, Florida
 678 Statutes, is amended to read:

679 626.9953 Qualifications for registration; application
 680 required.—

681 (5) An applicant must submit a set of his or her
 682 fingerprints to the department and pay the processing fee
 683 established under s. 624.501(23) ~~s. 624.501(24)~~. The department
 684 shall submit the applicant's fingerprints to the Department of
 685 Law Enforcement for processing state criminal history records
 686 checks and local criminal records checks through local law
 687 enforcement agencies and for forwarding to the Federal Bureau of
 688 Investigation for national criminal history records checks. The
 689 fingerprints shall be taken by a law enforcement agency, a
 690 designated examination center, or another department-approved
 691 entity. The department may not approve an application for
 692 registration as a navigator if fingerprints have not been
 693 submitted.

694 Section 22. 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)

4/3/17

Meeting Date

922

Bill Number (if applicable)

Topic Insurance Adjusters

Amendment Barcode (if applicable)

Name PAUL HENDERHAN

Job Title Consultant

Address 120 South Monroe Street

Street

Tallahassee FL 33021

City

State

Zip

Phone 561-704-0425

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4-3-17

Meeting Date

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

922

Bill Number (if applicable)

Topic Insurance Adjusters

Amendment Barcode (if applicable)

Name Steve Geller

Job Title Attorney

Address 110 E Broward Blvd Ste. 1700

Phone 954-629-7782

Street

City

F. Lauderdale

State

FL 33301

Zip

Email SteveGeller@lawfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAPIA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17

Meeting Date

922

Bill Number (if applicable)

655674

Amendment Barcode (if applicable)

Topic INSURANCE ADJUSTERS

Name Paul Handerhan

Job Title Consultant

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Tallahassee

City

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State

33021

Zip

Phone 561 704 0428

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FAIR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 958

INTRODUCER: Banking and Insurance Committee and Senator Thurston

SUBJECT: Financial Institutions

DATE: April 4, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 958 amends the Financial Institution Codes to expand the pool of eligible individuals who may qualify to serve as a director, president, or chief executive officer of a new or existing bank or trust company that is subject to regulation by the Office of Financial Regulation (OFR). The OFR charters, licenses, and regulates various entities that engage in financial institution business in Florida, including state-chartered banks and trust companies.

For existing and new state-chartered banks and trust companies, the bill extends the period from 3 to 5 years for certain officers and directors to have met the minimum 1 year of financial institution experience. Under current law, at least two of the proposed directors, who are not also proposed officers, must have had at least 1 year of financial institution experience within 3 years prior to the submission of a bank or trust company application to the OFR. Likewise, for existing state-chartered banks or trust companies, the president, chief executive officer, or any other person with an equivalent rank, must have had at least 1 year of experience within the last 3 years.

Lastly, the bill requires that at least a majority, rather than three-fifths, of the directors of a state-chartered bank or trust company must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

The bill has an indeterminate fiscal impact on the Office of Financial Regulation.

II. Present Situation:

Office of Financial Regulation

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). The codes include:

- Ch. 655, F.S., relating to financial institutions generally;
- Ch. 657, F.S., relating to credit unions;
- Ch. 658, F.S., relating to banks and trust companies;
- Ch. 660, F.S., relating to trust business;
- Ch. 663, F.S., relating to international banking;
- Ch. 665, F.S., relating to associations; and
- Ch. 667, F.S., relating to savings banks.¹

Qualifications of Officers and Directors for New or De Novo State Chartered Bank or Trust Company

Section 658.19, F.S., prescribes the information required of an applicant to the OFR for authority to organize a bank or trust company, which includes financial, business, and biographical information the commission or the OFR may reasonably require for each proposed director, executive officer, and, if applicable, each trust officer. The OFR must approve the application if it finds the proposed bank or trust company meets certain criteria including the qualifications of the proposed officers and directors.²

In regards to the background and experience of proposed officers and directors, proposed officers must have sufficient financial experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing and reputation to indicate reasonable promise of successful operation. Further, as a condition, none of the proposed officers and directors may not have been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and ch. 896, F.S., relating to offenses against financial institutions.

At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 3 years before the application date. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive

¹ Section 655.005(1)(k), F.S.

² Section 658.21, F.S.

officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.³

Qualifications of Officers and Directors for an Existing State-Chartered Bank or Trust Company

A state-chartered bank or trust company must have at least five directors and at least a majority of the directors must be citizens of the United States.⁴ At least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office.⁵

In contrast, the Office of the Comptroller of Currency (Comptroller) has different requirements relating to the directors or officers of a nationally chartered bank or trust company. Every director must be a citizen of the United States. At least a majority of the directors must have resided in the state, territory, or district in which the association is located, or within 100 miles of the location of the office of the association, for at least 1 year immediately preceding their election, and must be residents of such state or within 100-mile territory of the location of the association during their continuance in office. However, the Comptroller has the discretion to waive the requirement of residency, and waive the requirement of citizenship in the case of not more than a minority of the total number of directors.⁶

Further, s. 658.33(5), F.S., requires a bank or trust company, with total assets of less than \$150 million, to have at least one director who is not also an officer of the bank or trust company, and must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the preceding 3 years.⁷ For a bank or trust company with total assets of more than \$150 million, at least two directors who are not also officers of the bank or trust company must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 3 years.⁸ The president, chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 658.21, F.S., to provide that a proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within 5 years, rather than 3 years, of the application date for a state chartered bank or trust company.

Further, the bill provides that at least two of the proposed directors who are not also proposed officers must have at least 1 year of direct financial institution experience within 5 years, rather

³ Section 658.21(4), F.S.

⁴ Section 658.33(2), F.S.

⁵ *Id.*

⁶ 12 U.S.C. s. 72.

⁷ *Id.*

⁸ *Id.*

⁹ s. 658.33(5), F.S.

than 3 years, prior to the application. However, the OFR may require only one director to have such experience if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution within the last 5 years rather than the last 3 years.

Section 2 amends s. 658.33, F.S., to increase the period within which a president or chief executive officer and a certain number of directors must have 1 year of relevant financial institution experience in order to serve at an existing state-chartered bank or trust company. The bill expands the period to satisfy the required experience from 3 years to 5 years, as follows:

- The president, chief executive officer, or other person who has equivalent rank or leads the overall operations of a bank or trust company must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years.
- For a bank or trust company with total assets of less than \$150 million, at least one director who is not also an officer of the bank or trust company must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 years.
- For a bank or trust company with total assets of more than \$150 million, at least two directors who are not also officers of the bank or trust company must have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 years.

The bill also requires that at least a majority, rather than three-fifths, of the directors must have resided in Florida for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

Section 3 provides the act will take 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would expand the pool of eligible individuals who may qualify to serve as a director, president, or chief executive officer of a proposed or existing state chartered bank or trust company.

C. Government Sector Impact:

The bill has an indeterminate impact on the Office of Financial Regulation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 658.21 and 658.30.

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 April 3, 2017:

The CS revises the residency requirements of certain directors of an existing bank or trust company and revises requirements relating to the financial institution experience of certain directors and officers of a new or existing bank or trust company. The CS removes provisions that would have allowed a state-chartered bank or trust company to organize as a benefit corporation under part III of ch. 607, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 41 - 95

and insert:

Section 2. Subsections (2) and (5) of section 658.33, Florida Statutes, are amended to read:

658.33 Directors, number, qualifications; officers.—

(2) Not less than a majority of the directors must, during their whole term of service, be citizens of the United States, and at least a majority ~~three-fifths~~ of the directors must have



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resided in this state for at least 1 year preceding their election and must be residents therein during their continuance in office. In the case of a bank or trust company with total assets of less than \$150 million, at least one, and in the case of a bank or trust company with total assets of \$150 million or more, two of the directors who are not also officers of the bank or trust company must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 5 ~~3~~ years.

(5) The president, chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations of a bank or trust company must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 ~~3~~ years. This requirement may be waived by the office after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data.

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

And the title is amended as follows:

Delete lines 6 - 9

and insert:

company applicant; amending s. 658.33, F.S.; revising minimum qualifications for the board of directors and certain officers of banks or trust companies; providing an effective date.

By Senator Thurston

33-01158-17

2017958__

A bill to be entitled

An act relating to financial institutions; amending s. 658.21, F.S.; revising an applicable timeframe of a minimum financial institution experience requirement for certain proposed directors of a bank or trust company applicant; amending ss. 658.23 and 658.30, F.S.; revising applicability of the Florida Business Corporations Act to include parts II and III of ch. 607, F.S.; providing an effective date.

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

Section 1. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5-

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

33-01158-17

2017958__

year period ~~3 years~~ before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution for more than 5 ~~3~~ years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has ~~to have~~ direct financial institution experience within the last 5 ~~3~~ years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 ~~3~~ years.

Section 2. Subsection (2) of section 658.23, Florida Statutes, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(2) The articles of incorporation shall contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which may not be less than the amount required

Page 2 of 4

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by the office pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to the financial institutions codes.

(f) The initial street address of the main office of the corporation, which shall be in this state.

(g) The number of directors, which shall be five or more, and the names and street addresses of the members of the initial board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The office shall provide to the proposed directors form articles of incorporation which must include only those provisions required under this section or under ~~part I of~~ chapter 607. The form articles shall be acknowledged by the proposed directors and returned to the office for filing with the Department of State.

Section 3. Section 658.30, Florida Statutes, is amended to read:

658.30 Application of the Florida Business Corporation Act.—

(1) When not in direct conflict with or superseded by specific provisions of the financial institutions codes, the provisions of the Florida Business Corporation Act, ~~part I of~~ chapter 607, extend to state banks and trust companies formed under the financial institutions codes. This section shall be

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liberally construed to accomplish the purposes stated herein.

(2) Without limiting the generality of subsection (1), stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner authorized by ~~part I of~~ chapter 607, and any action by stockholders, directors, or committees required or authorized to be taken at a meeting may be taken without a meeting in any manner authorized by ~~part I of~~ chapter 607.

Section 4. 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)

4/3/2017

Meeting Date

958

Bill Number (if applicable)

Topic Financial Institutions

Name Katie Crofoot

Amendment Barcode (if applicable)

Job Title Assistant Vice President of Gov't Affairs

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Zip

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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 1008

INTRODUCER: Banking and Insurance Committee and Senators Perry and Bradley

SUBJECT: Public Records/Injured or Deceased Employee/Department of Financial Services

DATE: April 4, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1008 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the Department of Financial Services (DFS) pursuant to s. 440.1851, F.S. "Personal identifying information," means the injured or deceased employee's name, date of birth, home, mailing, or e-mail address, or telephone number. The bill authorizes the DFS to disclose personal identifying information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891, F.S.;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency's official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt under this commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemptions.

The bill takes effect October 1, 2017.

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

In addition to the Florida Constitution, the Florida Statutes provide 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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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.”

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 be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.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

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸

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 *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004).

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).

¹⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Department of Financial Services

The Chief Financial Officer is the head of the Department of Financial Services (DFS).²⁴ The DFS is responsible for various administrative and law enforcement functions. The scope of the DFS's jurisdiction includes many divisions, such as the Division of Investigative and Forensic Services, the Division of Risk Management, and the Division of Workers' Compensation.

The Bureau of Insurance Fraud of the Division of Investigative and Forensic Services investigates alleged acts of insurance fraud not categorized under workers' compensation fraud, including; licensee, healthcare, application, vehicle, homeowners, commercial, disability, arson, and life insurance fraud. Within these categories are: organized schemes to defraud the public and insurers, insolvency of insurance companies due to internal fraud, criminal activity.²⁵

The Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management is responsible for the administration of all workers' compensations claims filed by state employees and volunteers who are injured on the job. The bureau is primarily responsible for ensuring that covered individuals receive timely benefits, while safeguarding the State from instances of fraud, waste, and abuse.²⁶

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 20.121(1), F.S.

²⁵ Section 626.989, F.S.

²⁶ See Bureau of State Employee Workers' Compensation Claims within the Division of Risk Management, available at <http://www.fldfs.com/Division/Risk/WorkersCompensation/Default.htm> (last viewed Apr. 5, 2017).

The Division of Workers' Compensation is responsible for administering many of the provisions of ch. 440, F.S.²⁷ In addition, the Agency for Health Care Administration and the Office of Judges of Compensation Claims within the Division of Administrative Hearings are also responsible for administering provisions of ch. 440, F.S., the Workers' Compensation Law.²⁸

Section 440.185, F.S., establishes reporting requirements for employers and carriers relating to injured employees. In addition to the First Report of Injury (DWC-1), employers and carriers are required to file subsequent reports with the DFS relating to an injured worker that also contain information that would identify an injured worker. These reports or forms include, but are not limited to the: Wage Statement, Request for Wage Loss/Temporary Partial Benefits, Notice of Action/Change, Notice of Denial, and Claim Cost Report. Generally, these reports or forms²⁹ require the submission of the following information to DFS:

- The name and address of the employer;
- The name, social security number, mailing address, telephone number, and occupation of the injured worker;
- The cause and nature of the injury or death;
- The year, month, day, and hour when, and the particular locality where the injury or death occurred; and
- Such other information the DFS may require.³⁰

Carriers and employers are required to report to the DFS every injury that results in payment of lost wages. Further, additional reports with respect to such injury and of the condition of the employee, including copies of medical reports,³¹ funeral expenses, and wage statements, must be filed with the DFS.³²

Public Records Exemptions Relating to Florida's Workers' Compensation Law

Currently, ch. 440, F.S., provides two public records exemptions directly related to injured or deceased injured workers. The first exemption, s. 440.102(8), F.S., protects all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced because of a drug-testing program. The second exemption, s. 440.125, F.S., provides that medical records and medical reports identifying an injured worker, which are filed with the DFS pursuant to s. 440.13, F.S., are confidential and exempt.

In addition, s. 624.23, F.S., of the Florida Insurance Code provides a public record exemption for personal information submitted by a consumer seeking assistance from the DFS. The term, "consumer," is defined to include an employee seeking assistance from the Employee Assistance

²⁷ Effective July 1, 2002, the Department of Labor and Employment Security was abolished and the majority of the functions and programs that were within the Division of Workers' Compensation of this department were transferred to the Department of Insurance. [ch. 2002-194, L.O.F.] Effective January 7, 2003, the Division of Workers' Compensation will be transferred to the Department of Financial Services. [ch. 2002-404, L.O.F.]

²⁸ Section 440.01, F.S.

²⁹ Section 440.185(2), F.S.

³⁰ Rule 69L-3.025, F.A.C., incorporating DFS-F2-DWC-1 by reference.

³¹ Information in the medical reports include the name and address of the injured worker, date of accident, and procedure and diagnosis code describing the treatment and nature of the injury. Section 440.13(4)(b), F.S., and Rules 69L-7.710-7.750, F.A.C.

³² Section 440.185(4), F.S.

and Ombudsman Office under s. 440.191, F.S. Section 624.23, F.S., provides that a consumer's personal and financial information means:

- Personal health condition, disease, or injury;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Personal financial and health information held by the DFS or Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Further, the section provides that such confidential and exempt information may be disclosed to:

- Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.
- The National Association of Insurance Commissioners.
- The consumer or the legally authorized representative of the consumer.

In 1998, the Legislature enacted a public records exemption for information, pertaining to injured or deceased workers, contained in the report of injury or death submitted to the division. This exemption provided that any information contained in a report of injury or illness that was filed pursuant to s. 440.185, F.S., that would identify an ill or injured employee was confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This exemption was not reenacted in 2003, and was repealed as a result of a 2002 Open Government Sunset Review of the public record exemption. The Senate committee staff interim report, did not recommend³³ reenacting the exemption since the statutory exemption, as implemented, did not maintain the confidentiality of an injured worker and failed to meet all of the OGSR standards necessary to be recommended for reenactment.³⁴

According to Division of Workers' Compensation (DWC), about 90 requests per month are received for requests of the names and contact information of injured workers that were reported by employers/carriers in the previous month. Pursuant to these requests, the names and contact information for approximately 4,750 injured or deceased workers are released in response to

³³ See Senate Committee on Banking and Insurance, *Open Government Sunset Review of the Public Records Exemption for Notices of Injury or Death Received by the Division of Workers' Compensation* (Nov. 2002) (on file with Senate Committee on Banking and Insurance).

³⁴ For example, interested parties could obtain records concerning an injured worker by providing the division with the name and social security number of the injured worker. In response, the division would provide the requestor with any applicable records of the injured worker with the name and social security number redacted. The exempt information concerning an injured workers' was also available to carriers and other parties, which subscribed to claims' databases provided by third parties, such as the Division of Workers' Compensation. This confidential information was readily available on other forms submitted to the division, pursuant to s. 440.185, F.S., and would not be protected by the exemption.

these monthly requests. The majority of the requesting parties are law firms.³⁵ The DWC also has an online claims database that allows users to search for claims of injured or deceased employees based on their name and social security number.³⁶

III. Effect of Proposed Changes:

Section 1 creates a public records exemption for personal identifying information of an injured or deceased worker contained in reports, notices, records, or supporting documentation held by the Department of Financial Services (DFS) pursuant to newly created s. 440.1851, F.S.

“Personal identifying information,” means the injured or deceased employee’s name, date of birth, home mailing, or e-mail address, or telephone number.

The bill authorizes the DFS to disclose information made confidential and exempt only:

- To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee’s estate;
- To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
- To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;
- In an aggregate reporting format that does not reveal the personal identifying information of any employee;
- Pursuant to a court order or subpoena;
- To an agency for administering its anti-fraud investigative function or in furtherance of the agency’s official duties and responsibilities; or
- To a federal governmental entity in the furtherance of the entity’s official duties and responsibilities.

Any carrier, employer, agency, or governmental entity receiving such information must maintain the confidentiality of the information as long as it would otherwise be confidential. The exemption applies to personally identifying information held by the DFS before, on, or after the effective date of the exemption.

The bill provides that a person who willfully and knowingly discloses personal identifying information made confidential and exempt under this commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

The public records exemption created by this bill is subject to the Open Government Sunset Review and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

³⁵ Section 440.192, F.S.

³⁶ See Division of Workers’ Compensation Claims Database available at <https://apps.fldfs.com/claimsweb/logon.aspx> (last viewed Apr. 5, 2017).

This bill requires a two-thirds vote from each chamber for passage because the bill creates a public records exemptions.

Section 2 provides a public necessity statement for making personal identifying information of an injured worker or employee held by the DFS pursuant to s. 440.1851, F.S., confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Such information is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of a deceased employee's family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

Section 3 provides the bill takes effect October 1, 2017.

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:

The bill will protect personal identifying information of injured or deceased employees held by the Department of Financial Services. Since attorneys will no longer have access to the names and contact information of injured or deceased workers, the bill may reduce attorney involvement in workers' compensation disputes.

C. Government Sector Impact:

Insignificant. The DFS estimated a nonrecurring fiscal impact of \$400 for the fiscal year 2017-2018.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The public records exemption in s. 624.23, F.S., does not exempt personal identifying information of consumers, which includes employees seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

VIII. Statutes Affected:

This bill creates section 440.1851 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 April 3, 2017:

- Revises the definition of the term, “personal identifying information.”
- Expands the circumstances in which the Department of Financial Services may disclose personal identifying information.
- Creates a criminal penalty for a person who willfully and knowingly discloses information made confidential and exempt.
- Provides that the exemption applies to personal identifying information held by the DFS before, on, or after the effective date of the exemption.
- Revises the effective date of the bill.

- B. Amendments:

None.



305854

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 440.1851, Florida Statutes, is created
to read:

440.1851 Personal identifying information of an injured or
deceased employee; public records exemption.—

(1) The personal identifying information of an injured or
deceased employee which is contained in reports, notices,



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records, or supporting documentation held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this section, the term "personal identifying information" means:

1. The injured or deceased employee's name;
2. The injured or deceased employee's date of birth;
3. The injured or deceased employee's home address or mailing address;
4. The injured or deceased employee's e-mail address; or
5. The injured or deceased employee's telephone number.

(b) The department may disclose information made confidential and exempt under this section only:

1. To the injured employee, to the spouse or a dependent of the deceased employee, to the spouse or a dependent of the injured employee if authorized by the injured employee, or to the legal representative of the deceased employee's estate;
2. To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;
3. To a carrier or an employer for the purpose of investigating the compensability of a claim or for the purpose of administering its anti-fraud investigative unit established pursuant to s. 626.9891;
4. In an aggregate reporting format that does not reveal the personal identifying information of any employee;
5. Pursuant to a court order or subpoena;
6. To an agency for administering its anti-fraud investigative function or in the furtherance of the agency's



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official duties and responsibilities; or

7. To a federal governmental entity in the furtherance of the entity's official duties and responsibilities.

Any carrier, employer, agency, or governmental entity receiving such information shall maintain the confidentiality of the information as long as it would otherwise be confidential.

(c) This exemption applies to personal identifying information held by the department before, on, or after the effective date of this exemption.

(2) A person who willfully and knowingly discloses personal identifying information made confidential and exempt under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the personal identifying information of an injured or deceased employee which is contained in reports, notices, records, or supporting documentation held by the Department of Financial Services. Such information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of his or her family. Further, the release of such information could lead to discrimination against the employee by



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coworkers, potential employers, and others. The harm caused to
such an employee or his or her family by the release of this
information outweighs any public benefit derived from its
release.

Section 3. This act shall take effect October 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 public records; creating s.
440.1851, F.S.; providing an exemption from public
records requirements for the personal identifying
information of an injured or deceased employee which
is contained in reports, notices, records, or
supporting documentation held by the Department of
Financial Services; defining the term "personal
identifying information"; specifying circumstances
under which the department may disclose such
information; providing retroactive applicability;
providing a criminal penalty for willful and knowing
disclosure of such information; providing for future
review and repeal of the exemption; providing a
statement of public necessity; providing an effective
date.

By Senator Perry

8-00874-17

20171008__

A bill to be entitled

An act relating to public records; amending s. 440.185, F.S.; providing an exemption from public records requirements for the personal identifying information of an injured or deceased employee which is contained in certain notices or reports filed with the Division of Workers' Compensation of the Department of Financial Services; authorizing the division to disclose such information under certain circumstances; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (11) is added to section 440.185, Florida Statutes, to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(11) (a) In any notice or report filed with the division pursuant to this section, the personal identifying information of an injured or deceased employee contained in such notice or report is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under this subsection may be disclosed by the division only:

1. In an aggregate reporting format that does not reveal the personal identifying information of any employee;

2. Pursuant to a court order; or

8-00874-17

20171008__

3. To an administrative or law enforcement agency in the furtherance of the agency's official duties and responsibilities. An administrative or law enforcement agency receiving such information shall maintain the confidentiality of the information as long as it would otherwise be confidential.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the personal identifying information of an injured or deceased employee contained in any notice or report filed with the Division of Workers' Compensation of the Department of Financial Services pursuant to s. 440.185, Florida Statutes. Such information filed under the Workers' Compensation Law is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of a deceased employee's family. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee or his or her family by the release of this information outweighs any public benefit derived from its release.

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)

4-3-17

Meeting Date

SB 1008

Bill Number (if applicable)

AM 305854

Amendment Barcode (if applicable)

Topic WORKERS' COMP

Name Cam FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGE SQUARE # 3-243

Street

TALL FL 32312

City

State

Zip

Phone 850-222-2772

Email AFENTRISS@AOL.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FUA. REFRIGERATION + AIR CONDITIONING CONTRACTORS

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)

4/3/17

Meeting Date

1008

Bill Number (if applicable)

Topic Public Records/Workers' Comp

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/13/17
Meeting Date

1008
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Phone 850-681-0416

Tallahassee FL 32301
City State Zip

Email tim.nungesser@nfb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

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)

4/3/17

Meeting Date

1008

Bill Number (if applicable)

Topic Public Records / DFS / Injured Employee Info

Amendment Barcode (if applicable)

Name B.G. Murphy

Job Title Dep. Legislative Affairs Director

Address 400 S. Monroe St

Phone 850-413-2890

Street

Tallahassee

FL

32399

City

State

Zip

Email B.G. Murphy@myfloridato.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/13/17

Meeting Date

SB1008

Bill Number (if applicable)

Topic Public Records/WC

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams

Phone 224-7175

Street

TLH

City

FL

State

32301

Zip

Email bbevis@aificon

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/11

Meeting Date

Topic Public Records/Injured Deceased Employee Bill Number 1008 (if applicable)
Name Richard Watson Amendment Barcode _____ (if applicable)
Job Title Legislative Counsel
Address P.O. Box 10038 Phone 850-222-0000
Street
City Tallahassee State fl Zip 32302 E-mail rick@rwatsonandassociates.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Builders and Contractors of Florida

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17

Meeting Date

21008

Bill Number (if applicable)

Topic Workers Comp. P.R.

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277

Street

Phone 850-570-0033

Tallah FL 32317

City

State

Zip

Email lawson.deborah.e@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla Roof Deck Assn & NACM

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)

4/13/17
Meeting Date

SB 1008
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 230 West Bay Ave
Street

Phone 407 830 1882

Longwood FL 32750
City State Zip

Email RBKershner@att.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southeast Glass Assn.

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

04.03.17

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

1008

Meeting Date

Bill Number (if applicable)

Topic Public Record/Injured or Deceased Employee

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

City

State

Zip

Email William@fljustice.org

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

Representing Florida Justice Reform Institute

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-3-17

Meeting Date

SB 1008

Bill Number (if applicable)

AM 305854

Amendment Barcode (if applicable)

Topic WORKERS' COMP

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQUARE # 3-283

Street

TAU FL 32312

City

State

Zip

Phone 850-222-2772

Email CFENTRISS@AOL.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing FLA. ROOFING + SHEET METAL CONTRACTORS ASSN

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 1012

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Investigative and Forensic Services

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1012 creates new requirements for insurance companies relating to insurance fraud prevention and reporting. The bill requires all insurers to adopt an anti-fraud plan and to establish and maintain a unit within the company to investigate possible fraudulent insurance acts or contract with others to investigate fraudulent insurance acts. The insurer must electronically file with the Department of Financial Services (DFS) a detailed description of the unit established to investigate possible fraudulent insurance acts or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer and a copy of the anti-fraud plan. This filing must be made annually on or before December 1, starting in 2017.

The anti-fraud plan must include:

- An acknowledgment that the insurer has established procedures for detecting possible fraudulent insurance acts;
- An acknowledgement that the insurer has established procedures for reporting such acts to the DFS;
- An acknowledgement that the insurer provides required anti-fraud education to employees;
- A description of the anti-fraud education;
- A description of the insurer's anti-fraud unit; and
- The rationale for staffing levels and resources provided to the anti-fraud unit.

Beginning in 2019, the bill requires every insurer to annually submit anti-fraud statistics to the DFS by March 1 of for the lines written by that insurer for the calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the DFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the DFS or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This bill requires all insurers to provide reports.

The bill modifies reporting requirements for workers' compensation insurers.

The bill creates a dedicated prosecutor program to be administered by the DFS. The program will allow state attorneys to seek grants from DFS, subject to funding by the Legislature, to add positions to prosecute insurance fraud cases.

II. Present Situation:

The DFS regulates insurance agents, insurance agencies, and insurance adjusters. The DFS Division of Investigative and Forensic Services (division) contains sworn law enforcement officer that investigate various types of insurance fraud including personal injury protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud. The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida Insurance Code and rules adopted pursuant to the code. The division employs sworn law enforcement officers to investigate insurance fraud and other matters within the division's jurisdiction. In Fiscal Year 2014-2015, the division received 17,392 referrals.¹

Anti-Fraud Requirements Imposed on Insurance Companies

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received \$10 million or more in direct premiums during the previous calendar year, to establish a unit to investigate possible insurance claim fraud or to contract with others to investigate such

¹ http://www.fldfs.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed March 29, 2017).

fraud. The insurer must file a detailed description of the anti-fraud unit with, or provide a copy of the contract, to the division.²

If the insurer received less than \$10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the division.³ The anti-fraud plan must describe:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and
- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.⁴

Workers' compensation insurers are required to report the following to the Department on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other;
- The number of fraud referrals submitted to the Bureau of Workers' Compensation Fraud for the prior year;
- A description of the organization of its anti-fraud unit, if applicable;
- The rationale for the level of staffing and resources being provided for the SIU;
- The in-service anti-fraud education and training provided to personnel; and
- A description of a public awareness program focused on insurance fraud and methods by which the public can prevent it.⁵

If an insurer fails to comply with the requirements for anti-fraud units or anti-fraud plans or fails to comply with other provisions of law, the DFS, OIR, or Financial Services Commission may impose certain administrative fines.⁶

Dedicated Prosecutor Program

The Dedicated Prosecutor Program was created in September of 2003. The first dedicated prosecutor position was jointly funded by the DFS, the Miami-Dade State Attorney's Office and the Florida Automobile Joint Underwriting Association. As of June 30, 2016, the program has 36 full time positions with 20 dedicated prosecutors located in Jacksonville, Orlando, Miami-Dade, Tampa, West Palm Beach, Broward, and Ft. Myers. Four positions are devoted solely to worker's compensation fraud.⁷

² s. 626.9891(1), F.S.

³ s. 626.9891(2), F.S.

⁴ s. 626.9891(3), F.S.

⁵ s. 626.9891(6), F.S.

⁶ s. 626.9891(7), F.S.

⁷ Department of Financial Services, *Analysis of SB 1012* (March 8, 2017) at p. 2.

III. Effect of Proposed Changes:

Anti-Fraud Requirements Imposed on Insurance Companies

Section 1 rewrites s. 626.9891, F.S. It creates more uniform requirements for insurers to create anti-fraud units and anti-fraud plans than those that exist in current law. It requires every insurer to designate at least one employee responsible for meeting the requirements of s. 626.9891, F.S.

The bill requires all insurers to establish and maintain a designated anti-fraud unit or division to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds. Alternatively, an insurer may contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

The bill requires insurers to adopt an anti-fraud plan. The anti-fraud plan must include:

- An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgment that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- An acknowledgment that the insurer provides the required anti-fraud education and training to the anti-fraud unit;
- A description of the required anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

Insurers must establish the anti-fraud units and anti-fraud plans (or enter an appropriate contract) by December 31, 2017, and must file the anti-fraud plan or contract annually with the DFS.

Beginning in 2019, the bill requires every insurer to annually submit anti-fraud statistics by March 1, 2019, for the lines written by that insurer for the prior calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;

- The number of cases referred to the Division of Investigative and Forensic Services of the department;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the Division of Investigative and Forensic Services of the department, or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This bill requires all insurers to provide reports.

The bill requires workers' compensation insurers to report the following information each year:

- The estimated dollar amount of losses attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type;
- The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type; and
- The number of cases referred to the division, delineated by the type of fraud, including: claimant, employer, provider, agent, or other type;

The bill requires every insurer to provide at least 2 hours of initial anti-fraud training to the designated anti-fraud investigative unit or contractor by December 31, 2018. Each insurer must also provide an annual 1-hour refresher course that addresses detection, referrals, investigations, and reporting of suspected insurance fraud for the types of insurance lines written by the insurer.

The bill provides that an insurer who obtains a certificate of authority has 6 months to establish the anti-fraud unit or enter into an appropriate contract. During the same 6 months the insurer must adopt an anti-fraud plan and to designate an employee responsible for complying with s. 626.9891, F.S. The bill provides that the insurer has one calendar year thereafter to file the anti-fraud plan with the DFS and comply with relevant reporting requirements. The bill provides for administrative fines if an insurer fails to comply with s. 626.9891, F.S.

Dedicated Prosecutor Program

The bill creates a grant program to fund the Insurance Fraud Dedicated Prosecutor Program. The purpose of the program is to provide grants to state attorneys' offices to fund attorney and paralegal positions to prosecute insurance fraud. The program will consist only of funds appropriated specifically for the program.

The bill provides that, beginning in 2018, a state attorney's office seeking grant funds must submit an application to the division detailing the proposed number of dedicated prosecutors and paralegals requested for the prosecution of insurance fraud. Applications must be received by July 1 of each even-numbered year and shall identify funding needs for 2 years. Grant awards are contingent upon legislative appropriation and subject to renewal by the DFS. The bill requires the division to compile and review the applications to establish its legislative budget request for the program for the upcoming 2 years.

The bill authorizes the division to award grants to state attorneys' offices using a formula adopted by rule. The rule must be based on metrics and data compiled by the division which allocate funds to the judicial circuits based on trends in insurance fraud and the performance and output measures reported to the division. A grant is subject to s. 215.971, F.S., and may only be used to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. The division shall establish the annual maximum grant amount.

The bill requires the division to track and report on the effectiveness and efficiency of each state attorney's office's use of the awarded grant funds. To help complete the report, each state attorney's office that is awarded a grant must submit performance and output information to the division. The report must be provided to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2020, and annually thereafter. The report must include, but is not limited to, the following:

- The amount of grant funds received and expended by each state attorney's office;
- A description of the purposes for which the funds were expended, including payment of salaries, expenses, and any other costs needed to support the delivery of services; and
- The results achieved from the expenditures made, including the number of complaints filed, the number of investigations initiated, the number of arrests made, the number of convictions, and the amount of restitution or fines paid as a result of the cases presented for prosecution.

The bill provides that the DFS may adopt rules for the administration and implementation of the Insurance Fraud Dedicated Prosecutor Program and provides requirements for the rules.

Other Provisions

The bill amends s. 641.3915, F.S., to make technical changes.

The effective date of the bill is September 1, 2017.

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:

Insurance companies will incur some costs compiling and providing statistical data to the DFS. The fiscal impact is not known.

C. Government Sector Impact:

The DFS anticipates no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.9891, and 641.3915.

This bill creates section 626.9896 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.)

CS by Banking and Insurance on April 3, 2017:

- Removes a provision related to the reversion of funds from the Justice Administrative Commission to the Workers' Compensation Trust Fund.
- Requires all insurers, regardless of the amount of premium written, to submit anti-fraud plans (or contracts) to the DFS. It modifies insurer reporting requirements.
- Requires a report to the Governor, President, and Speaker regarding the effectiveness of the dedicated prosecutor program.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 626.9891, Florida Statutes, is reordered
and amended to read:

626.9891 Insurer anti-fraud investigative units; reporting
requirements; penalties for noncompliance.—

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

(a) "Anti-fraud investigative unit" means the designated



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11 anti-fraud unit or division, or contractor authorized under
12 subparagraph (2) (a) 2.

13 (b) "Designated anti-fraud unit or division" includes a
14 distinct unit or division or a unit or division made up of the
15 assignment of fraud investigation to employees whose principal
16 responsibilities are the investigation and disposition of claims
17 who are also assigned investigation of fraud. If an insurer
18 creates a distinct unit or division, hires additional employees,
19 or contracts with another entity to fulfill the requirements of
20 this section, the additional cost incurred must be included as
21 an administrative expense for ratemaking purposes.

22 (2)(1) By December 31, 2017, every insurer admitted to do
23 business in this state who in the previous calendar year, at any
24 time during that year, had \$10 million or more in direct
25 premiums written shall:

26 (a) 1. Establish and maintain a designated anti-fraud unit
27 or division within the company to investigate and report
28 possible fraudulent insurance acts claims by insureds or by
29 persons making claims for services or repairs against policies
30 held by insureds; or

31 2.(b) Contract with others to investigate and report
32 possible fraudulent insurance acts by insureds or by persons
33 making claims for services or repairs against policies held by
34 insureds.

35 (b) Adopt an anti-fraud plan.

36 (c) Designate at least one employee with primary
37 responsibility for implementing the requirements of this
38 section.

39 (d) Electronically An insurer subject to this subsection



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~~shall~~ file with the Division of Investigative and Forensic Services of the department, and annually thereafter ~~on or before July 1, 1996~~, a detailed description of the designated anti-fraud unit or division ~~established pursuant to paragraph (a) or~~ a copy of the contract executed under subparagraph (a)2., as applicable, a copy of the anti-fraud plan, and the name of the employee designated under paragraph (c) ~~and related documents required by paragraph (b).~~

An insurer must include the additional cost incurred in creating a distinct unit or division, hiring additional employees, or contracting with another entity to fulfill the requirements of this section, as an administrative expense for ratemaking purposes.

~~(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than \$10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Investigative and Forensic Services of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with the provisions of subsection (1).~~

(3) Each ~~insurers~~ anti-fraud plan must ~~plans shall~~ include:

(a) An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance by that insurer ~~A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;~~

(b) An acknowledgment that the insurer has established ~~A description of the insurer's procedures for the mandatory~~



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reporting of possible fraudulent insurance acts to the Division of Investigative and Forensic Services of the department;

(c) An acknowledgement that the insurer provides the A description of the insurer's plan for anti-fraud education and training required by this section to the anti-fraud investigative unit of its claims adjusters or other personnel; and

(d) A description of the required anti-fraud education and training;

(e) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud investigative unit, including the position titles and descriptions of staffing; and personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts

(f) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

(4) By December 31, 2018, each insurer shall provide staff of the anti-fraud investigative unit at least 2 hours of initial anti-fraud training that is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities. Annually thereafter, an insurer shall provide such employees a 1-hour course that addresses detection, referral, investigation, and reporting of



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possible fraudulent insurance acts for the types of insurance lines written by the insurer.

(5) Each insurer is required to report data related to fraud for each line of insurance written by the insurer during the prior calendar year. The data shall be reported to the department by March 1, 2019, and annually thereafter, and must include, at a minimum:

(a) The number of policies in effect;

(b) The amount of premiums written for policies;

(c) The number of claims received;

(d) The number of claims referred to the anti-fraud investigative unit;

(e) The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;

(f) The number of claims investigated or accepted by the anti-fraud investigative unit;

(g) The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;

(h) The number of cases referred to the Division of Investigative and Forensic Services;

(i) The number of cases referred to other law enforcement agencies;

(j) The number of cases referred to other entities; and

(k) The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies.

(6) In addition to providing information required under subsections (2), (4), and (5), each insurer writing workers'



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compensation insurance shall also report the following
information to the department, on or before March 1, 2019, and
annually thereafter ~~August 1 of each year, on its experience in~~
~~implementing and maintaining an anti-fraud investigative unit or~~
~~an anti-fraud plan. The report must include, at a minimum:~~

(a) The estimated dollar amount of losses attributable to
workers' compensation fraud delineated by the type of fraud,
including claimant, employer, provider, agent, or other type.

(b) The estimated dollar amount of recoveries attributable
to workers' compensation fraud delineated by the type of fraud,
including claimant, employer, provider, agent, or other type.

(c) The number of cases referred to the Division of
Investigative and Forensic Services, delineated by the type of
fraud, including claimant, employer, provider, agent, or other
type.

~~(a) The dollar amount of recoveries and losses attributable~~
~~to workers' compensation fraud delineated by the type of fraud:~~
~~claimant, employer, provider, agent, or other.~~

~~(b) The number of referrals to the Bureau of Workers'~~
~~Compensation Fraud for the prior year.~~

~~(c) A description of the organization of the anti-fraud~~
~~investigative unit, if applicable, including the position titles~~
~~and descriptions of staffing.~~

~~(d) The rationale for the level of staffing and resources~~
~~being provided for the anti-fraud investigative unit, which may~~
~~include objective criteria such as number of policies written,~~
~~number of claims received on an annual basis, volume of~~
~~suspected fraudulent claims currently being detected, other~~
~~factors, and an assessment of optimal caseload that can be~~



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156 ~~handled by an investigator on an annual basis.~~

157 ~~(e) The inservice education and training provided to~~
158 ~~underwriting and claims personnel to assist in identifying and~~
159 ~~evaluating instances of suspected fraudulent activity in~~
160 ~~underwriting or claims activities.~~

161 ~~(f) A description of a public awareness program focused on~~
162 ~~the costs and frequency of insurance fraud and methods by which~~
163 ~~the public can prevent it.~~

164 ~~(7)(4) An~~ Any insurer who obtains a certificate of
165 authority has 6 ~~after July 1, 1995, shall have 18~~ months in
166 which to comply with subsection (2), and one calendar year
167 thereafter, to comply with subsections (4), (5), and (6) ~~the~~
168 ~~requirements of this section.~~

169 ~~(8)(7) If an insurer fails to timely submit a final~~
170 ~~acceptable anti-fraud plan or anti-fraud investigative unit~~
171 ~~description, fails to implement the provisions of a plan or an~~
172 ~~anti-fraud investigative unit description, or otherwise refuses~~
173 ~~to comply with the provisions of this section, the department,~~
174 ~~office, or commission may:~~

175 (a) Impose an administrative fine of not more than \$2,000
176 per day for such failure ~~by an insurer to submit an acceptable~~
177 ~~anti-fraud plan or anti-fraud investigative unit description,~~
178 until the department, office, or commission deems the insurer to
179 be in compliance;

180 (b) Impose an administrative fine for failure by an insurer
181 to implement or follow the provisions of an anti-fraud plan or
182 anti-fraud investigative unit description; or

183 (c) Impose the provisions of both paragraphs (a) and (b).

184 ~~(9)(8)~~ The department may adopt rules to administer this



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section.

Section 2. Section 626.9896, Florida Statutes, is created to read:

626.9896 Insurance Fraud Dedicated Prosecutor Program.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes the increasing problem of insurance fraud, the need to adequately investigate and prosecute insurance fraud, and the need to create a program dedicated to the prosecution of insurance fraud. The Legislature recognizes that the Division of Investigative and Forensic Services of the department can efficiently and effectively implement and monitor such a program, and can direct and reallocate resources as insurance fraud trends change and demand for prosecutorial resources shift between judicial circuits.

(2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED PROSECUTOR PROGRAM.—There is created within the department a grant program to fund the Insurance Fraud Dedicated Prosecutor Program. The purpose of the program is to provide grants to state attorneys' offices to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. The program shall consist only of funds appropriated by the state specifically for this program.

(3) GRANT APPLICATIONS.—Beginning in 2018, a state attorney's office seeking grant funds must submit an application to the Division of Investigative and Forensic Services detailing the proposed number of dedicated prosecutors and paralegals requested for the prosecution of insurance fraud. Applications must be received by July 1 of each even-numbered year and shall identify funding needs for 2 years. Grant awards are contingent



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upon legislative appropriation in the Insurance Regulatory Trust Fund and Workers' Compensation Administration Trust Fund and subject to renewal by the department. The division must compile and review the timely submitted applications to establish its legislative budget request for the program for the upcoming two years.

(4) AWARD OF GRANTS.—The division is authorized to award grants to state attorneys' offices using a formula adopted by rule of the department and based on metrics and data compiled by the division which allocate funds to the judicial circuits based on trends in insurance fraud and the performance and output measures reported as required by this section. A grant awarded to a state attorney's office may only be used to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. Grants are subject to the provisions of s. 215.971. The division shall establish the annual maximum grant amount, based on funds appropriated to the department for funding the Insurance Fraud Dedicated Prosecutor Program.

(5) REPORTING.—The division must track and report on the effectiveness and efficiency of each state attorney's office's use of the awarded grant funds. To help complete the report, each state attorney's office that is awarded a grant under this section must submit performance and output information as determined by the division. The report must be provided to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2020, and annually thereafter. The report must include, but is not limited to, the following:



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(a) The amount of grant funds received and expended by each state attorney's office;

(b) A description of the purposes for which the funds were expended, including payment of salaries, expenses, and any other costs needed to support the delivery of services;

(c) The results achieved from the expenditures made, including the number of complaints filed, the number of investigations initiated, the number of arrests made, the number of convictions, and the amount of restitution or fines paid as a result of the cases presented for prosecution.

(6) RULES.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for the administration and implementation of the Insurance Fraud Dedicated Prosecutor Program. Such rules may establish procedures for the Insurance Fraud Dedicated Prosecutor Program, including forms to be used by the state attorney's offices. The department may establish a formula for allocating grant funds, eligibility criteria, renewal requirements, and standards for evaluating the effectiveness and efficiency of expended funds.

Section 3. Section 641.3915, Florida Statutes, is amended to read:

641.3915 Health maintenance organization anti-fraud plans and investigative units.—Each authorized health maintenance organization and applicant for a certificate of authority shall comply with the provisions of ss. 626.989 and 626.9891 as though such organization or applicant were an authorized insurer. ~~For purposes of this section, the reference to the year 1996 in s. 626.9891 means the year 2000 and the reference to the year 1995 means the year 1999.~~



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Section 4. This act shall take effect September 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 insurer anti-fraud efforts;
reordering and amending s. 626.9891, F.S.; defining
and revising definitions; requiring every insurer to
designate at least one primary anti-fraud employee for
certain purposes; requiring insurers to adopt an anti-
fraud plan; revising insurer requirements in providing
anti-fraud information to the Department of Financial
Services; requiring specified information to be filed
annually with the department; revising the information
to be provided by insurers who write workers'
compensation insurance; requiring each insurer to
provide annual anti-fraud education and training;
requiring insurers who submit an application for a
certificate of authority after a specified date to
comply with the section; providing penalties for
failure to comply with requirements of the section;
creating s. 626.9896, F.S.; providing legislative
intent; creating a grant program to fund the Insurance
Fraud Dedicated Prosecutor Program within the
department; requiring moneys that are appropriated for
the program be used to fund specific attorney and
paralegal positions; specifying procedures to be used



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by state attorneys' offices when applying for biennial grants; specifying that grants are for two years but authorizing the division to renew the grants; specifying procedures to be used by the department in awarding grant funds; requiring the Division of Investigative and Forensic Services to provide an annual report to the Executive Office of the Governor, the Speaker of the House of Representatives, and the Senate President; specifying information to be contained in the report; authorizing the department to adopt rules to administer and implement the insurance fraud dedicated prosecutor program; amending s. 641.3915, F.S.; deleting obsolete provisions; providing an effective date.

By Senator Brandes

24-00733B-17

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1 A bill to be entitled
 2 An act relating to investigative and forensic
 3 services; amending s. 440.50, F.S.; deleting the
 4 Justice Administrative Commission from a list of
 5 entities whose unencumbered or undisbursed funds
 6 appropriated from the Workers' Compensation
 7 Administration Trust Fund must be reverted to the
 8 trust fund at specified intervals; reordering and
 9 amending s. 626.9891, F.S.; requiring insurers to
 10 designate primary anti-fraud employees; requiring
 11 certain insurers to adopt an anti-fraud plan and
 12 investigate possible fraudulent insurance acts;
 13 revising requirements for information to be filed by
 14 insurers with the Division of Investigative and
 15 Forensic Services of the Department of Financial
 16 Services; revising requirements for insurer anti-fraud
 17 plans; requiring insurers to submit specified anti-
 18 fraud statistics at certain intervals; revising
 19 requirements for reports to the department by insurers
 20 writing workers' compensation insurance; providing
 21 requirements for anti-fraud training for insurer anti-
 22 fraud investigative units or contractors; providing a
 23 penalty for violations; creating s. 626.9896, F.S.;
 24 providing legislative intent; creating the Insurance
 25 Fraud Dedicated Prosecutor Program; requiring the
 26 division to accept and administer appropriated moneys
 27 for a certain purpose; requiring a state attorney's
 28 office that desires a grant under the program to apply
 29 to the department; providing criteria for the

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

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30 department's awarding of grants; providing grant
 31 limits; requiring the department to track, monitor,
 32 and report on the use of funds by state attorney
 33 offices; requiring state attorney offices to submit
 34 certain information to the department; authorizing the
 35 department to adopt rules; amending s. 641.3915, F.S.;
 36 conforming a provision to changes made by the act;
 37 providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Subsection (5) of section 440.50, Florida
 42 Statutes, is amended to read:
 43 440.50 Workers' Compensation Administration Trust Fund.—
 44 (5) Funds appropriated by an operating appropriation or a
 45 nonoperating transfer from the Workers' Compensation
 46 Administration Trust Fund to the Agency for Health Care
 47 Administration, the Department of Business and Professional
 48 Regulation, the Department of Management Services, and the First
 49 District Court of Appeal, ~~and the Justice Administrative~~
 50 ~~Commission~~ remaining unencumbered as of June 30 or undisbursed
 51 as of September 30 each year shall revert to the Workers'
 52 Compensation Administration Trust Fund.
 53 Section 2. Section 626.9891, Florida Statutes, is reordered
 54 and amended to read:
 55 626.9891 Insurer anti-fraud investigative units; reporting
 56 requirements; penalties for noncompliance.—
 57 (2) (†) Every insurer admitted to do business in this state
 58 who estimates that it wrote ~~in the previous calendar year, at~~

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

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any time during that year, had \$10 million or more in direct premiums in the previous year written shall:

(a) Adopt an anti-fraud plan and establish and maintain a unit or division within the company to investigate possible fraudulent insurance acts ~~claims~~ by insureds or by persons making claims for services or repairs against policies held by insureds; or

(b) Contract with others to investigate possible fraudulent insurance acts ~~claims~~ for services or repairs against policies held by insureds.

An insurer subject to this subsection shall electronically file with the Division of Investigative and Forensic Services of the department on or before September 1, 2017, and annually thereafter July 1, 1996, a detailed description of the unit or division established pursuant to paragraph (a) or a copy of the contract and related documents required by paragraph (b).

(3)(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than \$10 million in direct premiums written, must adopt an anti-fraud plan and file it electronically with the Division of Investigative and Forensic Services of the department on or before September 1, 2017, and annually thereafter July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with paragraph (2)(b) ~~the provisions of subsection (1)~~.

(4)(3) Each ~~insurers~~ anti-fraud plan must plans shall include:

(a) An acknowledgment that the insurer has established procedures for detecting and investigating possible fraudulent

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insurance acts relating to the different types of insurance written by that insurer ~~A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;~~

(b) An acknowledgment that the insurer has established ~~A description of the insurer's~~ procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Investigative and Forensic Services of the department;

(c) An acknowledgement that the insurer provides ~~A description of the insurer's plan for~~ anti-fraud education and training ~~to~~ of its claims adjusters or other personnel; ~~and~~

(d) A description of the anti-fraud education and training required under subsection (7) which is provided to the designated anti-fraud investigative unit or contractor and which is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities;

(e)(4) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts;

(f) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors; and

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(g) A description of the insurer's public awareness efforts focused on the costs and frequency of insurance fraud and methods by which the public can prevent such fraud.

~~(8)(4) An Any~~ insurer who submits an application to obtain ~~obtains~~ a certificate of authority after September 1, 2017, must ~~July 1, 1995, shall have 18 months in which to~~ comply with the requirements of this section before receiving such certificate.

~~(1)(a)(5)~~ For purposes of this section, the term "unit or division" includes the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit or division, hires additional employees, or contracts with another entity to fulfill the requirements of this section, the additional cost incurred must be included as an administrative expense for ratemaking purposes.

(b) Every insurer shall designate at least one primary anti-fraud employee responsible for meeting the requirements set forth in this section.

(5) Every insurer shall also submit anti-fraud statistics annually by September 1 for the lines written by that insurer for the calendar year. The statistics must include, at a minimum:

(a) The number of policies in effect;

(b) The amount of premiums written for policies;

(c) The number of claims received;

(d) The number of claims referred to the anti-fraud investigative unit;

(e) The number of other insurance fraud matters referred to the anti-fraud investigative unit that were nonclaim related;

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(f) The number of claims investigated or accepted by the anti-fraud investigative unit;

(g) The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were nonclaim related;

(h) The number of cases referred to the Division of Investigative and Forensic Services of the department;

(i) The number of cases referred to other law enforcement agencies;

(j) The number of cases referred to other entities; and

(k) The estimated dollar amount of damages in cases referred to the Division of Investigative and Forensic Services of the department, or other agencies.

(6) In addition to providing the information required under subsections (2), (3), and (5), each insurer writing workers' compensation insurance shall also report the following information to the department, on or before September 1 August 1 of each year, on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan. The report must include, at a minimum:

(a) The estimated dollar amount of losses attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type.

(b) The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type.

(c) The number of cases referred to the Division of Insurance and Forensic Services of the department, delineated by the type of fraud, including: claimant, employer, provider,

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175 agent, or other type.

176 (d) The dollar amount of recoveries and losses attributable
 177 to workers' compensation fraud, delineated by the type of fraud:
 178 claimant, employer, provider, agent, or other type.

179 ~~(a) The dollar amount of recoveries and losses attributable~~
 180 ~~to workers' compensation fraud delineated by the type of fraud:~~
 181 ~~claimant, employer, provider, agent, or other.~~

182 ~~(b) The number of referrals to the Bureau of Workers'~~
 183 ~~Compensation Fraud for the prior year.~~

184 (e)(e) A description of the organization of the anti-fraud
 185 investigative unit, if applicable, including the position titles
 186 and descriptions of staffing.

187 ~~(d) The rationale for the level of staffing and resources~~
 188 ~~being provided for the anti-fraud investigative unit, which may~~
 189 ~~include objective criteria such as number of policies written,~~
 190 ~~number of claims received on an annual basis, volume of~~
 191 ~~suspected fraudulent claims currently being detected, other~~
 192 ~~factors, and an assessment of optimal caseload that can be~~
 193 ~~handled by an investigator on an annual basis.~~

194 ~~(e) The inservice education and training provided to~~
 195 ~~underwriting and claims personnel to assist in identifying and~~
 196 ~~evaluating instances of suspected fraudulent activity in~~
 197 ~~underwriting or claims activities.~~

198 ~~(f) A description of a public awareness program focused on~~
 199 ~~the costs and frequency of insurance fraud and methods by which~~
 200 ~~the public can prevent it.~~

201 (7) Every insurer shall provide at least 2 hours of initial
 202 anti-fraud training to the designated anti-fraud investigative
 203 unit or contractor and shall provide an annual 1-hour refresher

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204 course that addresses detection, referrals, investigations, and
 205 reporting of suspected insurance fraud for the types of
 206 insurance lines written by the insurer. Additionally, the
 207 insurer shall require the designated anti-fraud investigative
 208 unit or contractor to complete one hour of training annually
 209 provided by the department.

210 (9)(7) If an insurer fails to timely submit a final
 211 acceptable anti-fraud plan or anti-fraud investigative unit
 212 description, fails to implement the provisions of a plan or an
 213 anti-fraud investigative unit description, ~~fails to submit the~~
 214 annual anti-fraud statistical report, or otherwise refuses to
 215 comply with the provisions of this section, the department,
 216 office, or commission may:

217 (a) Impose an administrative fine of not more than \$2,000
 218 per day for such failure by an insurer to submit an acceptable
 219 anti-fraud plan or anti-fraud investigative unit description, or
 220 the anti-fraud statistical report, until the department, office,
 221 or commission deems the insurer to be in compliance;

222 (b) Impose an administrative fine for failure by an insurer
 223 to implement or follow the provisions of an anti-fraud plan or
 224 anti-fraud investigative unit description; or

225 (c) Impose the provisions of both paragraphs (a) and (b).

226 (10)(8) The department may adopt rules to administer this
 227 section.

228 Section 3. Section 626.9896, Florida Statutes, is created
 229 to read:

230 626.9896 Insurance Fraud Dedicated Prosecutor Program.—

231 (1) LEGISLATIVE INTENT.—The State of Florida, recognizing
 232 the ever-increasing problem of insurance fraud, has elected to

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appropriate funds to the Department of Financial Services for the purpose of allocating funds dedicated to the investigation and prosecution of insurance fraud. The Legislature recognizes the need to create a program dedicated to the prosecution of insurance fraud and the establishment of a mechanism to properly fund, monitor, direct, and reallocate positions as insurance fraud trends change and demand for prosecutorial resources varies. The Legislature also recognizes the need for the Division of Investigative and Forensic Services to have authority to administer such a program, and recognizes that the division can efficiently and effectively manage and monitor the program and direct and reallocate positions, as insurance fraud trends change and demand for prosecutorial resources shift between judicial circuits.

(2) ESTABLISHMENT OF PROGRAM.—There is created a grant program to fund the Insurance Fraud Dedicated Prosecutor Program. The Division of Investigative and Forensic Services shall accept and administer appropriated funds for the purpose of funding attorney and paralegal positions assigned to the prosecution of insurance fraud. These moneys must consist of any sums that the state may appropriate.

(3) GRANT APPLICATIONS.—A state attorney's office that desires a grant must submit to the department an application detailing the proposed number of dedicated prosecutors and staff to be funded solely for the prosecution of insurance fraud. Grants must be awarded to applicants whose prosecutorial needs are substantiated by the department's internal metrics and data.

(4) ELIGIBILITY.—The department shall award grants to state attorney's offices according to need, as based upon the

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department's internal metrics and data. The department may alter this allocation formula as necessary to achieve the most effective and efficient allocation of funds necessary to meet the purpose of the program. Each grant must be awarded to a state attorney's office for the full annual salary, including benefits, for each attorney and paralegal whose duties are solely dedicated to the prosecution of insurance fraud.

(5) GRANT LIMITS.—The maximum grant amount must be established by the department, pursuant to funds appropriated to the department for the purpose of funding the program, and may not exceed funding appropriated for the grant program. Grants must be for a period of 2 years, subject to renewal by the department, and are contingent upon annual appropriation by the Legislature. Grants are subject to s. 215.971.

(6) PERFORMANCE.—The department shall track, monitor, and report on the effectiveness and efficiency of each state attorney's office's use of the awarded funds.

(7) RESTRICTIONS.—Each state attorney's office that is awarded a grant under this section must submit performance and output information as determined by the department. The department may rely upon any reporting metric it requires of grant recipients, including, but not limited to, the following:

(a) Funds received and expended;

(b) The purposes for which those funds were expended, including payment of salaries, expenses, and any other costs needed to support the delivery of services;

(c) The prosecutorial results achieved from the expenditures made, including the number of investigations, arrests, complaints filed, and convictions.

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291 (8) RULES.—The department may adopt rules pursuant to ss.
292 120.536(1) and 120.54 for the administration and implementation
293 of the program. Such rules may establish procedures for the
294 program in forms to be used by the state attorney's office. The
295 department may establish eligibility criteria, renewal
296 requirements, and standards for evaluating the effectiveness and
297 efficiency of expended funds.

298 Section 4. Section 641.3915, Florida Statutes, is amended
299 to read:

300 641.3915 Health maintenance organization anti-fraud plans
301 and investigative units.—Each authorized health maintenance
302 organization and applicant for a certificate of authority shall
303 comply with the provisions of ss. 626.989 and 626.9891 as though
304 such organization or applicant were an authorized insurer. ~~For~~
305 ~~purposes of this section, the reference to the year 1996 in s.~~
306 ~~626.9891 means the year 2000 and the reference to the year 1995~~
307 ~~means the year 1999.~~

308 Section 5. 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)

4/13/17

Meeting Date

1012

Bill Number (if applicable)

Topic Investigative & Forensic Service

Amendment Barcode (if applicable)

Name B.G. Murphy

Job Title Depe Dep. Legislative Affairs Director

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Atwater

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 1014

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Public Records/Division of Investigative and Forensic Services of the Department of Financial Services

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1014 creates a public records exemption for certain information submitted to the Department of Financial Services by insurers to comply with insurance fraud prevention and reporting requirements. The bill provides that the following information is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the Florida Constitution:

- The description of the insurer's required anti-fraud education and training;
- The description or chart of the insurer's anti-fraud investigative unit;
- The rationale for the level of staffing and resources provided to the insurer's anti-fraud investigative unit;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies.

The bill provides that the exemption applies to records held on, before, or after the effective date.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will expire October 2, 2022, unless saved from repeal by the Legislature. The bill provides a public necessity statement.

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.

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

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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.

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 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.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁷

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

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).

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 Section 119.15(6)(a), F.S.

- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.¹⁹

Department of Financial Services

The DFS regulates insurance agents, insurance agencies, and insurance adjusters. The DFS Division of Investigative and Forensic Services (division) contains sworn law enforcement officers that investigate various types of insurance fraud including personal injury protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud. The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida Insurance Code and rules adopted pursuant to the code. The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2014-2015, the division received 17,392 referrals.²⁰

Reporting Requirements

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received \$10 million or more in direct premiums during the previous calendar year, to establish a unit to investigate possible insurance claim fraud or to contract with others to investigate such fraud. The insurer must file a detailed description of the anti-fraud unit with, or provide a copy of the contract, to the division.²¹

If the insurer received less than \$10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the division.²² The anti-fraud plan must describe:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ http://www.fldfs.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed March 29, 2017).

²¹ s. 626.9891(1), F.S.

²² s. 626.9891(2), F.S.

- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.²³

Workers' compensation insurers are required to report the following to the DFS on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other;
- The number of fraud referrals submitted to the Bureau of Workers' Compensation Fraud for the prior year;
- A description of the organization of its anti-fraud unit, if applicable;
- The rationale for the level of staffing and resources being provided for the anti-fraud unit;
- The in-service anti-fraud education and training provided to personnel; and
- A description of a public awareness program focused on insurance fraud and methods by which the public can prevent it.²⁴

If an insurer fails to comply with the requirements for anti-fraud units or anti-fraud plans or fails to comply with other provisions of law, the DFS, OIR, or Financial Services Commission may impose certain administrative fines.²⁵

CS/SB 1012 revises the reporting requirements and requires all insurance companies to file statistical information with the division. Each insurer must adopt an anti-fraud plan or contract with others to investigate possible fraud. Each insurer must also establish a unit to investigate possible fraud or contract with others to investigate possible fraud. Each insurer must electronically file with the division a detailed description of the unit established to investigate possible fraudulent insurance acts or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer.

The anti-fraud plan must include:

- An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgment that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- An acknowledgement that the insurer provides anti-fraud education and training to its anti-fraud investigative unit;
- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected

²³ s. 626.9891(3), F.S.

²⁴ s. 626.9891(6), F.S.

²⁵ s. 626.9891(7), F.S.

fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

CS/SB 1012 requires every insurer to submit anti-fraud statistics annually by September 1 for the lines written by that insurer for the calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the Division of Investigative and Forensic Services of the department;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the Division of Investigative and Forensic Services of the department, or other agencies.

III. Effect of Proposed Changes:

The bill provides that the following information is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the Florida Constitution:

- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount of damages in cases referred to the Division of Investigative and Forensic Services of the department, or other agencies.

The exemptions created by the bill apply to records held before, on, or after the effective date of the exemption.

The exemptions created by the bill are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement.

The provisions of this bill cite statutory changes made by CS/SB 1012. This bill only becomes law if CS/SB 1012 or similar legislation becomes 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:

The DFS does not anticipate a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9891 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 April 3, 2017:

The bill narrows the public records exemption and specifies the information that is exempt. The original bill exempted the entire anti-fraud plan rather than specific information from that plan that could damage insurers.

- B. **Amendments:**

None.

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



309546

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 626.9891,
Florida Statutes, to read:

626.9891 Insurer anti-fraud investigative units; reporting
requirements; penalties for noncompliance.—

(10) (a) The information submitted to the department
pursuant to paragraphs (3) (d), (e), and (f) and paragraphs



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(5) (d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) This exemption applies to records held before, on, or after the effective date of this exemption.

Section 2. (1) The Legislature finds that it is a public necessity to make exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the description of an insurer's anti-fraud education and training, the description of an insurer's anti-fraud investigative unit, and an insurer's rationale for the level of staffing and resources it provides to the anti-fraud investigative unit as required in s. 626.9891(3) (d), (e), and (f), Florida Statutes, and filed with the Division of Investigative and Forensic Services pursuant to s. 626.9891(2), Florida Statutes, and the data collected and reported to the Division of Investigative and Forensic Services pursuant to s. 626.9891(5) (d), (e), (f), (g), and (k), Florida Statutes.

(2) The description of an insurer's anti-fraud education and training that assists in identifying and evaluating instances of suspected fraudulent insurance acts, the description of an insurer's anti-fraud investigative unit, and an insurer's rationale for the level of staffing and resources it provides to the anti-fraud investigative unit will allow the Department of Financial Services to ensure that insurers have adequate procedures in place to properly detect, investigate,



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and report potential insurance fraud. The public disclosure of this information would allow criminal elements to use such information to identify fraud prevention or detection strategies employed by insurers and use this information to commit insurance fraud. The Legislature further finds that disclosure of this information would allow persons suspected of fraud to be alerted to a potential or ongoing investigation and alter behavior to impede an investigation. To ensure the integrity of such records already in the possession of the department, this exemption is made retroactive in its application.

(3) The data submitted pursuant to s. 626.9891(5)(d), (e), (f), (g), and (k), Florida Statutes, allow the department to track and assess trends in insurance fraud in this state. Such information includes the number of claims referred to the anti-fraud investigative unit, the number of matters referred to the anti-fraud investigative unit which were not claim-related, the number of claims investigated or accepted by the anti-fraud investigative unit, the number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit which were not claim-related, and the estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies. The public disclosure of this information could injure a business in the marketplace by providing its competitors with detailed insights into the claim investigation processes and statistics of the company, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, insurers might refrain from providing accurate and unbiased data, thus impairing the



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department's ability to track and assess insurance fraud in this state. This data will allow insurance fraud investigators to better track, predict, and curb fraud trends in this state by providing access to data gathered by insurers' anti-fraud investigative units. Information regarding the amount of insurance fraud experienced, referred, and addressed internally will be valuable material for the department and will better enable law enforcement agencies to assist state prosecutors in the successful prosecution of fraudulent behavior.

Section 3. This act shall take effect on the same date that CS/SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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 public records; amending s.
626.9891, F.S.; providing an exemption from public
records requirements for reports, documents, or other
information relating to the investigation and tracking
of insurance fraud submitted by insurers to the
Department of Financial Services; providing for future
legislative review and repeal of the exemption;
providing retroactive applicability; providing a
statement of public necessity; providing a contingent
effective date.

By Senator Brandes

24-01264A-17

20171014__

A bill to be entitled

An act relating to public records; amending s. 626.9891, F.S.; providing an exemption from public records requirements for certain information held by the Division of Investigative and Forensic Services of the Department of Financial Services, or the department, relating to insurer anti-fraud plans, descriptions, contracts, related documents, anti-fraud statistics, and information reported by insurers writing workers' compensation insurance; 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 (11) is added to section 626.9891, Florida Statutes, as amended by SB ____, 2017 Regular Session, to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(11)(a) The following information held by the Division of Investigative and Forensic Services or the department is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. An insurer's anti-fraud plan adopted pursuant to subsections (2), (3), and (4) which is filed with the Division of Investigative and Forensic Services;

2. An insurer's description of its unit or division that

Page 1 of 5

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

24-01264A-17

20171014__

investigates possible fraudulent insurance acts and copies of contracts and related documents which are filed with the Division of Investigative and Forensic Services pursuant to subsection (2);

3. An insurer's anti-fraud statistics submitted to the department pursuant to subsection (5); and

4. Information reported by an insurer to the department pursuant to subsection (6).

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to make exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the anti-fraud plans adopted by insurers and filed with the Division of Investigative and Forensic Services of the Department of Financial Services pursuant to s. 626.9891(2), (3), and (4), Florida Statutes, an insurer's description of its unit or division that investigates possible fraudulent insurance acts and copies of contracts and related documents which are filed with the Division of Investigative and Forensic Services pursuant to s. 626.9891(2), Florida Statutes, the anti-fraud statistics annually submitted by insurers to the department pursuant to s. 626.9891(5), Florida Statutes, and the information annually reported by insurers writing workers' compensation insurance to the department pursuant to s. 626.9891(6), Florida Statutes.

(2) The anti-fraud plans adopted and filed pursuant to s.

Page 2 of 5

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

24-01264A-17

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626.9891(2), (3), and (4), Florida Statutes, and an insurer's description of its unit or division that investigates possible fraudulent insurance acts and copies of contracts and related documents which are filed with the Division of Investigative and Forensic Services pursuant to s. 626.9891, Florida Statutes, will allow the department to ensure that insurers have adequate procedures in place to properly detect, investigate, and report possible instances of insurance fraud. Such information includes, but is not limited to, a description of the anti-fraud education and training that is provided to the designated anti-fraud investigative unit or contractor and that is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities; a written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts; and the rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors. The public disclosure of this information would allow criminal elements to use such information to identify fraud prevention or detection strategies employed by insurers and use this information to commit insurance fraud. The Legislature further finds that disclosure of this information would allow persons suspected of fraudulent behavior to be alerted to a potential or ongoing

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investigation into suspicious criminal insurance activity and alter behavior to impede an investigation.

(3) The anti-fraud statistics annually submitted by insurers to the department pursuant to s. 626.9891(5), Florida Statutes, and the information annually reported by insurers writing workers' compensation insurance to the department pursuant to s. 626.9891(6), Florida Statutes, enables the department to track and assess insurance fraud in this state. Such information includes detailed information about fraud-related cases, including those referred to the Division of Insurance and Forensic Services. The public disclosure of this information could injure a business in the marketplace by providing its competitors with detailed insights into the claim investigation processes and statistics of these companies, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, insurers might refrain from providing accurate and unbiased data, thus impairing the department's ability to track and assess insurance fraud in this state. This data will allow insurance fraud investigators to better track, predict, and curb fraud trends in this state by providing access to data gathered by insurers' anti-fraud investigative units or contractors. Information regarding the amount of insurance fraud experienced, referred, and addressed internally will be valuable material for the department and will better enable law enforcement agencies to assist state prosecutors in the successful prosecution of fraudulent behavior.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation

24-01264A-17

20171014__

117 is adopted in the same legislative session or an extension
118 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17
Meeting Date

1014
Bill Number (if applicable)

Topic Investigative & Forensic Services Public Records

Amendment Barcode (if applicable)

Name B.G. Murphy

Job Title Dep. Legislative Affairs Director

Address 400 S. Monroe St.

Phone 850-413-2890

Street

Tallahassee

City

FL

State

32399

Zip

Email BG.Murphy@myfloridato.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Atwater

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 1032

INTRODUCER: Senator Mayfield

SUBJECT: Unfair Insurance Trade Practices

DATE: March 31, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Matiyow	Knudson	BI	Favorable
2. _____	_____	CM	_____
3. _____	_____	RC	_____

I. Summary:

SB 1032 allows licensed insurers and agents to give promotional items to insureds or prospective insureds, not to exceed \$100 in value within one calendar year. Promotional items include prizes, goods, wares, gift cards, gift certificates, event tickets and other items, in addition to merchandise.

Current law allows licensed insurers and agents to give out gifts valued at not more than \$25 for advertising purposes.

The bill is effective July 1, 2017.

II. Present Situation:

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts in the business of insurance. It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements for the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. However, there are many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to \$25 per gift to an insured, prospective insured, or any person for the purpose of advertising. There are several similar limitations on advertising gifts under the Insurance Code

related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.¹ The \$25 limit has been in place since 1989.²

The Insurance Code³ does not define the term “merchandise,” nor has the Department of Financial Services or the Office of Insurance Regulation defined this term in rules implementing their duties and obligations under the Insurance Code.⁴ The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”⁵ Therefore, insurers and agents are allowed to give saleable items valued at \$25 or less to others for advertising purposes.

III. Effect of Proposed Changes:

The bill allows licensed insurers and agents to give out goods, wares, gift cards, gift certificates, event tickets and other promotional items, in addition to merchandise. It removes the requirement that the gift be given out for advertising purposes. The bill increases the allowed maximum value of items given from \$25 to \$100 and applies the limit within one calendar year per insured or prospective insured.

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.

¹ Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. s. 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. s. 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. s. 634.282(17), F.S.

² ch. 89-360, L.O.F.

³ ch. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

⁴ Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. s. 2607 (2017).

⁵ MERRIAM-WEBSTER, DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise>.

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 626.9541 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 Mayfield

17-01128-17

20171032__

A bill to be entitled

An act relating to unfair insurance trade practices;
amending s. 626.9541, F.S.; revising provisions to
permit a licensed insurer or its agent to give
promotional or advertising items under a certain
value; providing an effective date.

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

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

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

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

(m) Promotional items ~~Advertising gifts~~ permitted.—No
provision of paragraph (f), paragraph (g), or paragraph (h)
shall be deemed to prohibit a licensed insurer or its agent from
giving prizes, goods, wares, gift cards, gift certificates,
event tickets, merchandise, and other items valued at \$100 or
less to insureds, prospective insureds, and others, for the
purpose of conducting a promotional or advertising program. An
insurer or its agent may not give such promotional items that
exceed \$100 in total value within one calendar year to an
individual advertising, any article of merchandise having a
value of not more than \$25.

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/3/2017

Meeting Date

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

SB 1032

Bill Number (if applicable)

Topic Unfair Insurance Trade Practices

Amendment Barcode (if applicable)

Name Laura Pearce

Job Title VP and General Counsel

Address

Street

Phone 850-566-8615

City

State

Zip

Email lpearce@faia.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Association of Insurance Agents

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)

4/3/17

Meeting Date

1032

Bill Number (if applicable)

Topic Unfair Trade Practices

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title _____

Address 325 W. College Ave
Street

Phone 850 509 1802

TALL FL 32301
City State Zip

Email rreyes@capitol.cu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Allstate Insurance Co

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 1084

INTRODUCER: Banking and Insurance Committee and Senator Stargel

SUBJECT: Firefighter Certifications

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1084 allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

- Has at least 20 years of service;
- Has been employed with a fire service provider and is in good standing with their last most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded in a fire service provider's roster as recorded in the division's online electronic database; or
- Was previously certified as a firefighter or volunteer firefighter in this state.

The Division of State Fire Marshal shall by rule establish the application for such designation.

Firefighters receiving such designation must still maintain all requirements for licensure in order to engage in firefighting activities.

II. Present Situation:

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the

Division of the State Fire Marshal.¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.²

The Division of the State Fire Marshal (Division) consists of the following four bureaus: the Bureau of Fire and Arson Investigations, the Bureau of Fire Standards and Training, the Bureau of Forensic Fire and Explosive Analysis, and the Bureau of Fire Prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.³

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed at the Department of Financial Services and consists of 13 members. Two members are fire chiefs appointed by the Florida Fire Chiefs Association; two members are firefighters who are not officers, appointed by the Florida Professional Firefighters Association; two members are firefighter officers who are not fire chiefs, appointed by the State Fire Marshal; one member is appointed by the Florida League of Cities; one member is appointed by the Florida Association of Counties; one member is appointed by the Florida Association of Special Districts; one member is appointed by the Florida Fire Marshal's Association; one member is appointed by the State Fire Marshal; and one member is a director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal.

The council has special powers in connection with the employment and training of firefighters as it:

- Recommends for adoption by the division, uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Recommends for adoption by the division, minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Recommends matters for adoption by the division, relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS.

² s. 633.202(1), F.S.

³ Division of State Fire Marshal, *About the Florida State Fire Marshal*, <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last viewed March 28, 2017).

- Makes or supports studies on any aspect of firefighting employment, education, and training or recruitment.

Curriculum Requirements for Firefighters

Firefighter Certificate of Compliance (FCOC)⁴ is issued by the division to an individual who does all of the following:⁵

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.

“Certification” or “certified” is defined as the act of holding a current and valid certificate.⁶ A “fire service provider” is defined as a municipality or county, the state, the division, or any political subdivision of the state, including an authorities and special district, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.⁷

In order for a firefighter to retain/renew his or her FCOC, every 4 years he or she must:⁸

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

Curriculum Requirements for Volunteer Firefighters⁹

Volunteer Firefighter training consists of Part I of the State of Florida Minimum Standards Course as required by ch. 633, F.S., and Florida Administrative Codes 69A-37 and 69A-62. A significant portion of this training can be completed through both on-line and practical skill courses. The on-line courses can be taken in lieu of the traditional classroom lecture and satisfies most of the required academic objectives. The following academic components make up the Part I Minimum Standards Curriculum:

⁴ Section 633.408(1)(a), F.S.

⁵ Section 633.408(4), F.S.

⁶ Section 633.426(1)(b), F.S.

⁷ Section 633.102(13), F.S.

⁸ Section 633.414(1), F.S.

⁹ Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter), Division of the State Fire Marshal, the Florida State Fire College, Revision 1.7, October 2012.

- Firefighter I Curriculum consists of classroom and live fire based core training.
- National Incident Management System focuses on the history, features, principles and organizational structure of Incident Command.
- Wildland Firefighter Training curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.
- EMS First Responder curriculum that is an introduction to basic life support and emergency care.

Volunteer Firefighters who have successfully completed the Firefighter Part I training are able to operate in the exclusionary or hot zone¹⁰ and in an Immediately Dangerous to Life or Health environment.

Pursuant to s. 633.414 (2), F.S., volunteer firefighters can retain their Volunteer Firefighter Certificate of Completion by:

- Serving as a volunteer firefighter; or
- Completing a 40-hour refresher course.

III. Effect of Proposed Changes:

The bill allows a firefighter or volunteer firefighter to apply for a Lifetime Firefighter designation if he or she:

- Has at least 20 years of service;
- Has been employed with a fire service provider and is in good standing with his or her most recent fire service provider;
- Has not been convicted of a felony under s. 633.412 (2), F.S.; and
- Is recorded in a fire service provider's roster as recorded in the division's online electronic database or was previously certified as a firefighter or volunteer firefighter in this state.

The Division of State Fire Marshal shall by rule establish the application for the designation.

A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408, F.S.

After the division approves a currently employed firefighter's Lifetime Firefighter designation, the division shall, after the firefighter's 4-year period pursuant to s. 633.414, F.S., issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or

¹⁰ s. 633.102(17), F.S., "Hot zone" means the area immediately around an incident where serious threat of harm exists, which includes the collapse zone for a structure fire.

a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412, F.S.

This bill also gives the Division of State Fire Marshal the authority to investigate reports or complaints of a felony conviction for a firefighter or volunteer firefighter seeking a Lifetime Firefighter Designation.

The effective date is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DFS may incur minimal costs for the implantation of the Lifetime Firefighter Designation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.414 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 April 3, 2017:

The CS establishes the Lifetime Firefighter designation while maintaining recipients of such designation engaging in firefighting activities must still complete all requirements for licensure under ch. 633, F.S.

- B. Amendments:

None.



863310

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 633.415, Florida Statutes, is created to
read:

633.415 Lifetime Firefighter designation.—

(1) A firefighter or volunteer firefighter may apply for a
Lifetime Firefighter designation if he or she:

(a) Has at least 20 years of service;



863310

(b) Has been employed by a fire service provider, as defined in s. 633.102(13), and is in good standing with his or her most recent fire service provider;

(c) Has not been convicted of a felony under s. 633.412(2), and so attests; and

(d)1. Is recorded on a fire service provider roster in the division's online electronic database; or

2. Was previously certified as a firefighter or volunteer firefighter in this state.

(2) A firefighter may have his or her Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion placed into a Lifetime Firefighter designation by applying to the division at the time required to renew the certificate. The application shall be made on a form prescribed by the division.

(3) A Lifetime Firefighter may not engage in firefighting activities with a fire department unless he or she holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408.

(4) After the division approves a currently employed firefighter's Lifetime Firefighter designation, the division shall, after the firefighter's 4-year period pursuant to s. 633.414, issue in its online electronic database the Lifetime Firefighter designation upon the end of such period.

(5) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion is current upon the approval of a Lifetime Firefighter designation and he or she applies to renew such certification within the



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first 4 years after the date of such approval, he or she must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412.

(6) If a firefighter's Firefighter Certificate of Compliance or Volunteer Firefighter Certificate of Completion has expired upon receiving the Lifetime Firefighter designation and he or she desires to perform firefighting services within the first 4 years after the date of approval of the Lifetime Firefighter designation, the firefighter must successfully complete the Minimum Standards Course Examination for a firefighter or a volunteer firefighter task book for a volunteer firefighter, and meet all requirements in s. 633.412.

(7) The division may investigate any report, complaint, or felony conviction concerning a Lifetime Firefighter pursuant to s. 633.412 or s. 633.426.

(8) The division may adopt rules pursuant to its authority under s. 633.104(1) to implement this section.

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 firefighters; creating s. 633.415,
F.S.; providing for the designation as a Lifetime
Firefighter; providing requirements for such
designation; providing responsibilities of the



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69 Division of State Fire Marshal within the Department
70 of Financial Services; authorizing the division to
71 investigate reports, complaints, or felony convictions
72 concerning Lifetime Firefighters; authorizing the
73 division to adopt rules; providing an effective date.

By Senator Stargel

22-00746C-17

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A bill to be entitled

An act relating to firefighter certifications; amending s. 633.414, F.S.; authorizing certain firefighters to complete specified continuing education training in lieu of a specified instruction requirement; exempting firefighters holding current Firefighter Certificates of Compliance from certain periodic requirements under specified circumstances; exempting volunteer firefighters holding current Volunteer Firefighter Certificates of Completion from certain periodic requirements under specified circumstances; authorizing the Division of State Fire Marshal within the Department of Financial Services to investigate, in a specified manner, certain reports or complaints against firefighters claiming such exemptions; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 633.414, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

633.414 Retention of firefighter and volunteer firefighter certifications.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(b)1. Maintain a current and valid fire service instructor

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

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certificate; and~~;~~

2. Instruct or complete at least 40 hours of approved continuing education during the 4-year period, and provide proof of such instruction or training to the division, which proof must be registered in an electronic database designated by the division.

(8) (a) Notwithstanding this section, a firefighter holding a current Firefighter Certificate of Compliance is exempt from the requirements, every 4 years, of subparagraph (1) (b) 2. and paragraphs (1) (c) and (d) if he or she:

1. Has completed at least 20 years of service, and so attests;

2. Has been employed with a fire service provider as defined in s. 633.102(13) and appears on the fire service provider's roster as recorded in the division's online electronic database;

3. Is vested and in good standing in a firefighter pension plan, and so attests, or has been determined to have a disability in line of duty as defined in s. 121.021(13) for the duration of such disability; and

4. Has not been convicted of a felony under s. 633.412(2), and so attests.

(b) Notwithstanding this section, a volunteer firefighter holding a current Volunteer Firefighter Certificate of Completion is exempt from the requirement, every 4 years, of paragraph (2) (b) if he or she:

1. Has completed at least 20 years of service, and so attests;

2. Has volunteered with a fire service provider as defined

Page 2 of 3

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59 in s. 633.102(13) and is in good standing with his or her most
60 recent fire service provider, and so attests; or has been
61 determined to have a disability in line of duty as defined in s.
62 121.021(13) for the duration of such disability; and

63 3. Has not been convicted of a felony under s. 633.412(2),
64 and so attests.

65 (c) The division may investigate any reports or complaints
66 of a felony conviction of a firefighter claiming an exemption
67 from renewal or retention requirements under this subsection in
68 the same manner as the investigative procedures provided in s.
69 633.426 for other firefighters holding a Firefighter Certificate
70 of Compliance or a Volunteer Firefighter Certificate of
71 Completion.

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

THE FLORIDA SENATE
APPEARANCE RECORD

4/3/17

Meeting Date

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

1084

Bill Number (if applicable)

Topic FIRE fighter Cee-tifications

Amendment Barcode (if applicable)

Name Jim Millican

Job Title District Chief

Address 4360-55th AVE N

Phone 727-526-5650

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SF. Pctc

City

FL

State

33714

Zip

Email jmillican@calmanfire.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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 1218

INTRODUCER: Banking and Insurance Committee and Senator Farmer

SUBJECT: Property Repair

DATE: April 5, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1218 creates new requirements for assignment of post-loss benefits from personal residential, commercial residential, and commercial property insurance policies. The bill places various requirements and restrictions on assignments of post-loss benefits in personal residential, commercial residential, and commercial property insurance policies. The bill does not allow such policies to prohibit the post-loss assignment of benefits. It provides, however, that an agreement to assign post-loss benefits is not valid unless the agreement:

- Is in writing between the policyholder and assignee and is delivered to the insurer under specified time requirements;
- Is limited to claims for work performed by the assignee for damages claimed to be covered;
- Allows the policyholder to unilaterally rescind the assignment of post-loss benefits to a vendor within 5 days of execution of the agreement; and
- Contains an accurate and up-to-date statement of the scope of work to be performed.

The bill provides that an assignee:

- Must provide the policyholder with accurate and up-to date revised statements of the scope of work to be performed as supplemental or additional repairs are required;
- Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;
- May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work at the policyholder's own expense;

- May not charge the policyholder directly, except for additional work not covered under the policy; and
- May not pay referral fees totaling more than \$750 in connection with the assignment.

The bill creates a regulatory system for professional water damage restorers similar to the regulatory system for mold assessors. It prohibits unlicensed persons from practicing water damage restoration and requires assignees of water damage claims to be licensed. It requires the Department of Business and Professional Regulation (DBPR) to license professional water damage restorers if they are of good moral character, have passed an appropriate examination, and meet certain education requirements. The bill provides for fees, disciplinary rules, continuing education requirements, and insurance requirements for professional water damage restorers.

The bill provides that attorney fees and costs paid by a property insurer pursuant to s. 627.428, F.S., may not be included in a property insurer's rate base and may not be used to justify a rate or rate change.

The bill creates new reporting requirements for insurers and claimant attorneys relating to claims in which an assignment of benefits is obtained.

II. Present Situation:

Background on Assignment of Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the benefits.

Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹ the court held that a provision in an insurance contract prohibiting assignment of the policy was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.² However, an assignment made after the loss is valid even if the contract states otherwise.³ In *Continental Casualty Company v. Ryan Incorporated*,⁴ the court noted that it is a "well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss." A court explained that a rationale for post-loss assignments is that "assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer's contractual relationship to a party with whom it never intended to contract, but an assignment after loss is

¹ 704 So.2d 1384 (Fla. 1998).

² *Id.* at 1386.

³ *West Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209 (1917); *Gisela Inv., N.V. v. Liberty Mut. Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984).

⁴ 974 So.2d 368, 377 n. 7 (Fla. 2000).

simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”⁵

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,⁶ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”⁷

Section 627.428, F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured’s or beneficiary’s attorney prosecuting the suit in which the recovery is had.

This statute allows the insured to recover attorney’s fees if the insured prevails in an action against an insurer. A person who takes an assignment of benefits is entitled to attorney’s fees if that assignee prevails in an action against an insurer.⁸

Assignment of Benefits in Property Insurance Cases

In recent years, insurers have complained of abuse of the assignment of benefits process. An insurance company recently described the issue in a court filing:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and, before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher

⁵ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012).

⁶ 955 So.2d 1140 (Fla. 4th DCA 2007).

⁷ *Id.* at 1144-1145.

⁸ *All Ways Reliable Bldg. Maint., Inc. v. Moore*, 261 So.2d 131 (Fla. 1972); *Allstate Insurance Co. v. Regar*, 942 So.2d 969 (Fla.2d DCA 2006).

settlements from insurers. This, in turn, significantly increases litigation over the vendors' invoices.⁹

In a court filing in a different case, a company that provides emergency repair and construction services explained the rationale behind assignments of insurance benefits:

As a practical matter, a homeowner often will not be able to afford or hire a contractor immediately following a loss unless the contractor accepts an assignment of benefits to ensure payment. A homeowner may be unable to comply with the ... provision requiring the homeowner to protect and repair the premises unless the remediation contractor accepts an assignment of benefits, however, contractors will become unwilling to accept payments by assignment if court decisions render the assignments unenforceable ...

Whether the repair invoice is routed through the insured or submitted by the service provider directly by assignment, the service provider's repair invoice is submitted to the insurer for coverage and reviewed by an adjuster. The only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which he or she has no stake.¹⁰

There have been a number of cases in recent years where courts have held that post-loss benefits are assignable.¹¹

Insurers have also reported increases in litigation by assignees in "auto glass" cases. In such cases, the assignee is usually a vendor that repairs or replaces automobile windshields. Section 627.7288, F.S., provides that the deductible provisions of a motor vehicle insurance policy are not applicable to damage to windshields. Insurers contend that assignment of benefits has caused an increase in litigation over damaged windshields.¹²

Data and Recommendations for Reform

In 2015, the Office of Insurance Regulation (OIR) did a data call to attempt to determine the effect of assignment of benefits in the insurance market.¹³ The OIR found that water losses alone could require rate increases of 10 percent per year.¹⁴ One company reported that, in 2015, the claim cost of a claim with an assignment of benefits was 141 percent greater than the claim cost

⁹ *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case No. 1D14-1864 (Fla. 1st DCA), Appellant's Initial Brief at pp. 3-4 (appellate record citations omitted).

¹⁰ *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant's Initial Brief at 46-48.

¹¹ See, e.g., *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, rehearing denied (Fla. 1st DCA 2015); *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So.2d 638 (Fla.2d DCA 2016); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749 (Fla. 4th DCA 2015); *Accident Cleaners, Inc. v. Universal Ins. Co.*, 186 So.3d 1 (Fla. 5th DCA 2015);

¹² Florida Justice Reform Institute, *Restoring Balance in Insurance Litigation* (October 2015) at pp. 19-23.

¹³ <http://www.floir.com/Sections/PandC/AssignmentofBenefits.aspx> (last accessed April 5, 2017).

¹⁴ Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call* (February 8, 2016) at p. 8.

of a claim without an assignment of benefits.¹⁵ The company reported 90 cases of suspected insurance fraud to the Department of Financial Services in 2015 and part of 2016.

Citizens Property Insurance Company recently reported that the percentage of claims litigated with an assignment of benefits increased from 9.6 percent in 2012 to 46.9 percent in 2015.¹⁶ It projects that the average premium will increase in Miami-Dade County from \$2,926 to \$4,712 by 2022, and in Broward County from \$2,390 to \$3,850 by 2022.¹⁷ Citizens reports that water claims, including those that do not involve an assignment of benefits, have been increasing:

8,097 new lawsuits were filed against Citizens between January and November 2016, a 30 percent increase from the same period in 2015. Meanwhile, Citizens' policy count dropped by 26.3 percent between January 2015 and November 2016.¹⁸

Citizens noted that factors other than assignment of benefits contribute increase in the number of lawsuits. It noted that in many cases, it is made aware of a loss only after repairs are made or the policyholder has hired an attorney or a public adjuster.¹⁹

In a presentation to the Florida Cabinet on February 7, 2017, the State Insurance Commissioner explained that the frequency of water claims rose by 46 percent from 2010 to 2015 and the amount the insurers pay on those claims has increased 28 percent.²⁰ Data gathered in a data call by the OIR showed that the use of assignments of benefits has increased from 5.7 percent of the claims in 2010 to 15.9 percent of the claims in 2015.²¹ The Commissioner continued:

Absent any other type of reform, absent any other type of coverage or other expense that might be present on an insurance policy, were these trends to continue unchecked, policyholders would expect to see about a 10 percent rate increase going forward just to keep up with the water trends that are covering their policy.²²

The Commissioner recommended various reforms:

- Amending s. 627.428, F.S., to apply to insureds only and not to assignees;
- Consumer protections so that consumers are not left "holding the bag" if there is a dispute between the insurance company and a contractor; and

¹⁵ Security First Insurance, *Troubled Water: An Analysis of Water Damage Claims and the Impact on Homeowner's Insurance Premiums in Florida* (July 20, 2016) at p. 13.

¹⁶ Citizens Property Insurance Corporation, *Non-Catastrophic Homeowners Water Claims* (January 2016) at p. 3. The report can be found here: <https://www.citizensfla.com/documents/20702/1335431/20160121+White+Paper+Non-Catastrophic+Homeowners+Water+Claims.pdf/f66d4f43-e4cf-4e6e-b857-d457d761f5d6> (last accessed March 27, 2017).

¹⁷ Citizens Property Insurance Company, AOB Reform Makes Pocket Sense (on file with the Committee on Banking and Insurance).

¹⁸ https://www.citizensfla.com/-/20161207_bog-press-release (last accessed March 27, 2017).

¹⁹ *Id.*

²⁰ Transcript of the Meeting of the Governor and Cabinet, February 7, 2017, at p. 11. The transcript can be found at <http://www.myflorida.com/myflorida/cabinet/agenda17/0207/transcript.pdf> (last accessed March 27, 2017).

²¹ Office of Insurance Regulation, *2015 Report on Review of the 2015 Assignment of Benefits Data Call* (February 8, 2016) at p. 6 and 11.

²² *Id.* at 11-12.

- Notice requirements so the insurer is aware of the assignment and can participate in the claims adjustment process.²³

The First District Court of Appeal recently noted:

[W]e are not unmindful of the concerns that Security First expressed in support of [limiting assignment of benefits], providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a "cottage industry" of "vendors, contractors, and attorneys" exists that use the "assignments of benefits and the threat of litigation" to "extract higher payments from insurers." These concerns, however, are matters of policy that we are ill-suited to address.²⁴

The Fourth District Court of Appeal explained the competing policy arguments raised by the assignment of benefits issue:

Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.²⁵

The court noted that if “studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”²⁶

Regulation of Water Remediation Companies

The Sunrise Act

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act provides the intent of the Legislature that it should not:

- Subject a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulate a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

²³ *Id.* at 16-18.

²⁴ *Security First Ins. Co. v. State of Florida Office of Insurance Regulation*, 177 So.3d 627, 628, *rehearing denied* (Fla. 1st DCA 2015).

²⁵ *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749, 755 (Fla. 4th DCA 2015).

²⁶ *Id.*

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62(4), F.S., requires proponents of legislation regulating an occupation or profession to provide specified information. Section 11.62(5), F.S., requires the agency to provide information concerning the effect of proposed legislation. Section 11.62(6), F.S., requires legislative committees to consider whether the legislation is justified, whether it is the least restrictive and most cost-effective way to protect the public, and whether the legislation is technically sufficient.²⁷

Regulation of Water Remediation Companies

Water remediation companies are not regulated by the DBPR.

Insurance Rates

The Rating Law in part I of ch. 627, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. The OIR regulates insurer rate and form filing.

A rate is excessive if:

- It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
- The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.²⁸

A rate is inadequate if:

²⁷ While the Sunrise Act purports to place requirements on the legislature and its committees, “a legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law.” *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985).

²⁸ ss. 627.062(2)(e)1. and 2., F.S.

- It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
- If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group or risks.²⁹

A rate is unfairly discriminatory if:

- The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
- As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.³⁰

Replacement Coverage

Section 627.7011, F.S., requires an insurer, prior to issuing a homeowner's insurance policy, to offer each of the following:

- A policy providing that any loss that is repaired or replaced will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, but not including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.
- A policy providing that, subject to other policy provisions, any loss that is repaired or replaced at any location will be adjusted on the basis of replacement costs to the dwelling not exceeding policy limits, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.

Unless the insurer obtains the policyholder's written refusal of the policies or endorsements discussed above, any policy covering the dwelling is deemed to include the law and ordinance coverage limited to 25 percent of the dwelling limit.

In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value.

²⁹ ss. 627.062(2)(e)3. and 5., F.S.

³⁰ ss. 627.062(2)(e)4. and 6., F.S.

III. Effect of Proposed Changes:

Reforms Related to Assignment of Post-Loss Benefits

The bill provides that a personal lines residential property insurance policy, a commercial residential property insurance policy, or a commercial property insurance policy may not prohibit the assignment of post-loss benefits. This codifies the current case law regarding assignments. The bill further provides that it does not affect the assignment of benefits in other policies. Therefore, the bill does not change the law relating to the assignment of post-loss benefits in other lines of insurance.

Requirements to Assign Post-Loss Benefits under Residential Property Insurance Policies

The bill places various requirements and restrictions on assignments of post-loss benefits under personal residential, commercial residential, and commercial property insurance policies. It provides that an agreement to assign post-loss benefits is not valid unless the agreement:

- Is in writing between the policyholder and assignee and is delivered to the insurer as provided by the bill;
- Is limited to claims for work performed by the assignee for damages claimed to be covered;
- Allows the policyholder to unilaterally rescind the assignment of post-loss benefits within 5 days after execution of the agreement. It provides that the policyholder or insurer may be responsible for work performed during that period; and
- Contains an accurate and up-to-date statement of the scope of work to be performed.

An assignee:

- Must provide the policyholder with accurate and up-to date revised statements of the scope of work to be performed as supplemental or additional repairs are required and must provide to the policyholder and insurer a final invoice and bill for service rendered within 7 business days after the date of submission of the final invoice or bill;³¹
- Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;
- May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work at the policyholder's own expense;
- May not charge the policyholder directly, except for additional work not covered under the policy, including work performed that is rightfully denied as not covered and betterments or additional work not part of the loss; and
- May not pay referral fees totaling more than \$750 in connection with the assignment.

In addition, for water damage claims, the assignee:

- Must be licensed as a professional water damage restorer or a contractor under ch. 489, F.S., to perform any work requiring such a license; and
- Must verify that any vendor it contracts with to perform work meets the applicable license requirements.

³¹ It is not clear exactly when the 7 day time period begins to run.

The bill requires each insurer to provide on its website and in the policy its contact information for receiving an agreement assigning post-loss benefits. It must include at least a dedicated facsimile number.

After executing the assignment agreement, the bill requires the assignee to deliver the agreement to the insurer within the later of:

- If a state of emergency was declared under s. 252.36, F.S., for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or
- Seven business days after execution of the agreement.

The bill requires the insurer to make any initial inspections of the covered property within the later of:

- If a state of emergency was declared under s. 252.36, F.S., for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or
- Seven business days after receiving the agreement.

The bill requires an insured or assignee to provide the insurer notice of intent to initiate litigation no later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim. The notice must include a copy of the final invoice. The bill does not increase the time limits of s. 627.70131, F.S.

Reporting Requirements Related to Assignment Agreements

The bill requires each insurer to report, by January 1, 2019, and each year thereafter, data on each claim paid in the prior calendar year pursuant to an assignment agreement. This report must be made to the OIR. The data must include, but are not limited to:

- The number of days between the first notice of loss and the initial inspection;
- Loss severity;
- Allocated loss adjustment expense;
- For nonlitigated claims, the difference between the insurer's initial offer and the amount paid on the claim;
- The time from first notice of loss until the claim was closed; and
- For claims involving water damage, whether the adjuster was licensed as a water damage restorer.

For litigated claims, the report must include:

- Any amount paid before litigation, the amount in dispute, the amount of any proposal for settlement, and the settlement or judgment amount;
- The amount of fees paid to the claimant's attorney; and
- The amount and structure, whether fixed, hourly, or contingency, of fees paid to the insurer's attorney.

This information must be reported by the insurer to the opposing counsel on the litigated claim for verification or certification. The opposing counsel on the litigated claim shall report to the

OIR its agreement or disagreement with the accuracy of the figures reported. The bill does not provide the OIR with enforcement power if the claimant's attorney fails to provide the required information.

Regulation of Water Remediation Companies

The bill creates part XVII of ch. 468, F.S., to regulate water damage restoration companies and water damage restorers. The DBPR will be the regulator. They are not regulated under current law. These regulatory provisions are modeled after part XVI of ch. 468, F.S., relating to mold assessors and mold remediators.

This bill creates numerous sections of law. Each section will be referenced by the section, subsection, or paragraph designations as listed in the bill.

Section 468.94 contains a finding that it is necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents, and to regulate persons and companies that hold themselves out to the public as qualified to perform water damage restoration services.

Section 468.941 provides that following persons are not required to comply with any provisions relating to water damage restoration:

- A residential property owner who performs water damage restoration on his or her own property;
- A person who performs water damage restoration on property owned or leased by the person, the person's employer, or an entity affiliated with the person's employer through common ownership, or on property operated or managed by the person's employer or an entity affiliated with the person's employer through common ownership. This exemption does not apply if the person, employer, or affiliated entity engages in the business of performing water damage restoration for the public;
- An employee of a professional water damage restorer while directly supervised by the professional water damage restorer;
- Persons or business organizations that are action within the scope of the respective licenses required under part XV of chapter 468, chapter 471, part I or part II of ch. 481, ch. 482, or ch. 489; that are acting on behalf of an insurer under part VI of ch. 626; or that are persons in the manufactured housing industry who are licensed under ch. 320, except when any such persons or business organizations hold themselves out for hire to the public as a "certified water damage restorer," "registered water damage restorer," "licensed water damage restorer," "water damage restorer," "professional water damage restorer," or any combination thereof, stating or implying licensure under this part; and
- An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, and who is conducting water damage restoration within the scope of that employment, as long as the employee does not hold himself or herself out for hire to the general public or otherwise engage in water damage restoration.

Section 468.9411, F.S., defines "professional water damage restorer" as "any person who performs water damage restoration." It defines "water damage restoration" means water removal,

demolition, dehumidification, or other treatment related to water damage or water-contaminated matter larger than 10 square feet.”

Section 468.9412, F.S., establishes fee schedules. It provides that DBPR may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, delinquency fees, and application for providers of continuing education. The bill requires the DBPR to base the fees on estimates of the revenue required to administer the provisions of the bill but sets fee caps. The application fee may not exceed \$125. The examination fee may not exceed \$125 plus the actual per applicant cost to the DBPR to purchase the examination, if the DBPR chooses to purchase the examination.

The bill provides that the fee for an initial license may not exceed \$200 and that the fee for an initial certificate of authorization may not exceed \$200. The fee for a biennial license renewal may not exceed \$400 and the fee for licensure by endorsement may not exceed \$200. The fee for application for inactive status may not exceed \$100 and the fee for reactivation of an inactive license may not exceed \$200. The bill provides that the fee for applications from providers of continuing education may not exceed \$500.

Section 468.9413, F.S., requires a person desiring to be licensed as a professional water damage restorer to apply to the DBPR after satisfying the examination requirement. An applicant may practice as a professional water damage restorer if he or she passes the required examination, is of good moral character, and has successfully completed the Water Damage Restoration Technician course and the Advanced Structural Drying course approved by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) or similar courses approved by the DBPR. The IICRC describes the course:

The Water Damage Restoration Technician course is designed to teach restoration personnel that perform remediation work to give them a better concept of water damage, its effects and techniques for drying of structures. This course will give residential and commercial maintenance personnel the background to understand the procedures necessary to deal with water losses, sewer backflows, and contamination such as mold. (3 day course; 19 hours, not including exam time, lunch and breaks).³²

The IICRC describes its course on applied structural drying:

The IICRC-approved Applied Structural Drying course is designed to teach the effective, efficient and timely drying of water-damaged structures and contents, using comprehensive classroom and hands-on training, in order to facilitate appropriate decision making within a restorative drying environment. (3 day course; 21 hours, not including exam time, lunch and breaks).³³

The bill requires the DBPR to review and approve courses of study in water damage restoration.

³² <http://www.iicrc.org/education-certification/course-schedule/> (last accessed March 28, 2017).

³³ <http://www.iicrc.org/education-certification/course-schedule/> (last accessed March 28, 2017).

The bill defines “good moral character” as “a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.” The DBPR may refuse to certify an applicant who fails to satisfy the requirement for good moral character only if:

- There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensed professional water damage restorer; and
- The finding by the DBPR of lack of good moral character is supported by clear and convincing evidence.

If an applicant is found to be unqualified for a license because of a lack of good moral character, the DBPR must furnish the applicant with a statement containing the findings of the DBPR, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a hearing and appeal. The bill allows the DBPR to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the section.

The bill requires an applicant to submit, together with the application, a complete set of electronic fingerprints to the DBPR. The DBPR submits the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement forwards them to the Federal Bureau of Investigation for national processing, to determine whether the applicant has a criminal history record. The DBPR reviews the background check results to determine if the applicant meets licensure requirements. The applicant is responsible for the costs associated with processing the fingerprints.

Section 468.9414, F.S., requires licensure of any applicant who the DBPR certifies is qualified to practice professional water damage restoration. The DBPR must certify for licensure any applicant who satisfies character requirements, who has passed the licensing examination, and who has met the education requirements.

The bill provides procedures for licensure by endorsement if an applicant is of good moral character, who has the insurance coverage required under the bill, and who:

- Is qualified to take the state examination and has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of water damage restoration. The certification examination offered must be approved by the DBPR as substantially equivalent to the requirements of the bill; and
- Holds a valid license to practice water damage restoration issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria established by the bill.

The bill prohibits the DBPR from issuing a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of the bill or ch. 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

Section 468.9415, F.S., requires the DBPR to renew a license upon receipt of the renewal application and fee and upon certification by the DBPR that the licensee has satisfactorily completed continuing education requirements. The bill provides that the DBPR shall adopt rules establishing a procedure for the biennial renewal of licenses.

Section 468.9416, F.S., creates continuing education requirements for professional water damage restorers. It provides that the DBPR may not renew a license if the licensee has not completed 14 hours of continuing education during the previous 2 years.

Section 468.9417, F.S., allows a licensee to request his or her license be placed in inactive status. A license that becomes inactive may be reactivated by application to the DBPR. The DBPR may prescribe continuing education requirements as a condition of reactivating a license. The DBPR is required to adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The fee to reactivate or renew an inactive license may not exceed \$200.

Section 468.9418, F.S., provides that the practice of or the offer to practice water damage restoration by licensees through a corporation or partnership offering water damage restoration to the public, or by a corporation or partnership offering such services to the public through licensees is permitted.

Section 468.9419, F.S., provides that effective January 1, 2018, a person may not perform or offer to perform any water damage restoration unless the person is licensed as a professional water damage restorer. The bill provides that effective January 1, 2018, a person may not perform or offer to perform any water damage restoration unless the person has complied with the provisions of the bill. A person who is not licensed as a professional water damage restorer may not:

- Use the name or title “certified water damage restorer,” “registered water damage restorer,” “licensed water damage restorer,” “water damage restorer,” “professional water damage restorer,” or any combination thereof unless the person has complied with the provisions of the bill; and
- Remediate for a fee any property in which the professional water damage restorer or the professional water damage restorer’s company has any financial or transfer interest.

Section 468.942, F.S., provides that certain acts constitute grounds for which the disciplinary actions may be taken:

- Violation of any provision of part XVII or s. 455.227(1), F.S.;
- Attempting to procure a license to practice water damage restoration by bribery or fraudulent misrepresentations;
- Having a license to practice water damage restoration revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the practice of water damage restoration or the ability to practice water damage restoration;
- Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing;
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content;
- Engaging in fraud or deceit, or negligence, incompetency, or misconduct, in the practice of water damage restoration;

- Failing to perform any statutory or legal obligation placed upon a professional water damage restorer;
- Violating any provision of chapter 468, a DBPR rule, or a lawful order of the DBPR previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the DBPR;
- Practicing on a revoked, suspended, inactive, or delinquent license; or
- Failing to meet any standard of practice adopted by rule of the DBPR.

The bill provides for administrative penalties for violations including denial of an application for licensure, revocation or suspension of a license, imposition of an administrative fine not to exceed \$5,000 for each count or separate offense, issuance of a reprimand, placement of the professional water damage restorer on probation for a period of time and subject to such conditions as the DBPR, and restriction of the professional water damage restorer's authorized scope of practice. The DBPR may assess costs against licensees.

Section 468.9421, F.S., requires a professional water damage restorer to maintain general liability and errors and omissions insurance coverage of at least \$1 million.

Section 468.9422, F.S., provides that a contract to perform water damage restoration must be in a document or electronic record, signed or otherwise authenticated by the parties.

Section 468.9423, F.S., provides some "grandfather" provisions to allow persons currently practicing water damage restoration to qualify for licensure as a professional water damage restorer if the person submits an application by September 1, 2017, and if the person, at the time of application, has at least 3 years of experience as a professional water damage restorer. To establish the 3 years of experience, an applicant must submit at least 40 water damage restoration invoices prepared by the applicant. The DBPR may investigate the validity of a water damage restoration invoices submitted to comply with grandfather provisions. If the applicant submits a false assessment or invoice, the DBPR may take disciplinary action against the applicant.

An applicant may not qualify for licensure under the "grandfather" provision if he or she has had a professional water damage restorer license or a license in any related field³⁴ revoked at any time, suspended within the previous 5 years, or has been assessed a fine that exceeds \$500 within the previous 5 years.

An applicant for licensure under the "grandfather" provision must still comply with the good moral character and insurance requirements of the bill.

Section 468.9424, F.S., provides that the DBPR shall adopt rules to administer part XVII of ch. 468, F.S.

³⁴ A license in a related field includes, but is not limited to, licensure in real estate, construction, home inspection, building code administration or inspection, or indoor air quality.

Attorney Fees in Insurance Rates

The bill provides that attorney fees and costs paid by a property insurer pursuant to s. 627.428, F.S., may not be included in a property insurer's rate base and may not be used to justify a rate or rate change.

Replacement Cost Coverage

The bill amends s. 627.7011, F.S., to prohibit an insurer from requiring that a particular vendor make repairs to a dwelling insured on the basis of replacement costs. It also prohibits the insurer from recommending or suggesting a particular vendor to make repairs to a dwelling insured on the basis of replacement costs.

Effective Date

The bill provides an effective date of January 1, 2018. The revisions to s. 627.422, F.S., apply to assignment agreements entered into after January 1, 2018.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

The Florida Constitution provides:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.³⁵

This bill is titled, "[a]n act relating to property repair." The bill creates a new regulation system for water damage restorers, creates new requirements relating to assignment of post-loss benefits in property insurance policies, and prohibits the use of attorney fees paid pursuant to s. 627.428, F.S. It may be argued that this bill embraces more than one subject or that its subject is not expressed in the title.

³⁵ Art. III, s. 6, Fla. Const.

In *Smith v. Department of Insurance*,³⁶ the Florida Supreme Court held that an act relating to tort reform and insurance reform did not violate the single subject requirement. The act at issue in *Smith* contained provisions relating to tort reform, insurance regulation, and insurance rates did not violate the single subject requirement because the Legislature was addressing a crisis in the availability and affordability of liability insurance. Here, it can be argued that the bill's provisions all related to dealing with the rising number of water claims and the increase in property insurance rates.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes fees for licensure of water damage restorers.

B. Private Sector Impact:

Persons who currently work in water remediation will have to obtain a license from the DBPR, comply with continuing education requirements, and be subject to discipline for violations of the regulatory statutes.

The bill prohibits property insurers from including in their rates any attorney fees and costs paid by a property insurer pursuant to s. 627.428, F.S. This will result in a component of the insurer's expenses not being included in rates.

Insurers and claimant attorneys will be subject to new reporting requirements.

C. Government Sector Impact:

The DBPR provided an analysis of the licensing provisions of the original bill. The amendment adopted by the Banking and Insurance Committee made significant changes to the bill. This analysis will be updated when the DBPR has had the opportunity to analyze the committee substitute.

The OIR will have to collect information relating to claims paid and attorney fees paid.

VI. Technical Deficiencies:

The requirement that each insurer report on January 1, 2019, data on claims paid pursuant to an assignment agreement should refer specifically to property insurers. The due date on the report does not provide sufficient time for insurers to compile and submit the required data. The bill requires such data to first be reported to opposing counsel for verification or certification, who must then report to the OIR its agreement or disagreement with the accuracy of the report. The OIR does not have authority to require attorneys to comply with reporting requirements, though perhaps the Florida Bar could discipline such attorneys for lack of compliance.

³⁶ 507 So.2d 1080 (Fla. 1987).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062, 627.422, and 627.7011.

This bill creates the following sections of the Florida Statutes: 468.94, 468.941, 468.9411, 468.9412, 468.9413, 468.9414, 468.9415, 468.9416, 468.9417, 468.9418, 468.9419, 468.942, 468.9421, 468.9422, 468.9423, and 468.9424,

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 April 1, 2017:

- Removes provisions allowing insurers to include provisions in certain policies that prohibit assignments of post-loss benefits;
- Creates a regulatory system for professional water damage restorers. The system is modeled after the system of regulating mold assessors in ch. 468, F.S.;
- Requires insurers to report certain information relating to assignment of benefits to the OIR; and
- Prohibits insurers from using attorney fees and costs paid pursuant to s. 627.428, F.S., in their rate base or use the fees to justify a rate or rate change.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision and Information is directed to create part XVII of chapter 468, Florida Statutes, consisting of ss. 468.94-468.9424, Florida Statutes, to be entitled "Water Damage Restoration."

Section 2. Section 468.94, Florida Statutes, is created to read:



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468.94 Water damage restoration services licensing program;
legislative purpose.—

(1) There is created within the department the water damage
restoration services licensing program.

(2) The Legislature finds it necessary in the interest of
the public safety and welfare to prevent damage to real and
personal property, to avert economic injury to the residents of
this state, and to regulate persons and companies that hold
themselves out to the public as qualified to perform water
damage restoration services.

Section 3. Section 468.941, Florida Statutes, is created to
read:

468.941 Exemptions.—The following persons are not required
to comply with any provisions of this part relating to water
damage restoration:

(1) A residential property owner who performs water damage
restoration on his or her own property;

(2) A person who performs water damage restoration on
property owned or leased by the person, the person's employer,
or an entity affiliated with the person's employer through
common ownership, or on property operated or managed by the
person's employer or an entity affiliated with the person's
employer through common ownership. This exemption does not apply
if the person, employer, or affiliated entity engages in the
business of performing water damage restoration for the public;

(3) An employee of a professional water damage restorer
while directly supervised by the professional water damage
restorer;

(4) Persons or business organizations that are acting



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within the scope of the respective licenses required under part XV of this chapter, chapter 471, part I or part II of chapter 481, chapter 482, or chapter 489; that are acting on behalf of an insurer under part VI of chapter 626; or that are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a "certified water damage restorer," "registered water damage restorer," "licensed water damage restorer," "water damage restorer," "professional water damage restorer," or any combination thereof, stating or implying licensure under this part; and

(5) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, and who is conducting water damage restoration within the scope of that employment, as long as the employee does not hold himself or herself out for hire to the general public or otherwise engage in water damage restoration.

Section 4. Section 468.9411, Florida Statutes, is created to read:

468.9411 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Business and Professional Regulation.

(2) "Professional water damage restorer" means any person who performs water damage restoration.

(3) "Water damage restoration" means water removal, demolition, dehumidification, or other treatment related to water damage or water-contaminated matter larger than 10 square feet.



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Section 5. Section 468.9412, Florida Statutes, is created to read:

468.9412 Fees.—

(1) The department may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and application for providers of continuing education. The department may also establish a delinquency fee. Fees must be based on department estimates of the revenue required to administer this part. All fees must be remitted with the application, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee may not exceed \$125 and is nonrefundable. The examination fee may not exceed \$125 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee must be in an amount that covers the cost of obtaining and administering the examination and must be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license may not exceed \$200.

(4) The fee for an initial certificate of authorization may not exceed \$200.

(5) The fee for a biennial license renewal may not exceed \$400.

(6) The fee for licensure by endorsement may not exceed \$200.

(7) The fee for application for inactive status may not



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98 exceed \$100.

99 (8) The fee for reactivation of an inactive license may not
100 exceed \$200.

101 (9) The fee for applications from providers of continuing
102 education may not exceed \$500.

103 Section 6. Section 468.9413, Florida Statutes, is created
104 to read:

105 468.9413 Examinations.—

106 (1) A person desiring to be licensed as a professional
107 water damage restorer must apply to the department after
108 satisfying the examination requirements of this part.

109 (2) An applicant may practice in this state as a
110 professional water damage restorer if he or she passes the
111 required examination, is of good moral character, and has
112 successfully completed the Water Damage Restoration Technician
113 course and the Advanced Structural Drying course approved by the
114 Institute of Inspection, Cleaning and Restoration Certification
115 or similar courses approved by the department.

116 (3) The department shall review and approve courses of
117 study in water damage restoration.

118 (4) (a) As used in this section, the term "good moral
119 character" means a personal history of honesty, fairness, and
120 respect for the rights of others and for the laws of this state
121 and nation.

122 (b) The department may refuse to certify an applicant who
123 fails to satisfy the requirement for good moral character only
124 if:

125 1. There is a substantial connection between the lack of
126 good moral character of the applicant and the professional



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responsibilities of a licensed professional water damage restorer; and

2. The finding by the department of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department must furnish the applicant with a statement containing the findings of the department, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a hearing and appeal.

(5) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(6) An applicant for a license shall submit, together with the application, a complete set of electronic fingerprints to the department. The department shall submit the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing, to determine whether the applicant has a criminal history record. The department shall review the background check results to determine if the applicant meets licensure requirements. The applicant is responsible for the costs associated with processing the fingerprints. The authorized agencies or vendors shall collect such fees and pay the processing costs due the Department of Law Enforcement.

Section 7. Section 468.9414, Florida Statutes, is created to read:

468.9414 Licensure.—

(1) The department shall license any applicant who the



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department certifies is qualified to practice professional water damage restoration.

(2) The department shall certify for licensure any applicant who satisfies the requirements of s. 468.9413, who has passed the licensing examination, and who has met the education requirements of s. 468.9413. The department may refuse to certify any applicant who has violated any of the provisions of this part.

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character, who has the insurance coverage required under s. 468.9421, and who:

(a) Is qualified to take the examination as set forth in s. 468.9413 and has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of water damage restoration. The certification examination offered must be approved by the department as substantially equivalent to the requirements of this part and s. 455.217; or

(b) Holds a valid license to practice water damage restoration issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria established by this part as determined by the department.

(4) The department may not issue a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of this part or chapter 455 until such time as the investigation is complete and disciplinary proceedings have been terminated.

Section 8. Section 468.9415, Florida Statutes, is created



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to read:

468.9415 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.9416.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

Section 9. Section 468.9416, Florida Statutes, is created to read:

468.9416 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof that during the 2-year period before his or her application for renewal, the licensee completed at least 14 hours of continuing education. Criteria and course content must be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for a licensee's failure to complete the hours required for renewal by the end of the renewal period.

Section 10. Section 468.9417, Florida Statutes, is created to read:

468.9417 Inactive license.—

(1) A licensee may request that his or her license be placed in an inactive status by making application to the department.

(2) A license that becomes inactive may be reactivated upon application to the department. The department may prescribe by



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rule continuing education requirements as a condition of
reactivating a license. The rules may not require more than one
renewal cycle of continuing education to reactivate a license.

(3) The department shall adopt rules relating to licenses
that have become inactive and for the renewal of inactive
licenses. The department shall prescribe by rule a fee not to
exceed \$200 for the reactivation of an inactive license and a
fee not to exceed \$200 for the renewal of an inactive license.

Section 11. Section 468.9418, Florida Statutes, is created
to read:

468.9418 Certification of partnerships and corporations.—
The practice of or the offer to practice water damage
restoration by licensees through a corporation or partnership
offering water damage restoration to the public, or by a
corporation or partnership offering such services to the public
through licensees under this part as agents, employees,
officers, or partners, is permitted subject to the provisions of
this part. This section may not be construed to allow a
corporation to hold a license to practice water damage
restoration. A corporation or partnership may not be relieved of
responsibility for the conduct or acts of its agents, employees,
officers, or partners by reason of its compliance with this
section, nor may any individual practicing water damage
restoration be relieved of responsibility for professional
services performed by reason of his or her employment or
relationship with a corporation or partnership.

Section 12. Section 468.9419, Florida Statutes, is created
to read:

468.9419 Prohibitions; penalties.—



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(1) A person may not:

(a) Effective January 1, 2018, perform or offer to perform any water damage restoration unless the person is licensed as a professional water damage restorer under this part.

(b) Effective January 1, 2018, perform or offer to perform any water damage restoration unless the person has complied with the provisions of this part.

(c) Use the name or title "certified water damage restorer," "registered water damage restorer," "licensed water damage restorer," "water damage restorer," "professional water damage restorer," or any combination thereof unless the person has complied with the provisions of this part.

(d) Remediate for a fee any property in which the professional water damage restorer or the professional water damage restorer's company has any financial or transfer interest.

(2) Any person who violates any provision of this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

(b) A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

(c) A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does not apply to unlicensed activity that occurs before January 1, 2018.

Section 13. Section 468.942, Florida Statutes, is created to read:



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468.942 Disciplinary proceedings.—

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

(a) Violation of any provision of this part or s. 455.227(1) .

(b) Attempting to procure a license to practice water damage restoration by bribery or fraudulent misrepresentations.

(c) Having a license to practice water damage restoration revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the practice of water damage restoration or the ability to practice water damage restoration.

(e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records may include only those that are signed in the capacity of a professional water damage restorer.

(f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(g) Engaging in fraud or deceit, or negligence, incompetency, or misconduct, in the practice of water damage restoration.

(h) Failing to perform any statutory or legal obligation



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placed upon a professional water damage restorer; violating any provision of this chapter, a rule of the department, or a lawful order of the department previously entered in a disciplinary hearing; or failing to comply with a lawfully issued subpoena of the department.

(i) Practicing on a revoked, suspended, inactive, or delinquent license.

(j) Failing to meet any standard of practice adopted by rule of the department.

(2) When the department finds any professional water damage restorer committed any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the professional water damage restorer on probation for a period of time and subject to such conditions as the department may specify.

(f) Restriction of the professional water damage restorer's authorized scope of practice.

(3) In addition to any other sanction imposed under this part, in any final order that imposes sanctions, the department may assess costs related to the investigation and prosecution of the case.

Section 14. Section 468.9421, Florida Statutes, is created to read:



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468.9421 Required insurance.—A professional water damage restorer shall maintain general liability and errors and omissions insurance coverage of at least \$1 million.

Section 15. Section 468.9422, Florida Statutes, is created to read:

468.9422 Contracts.—A contract to perform water damage restoration must be in a document or electronic record, signed or otherwise authenticated by the parties.

Section 16. Section 468.9423, Florida Statutes, is created to read:

468.9423 Grandfather clause.—

(1) A person who performs water damage restoration as defined in this part may qualify for licensure by the department as a professional water damage restorer if the person submits his or her application to the department by September 1, 2017, whether postmarked or delivered by that date, and if the person, at the time of application, has at least 3 years of experience as a professional water damage restorer. To establish the 3 years of experience, an applicant must submit at least 40 water damage restoration invoices prepared by the applicant.

(2) The department may investigate the validity of a water damage restoration invoice submitted under subsection (1) and, if the applicant submits a false assessment or invoice, may take disciplinary action against the applicant under s. 468.942(1)(e) or (g).

(3) An applicant may not qualify for licensure under this section if he or she has had a professional water damage restorer license or a license in any related field revoked at any time or suspended within the previous 5 years or has been



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assessed a fine that exceeds \$500 within the previous 5 years.
For purposes of this subsection, a license in a related field
includes, but is not limited to, licensure in real estate,
construction, home inspection, building code administration or
inspection, or indoor air quality.

(4) An applicant for licensure under this section must
comply with the good moral character and insurance requirements
of this part. An applicant may not qualify for licensure under
this section if the department finds that the applicant lacks
good moral character pursuant to s. 468.9413(4) as a result of
the applicant's criminal history record.

Section 17. Section 468.9424, Florida Statutes, is created
to read:

468.9424 Rulemaking authority.—The department shall adopt
rules to administer this part.

Section 18. Subsection (11) is added to section 627.062,
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees and costs paid by a property insurer
pursuant to s. 627.428 may not be included in the property
insurer's rate base and may not be used to justify a rate or
rate change.

Section 19. Section 627.422, Florida Statutes, is amended
to read:

627.422 Assignment of policies or post-loss benefits.—A
policy may be assignable, or not assignable, as provided by its
terms.

(1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
relating to assignability, any life or health insurance policy



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under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

(2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE POLICIES.—A personal lines residential property insurance policy, a commercial residential property insurance policy, or a commercial property insurance policy may not prohibit the post-loss assignment of benefits. This subsection does not affect the assignment of benefits in other insurance policies.

(a) An agreement to assign post-loss benefits under this subsection is not valid unless the agreement:

1. Is in writing between the policyholder and assignee and is delivered to the insurer as provided in paragraph (c);

2. Is limited to claims for work performed or to be performed by the assignee for damages claimed to be covered;

3. Allows the policyholder to unilaterally rescind the assignment of post-loss benefits within 5 days after the execution of the assignment by an insured; provided, however, that the policyholder or insurer may be responsible for payment for work already performed during such period; and

4. Contains an accurate and up-to-date statement of the



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scope of work to be performed.

(b) An assignee of post-loss benefits under this subsection:

1. Must provide the policyholder with accurate and up-to-date revised statements of the scope of work to be performed as supplemental or additional repairs are required, and must provide to the policyholder and insurer a final invoice and bill for service rendered within 7 business days after the date of submission of the final invoice or bill;

2. Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;

3. May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work at the policyholder's own expense;

4. May not charge the policyholder directly, except for additional work not covered under the policy, including:

a. Work performed that is rightfully denied as not covered;
and

b. Betterments or additional work not part of the loss.

5. May not pay referral fees totaling more than \$750 in connection with the assignment; and

6. For water damage claims:

a. Must be licensed in good standing under part XVII of chapter 468 to perform any work requiring such a license.

b. Must verify that any vendor it contracts with to perform work meets the license requirements of sub-subparagraph a.

(c) An insurer shall provide on its website and in the policy its contact information for receiving the agreement that meets the requirements of paragraph (a) and which must include



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at least a dedicated facsimile number. After executing the assignment agreement, the assignee must deliver the agreement to the insurer within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after execution of the agreement.

(d) Notwithstanding s. 627.70131, upon receiving the agreement in paragraph (a), the insurer must make any initial inspections of the covered property within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after receiving the agreement.

(e) No later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim, the insured or assignee must provide the insurer with notice of intent to initiate such litigation. The notice of intent must include a copy of the final invoice required under subparagraph (b)1. This paragraph does not increase the time periods prescribed in s. 627.70131.

(3) ANNUAL REPORT.—The office shall require each insurer to report by January 1, 2019, and each year thereafter, data on each claim paid in the prior calendar year pursuant to an assignment agreement. Such data must include, but are not



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limited to:

(a) The number of days between the first notice of loss and the initial inspection.

(b) Loss severity.

(c) Allocated loss adjustment expense.

(d) For litigated claims:

1. Any amount paid before litigation, the amount in dispute, the amount of any proposal for settlement, and the settlement or judgment amount;

2. The amount of fees paid to the claimant's attorney; and

3. The amount and structure, whether fixed, hourly, or contingency, of fees paid to the insurer's attorney.

All information the insurer reports under this paragraph must first be reported to the opposing counsel on the litigated claim for verification or certification. The opposing counsel on the litigated claim shall report to the office its agreement or disagreement with the accuracy of the figures reported.

(e) For nonlitigated claims, the difference between the insurer's initial offer and the amount paid on the claim.

(f) The time from first notice of loss until the claim was closed.

(g) For claims involving water damage, whether the adjuster possessed licensure consistent with the requirements in subparagraph (2) (b) 6.

Section 20. The amendments made by this act to s. 627.422, Florida Statutes, apply to assignment agreements entered on or after January 1, 2018.

Section 21. Paragraph (a) of subsection (3) of section



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627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling:

1. The insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

2. The insurer may not require that a particular vendor make repairs to such dwelling.

3. The insurer may not, unless expressly requested by the insured, recommend or suggest a particular vendor for repairs to be made to such dwelling.

Section 22. 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 property repair; providing a directive to the Division of Law Revision and Information to create part XVII of ch. 468, F.S., entitled "Water Damage Restoration"; creating s.



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468.94, F.S.; creating within the Department of Business and Professional Regulation the water damage restoration services licensing program; providing legislative intent; creating s. 468.941, F.S.; providing exemptions from regulation under the part; creating s. 468.9411, F.S.; defining terms; creating s. 468.9412, F.S.; authorizing the department to establish specified fees; specifying requirements and limitations for such fees; creating s. 468.9413, F.S.; providing examination requirements for applicants for professional water damage restorer licensure; providing requirements for practicing as a professional water damage restorer; requiring the department to review and approve courses of study; defining the term "good moral character"; specifying conditions under which the department may refuse to certify an applicant for lack of good moral character; providing requirements for the department when refusing to certify on such grounds; authorizing the department to adopt rules; providing applicant fingerprinting and background check requirements; creating s. 468.9414, F.S.; requiring the department to license qualified applicants who meet specified requirements; authorizing the department to refuse to certify applicants under certain circumstances; creating s. 468.9415, F.S.; providing requirements for license renewals; authorizing the department to adopt rules; creating s. 468.9416, F.S.; providing requirements for continuing education; authorizing the



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department to prescribe by rule certain additional requirements; creating s. 468.9417, F.S.; providing procedures for placing licenses in inactive status; requiring the department to adopt rules; creating s. 468.9418, F.S.; providing construction relating to certification of partnerships and corporations; creating s. 468.9419, F.S.; specifying prohibited acts; providing criminal penalties; providing applicability; creating s. 468.942, F.S.; specifying grounds for disciplinary actions; authorizing specified disciplinary actions by the department; creating s. 468.9421, F.S.; requiring professional water damage restorers to maintain specified insurance coverage; creating s. 468.9422, F.S.; requiring contracts to perform water damage restoration to be in a document or electronic record and signed or authenticated by the parties; creating s. 468.9423, F.S.; providing procedures and requirements for grandfathering specified persons for licensure; specifying persons who may not qualify for such licensure; creating s. 468.9424, F.S.; requiring the department to adopt rules; amending s. 627.062, F.S.; specifying that certain fees and costs may not be included in a property insurer's rate base or used to justify a rate or rate change; amending s. 627.422, F.S.; prohibiting certain property insurance policies from prohibiting the post-loss assignment of benefits; providing that an assignment agreement is not valid unless it meets specified requirements; providing



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requirements and limitations for assignees of post-loss benefits; requiring insurers to provide specified contact information on their websites and in policies; requiring assignees to deliver an executed assignment agreement to insurers within a specified timeframe; requiring insureds or assignees to provide a certain prelitigation notice and invoice to insurers within a specified timeframe; providing construction; requiring the Office of Insurance Regulation to require each insurer to report at certain intervals specified data relating to claims paid pursuant to assignment agreements; requiring insurers to report certain information to opposing counsel, and requiring the opposing counsel to verify or certify the information, before it is reported to the office; providing applicability; amending s. 627.7011, F.S.; prohibiting specified acts of insurers relating to homeowners' insurance policies under certain circumstances; providing an effective date.

By Senator Farmer

34-00621B-17

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1 A bill to be entitled
 2 An act relating to property repair; amending s.
 3 468.8411, F.S.; defining the terms "professional water
 4 damage restorer" and "water damage restoration";
 5 amending s. 468.8414, F.S.; requiring the Department
 6 of Business and Professional Regulation to license
 7 applicants who are qualified to practice water damage
 8 restoration; specifying qualifications for licensure;
 9 providing applicability to professional water damage
 10 restorers of certain prohibitions and penalties;
 11 amending s. 627.422, F.S.; prohibiting personal lines
 12 residential or commercial residential property
 13 insurance policies from prohibiting the post-loss
 14 assignment of benefits; providing that an assignment
 15 agreement is not valid unless it meets specified
 16 requirements; providing requirements and limitations
 17 for assignees of post-loss benefits; requiring
 18 insurers that have a preferred vendor or similar
 19 program to consider certain certified persons to be
 20 preferred vendors; requiring insurers to provide
 21 specified contact information on their websites and in
 22 policies; requiring assignees to deliver an executed
 23 assignment agreement to insurers within a specified
 24 timeframe; requiring insurers to make any initial
 25 inspections of the covered property within a specified
 26 time after receiving such agreement; requiring
 27 insureds or assignees to provide a certain
 28 prelitigation notice to insurers by a specified
 29 timeframe; amending s. 627.7011, F.S.; prohibiting

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

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30 specified acts of insurers relating to homeowners'
 31 insurance policies under certain circumstances;
 32 providing an effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Subsections (7) and (8) are added to section
 37 468.8411, Florida Statutes, to read:
 38 468.8411 Definitions.—As used in this part, the term:
 39 (7) "Professional water damage restorer" means any person
 40 who performs water damage restoration.
 41 (8) "Water damage restoration" means water removal,
 42 demolition, dehumidification, or other treatment related to
 43 water damage or water-contaminated matter greater than 10 square
 44 feet.
 45 Section 2. Subsection (1) of section 468.8414, Florida
 46 Statutes, is amended, present subsection (4) of that section is
 47 redesignated as subsection (6), and a new subsection (4) and
 48 subsection (5) are added to that section, to read:
 49 468.8414 Licensure.—
 50 (1) The department shall license any applicant who the
 51 department certifies is qualified to practice mold assessment,
 52 ~~or~~ mold remediation, or water damage restoration.
 53 (4) The department shall certify for licensure as a
 54 professional water damage restorer an applicant who:
 55 (a) Is of good moral character;
 56 (b) Has the insurance coverage required under s. 468.8421;
 57 and
 58 (c) Satisfies the Institute of Inspection, Cleaning, and

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59 Restoration Certification S500 standards.

60 (5) The prohibitions and penalties described in s. 468.8419
 61 apply to a professional water damage restorer.

62 Section 3. Section 627.422, Florida Statutes, is amended to
 63 read:

64 627.422 Assignment of policies or post-loss benefits.—A
 65 policy or its post-loss benefits may be assignable, or not
 66 assignable, as provided by the its terms of the policy and the
 67 requirements of this section.

68 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
 69 relating to assignability, any life or health insurance policy
 70 under the terms of which the beneficiary may be changed upon the
 71 sole request of the policyowner may be assigned either by pledge
 72 or transfer of title, by an assignment executed by the
 73 policyowner alone and delivered to the insurer, whether or not
 74 the pledgee or assignee is the insurer. Any such assignment
 75 shall entitle the insurer to deal with the assignee as the owner
 76 or pledgee of the policy in accordance with the terms of the
 77 assignment, until the insurer has received at its home office
 78 written notice of termination of the assignment or pledge or
 79 written notice by or on behalf of some other person claiming
 80 some interest in the policy in conflict with the assignment.

81 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
 82 POLICIES.—A personal lines residential property insurance policy
 83 or a commercial residential property insurance policy may not
 84 prohibit the post-loss assignment of benefits.

85 (a) An agreement to assign post-loss benefits under this
 86 subsection is not valid unless the agreement:

87 1. Is in writing between the policyholder and assignee and

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88 is delivered to the insurer as provided in paragraph (c);

89 2. Is limited to claims for work performed by the assignee
 90 for damage to dwellings or structures covered under the policy;

91 3. Allows the policyholder to unilaterally rescind the
 92 assignment of post-loss benefits to a vendor if work has not yet
 93 begun or if the assignee fails to meet the standards required
 94 for such work; provided, however, that the policyholder or
 95 insurer may be responsible for payment for work performed; and

96 4. Contains an accurate and up-to-date statement of the
 97 scope of work to be performed.

98 (b) An assignee of post-loss benefits under this
 99 subsection:

100 1. Must provide the policyholder with accurate and up-to-
 101 date revised statements of the scope of work to be performed as
 102 supplemental or additional repairs are required;

103 2. Must guarantee to the policyholder that the work
 104 performed conforms to current and accepted industry standards,
 105 including, but not limited to, the standards under this part;

106 3. May not charge the policyholder more than the applicable
 107 deductible contained in the policy unless the policyholder opts
 108 for additional work at the policyholder's own expense;

109 4. May not charge the policyholder directly, except for
 110 additional work not covered under the policy;

111 5. May not pay referral fees totaling more than \$750 in
 112 connection with the assignment; and

113 6. For water-damage claims:

114 a. Must be licensed in good standing under part XVI of
 115 chapter 468 or chapter 489 to perform any work requiring such a
 116 license.

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b. Must be certified in good standing with the Institute of Inspection Cleaning and Restoration Certification to perform any work covered under the appropriate certification.

c. Must verify that any vendor it contracts with to perform work meets the applicable license and certification requirements in sub-subparagraphs a. and b.

For purposes of sub-subparagraphs b. and c., if an insurer has a preferred vendor or similar program, the insurer must consider a person certified by the Institute of Inspection Cleaning and Restoration Certification to be a preferred vendor.

(c) An insurer shall provide on its website and in the policy its contact information for receiving the agreement that meets the requirements of paragraph (a) and which must include at least a dedicated facsimile number. After executing the assignment agreement, the assignee must deliver the agreement to the insurer within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after execution of the agreement.

(d) Notwithstanding s. 627.70131, upon receiving the agreement in paragraph (a), the insurer must make any initial inspections of the covered property within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or

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natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after receiving the agreement.

(e) No later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim, the insured or assignee must provide the insurer with notice of intent to initiate such litigation.

Section 4. Paragraph (a) of subsection (3) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling:—

1. The insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

2. The insurer may not require that a particular vendor make repairs to such dwelling.

3. The insurer may not, unless expressly requested by the insured, recommend or suggest a particular vendor for repairs to be made to such dwelling.

Section 5. 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)

4/3/17
Meeting Date

1218
Bill Number (if applicable)

Topic Property Repair / AOB

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Commissioner

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Office of Ins. Reg.

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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

Topic Property Repair

Amendment Barcode (if applicable)

Name Sha'Ron James

Job Title Insurance Consumer Advocate

Address 200 E Gaines St
Street

Phone (858) 413-5922

Tallahassee FL
City State Zip

Email ShaRon.James@myfloridafly.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing DFS

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

April 3, 2017
Meeting Date

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

SB 1218
Bill Number (if applicable)

Topic Property Repair

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title State Affairs Director - Southeast Region

Address 3933 Victoria Lakes Dr. S.

Phone (317) 417-5618

Street

Jacksonville, FL 32226

City

State

Zip

Email lreynolds@namic.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Association of Mutual Ins. Cos.

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)

04.03.2017

Meeting Date

513 12 18
Bill Number (if applicable)

Topic SB 1218

Amendment Barcode (if applicable)

Name Ron Jackson

Job Title Vice President, State Affairs Southeast Region

Address 2107 N. Decatur Road, Suite 257

Phone 404.261.8834

Street

Decatur

GA

30033

Email rojackson@aiadc.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Insurance 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)

4-3-17
Meeting Date

1218
Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Gary A. Guzzio

Job Title _____

Address 108 S Monroe St
Street

Phone 850-681-0024

Tallahassee Fla 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance Council - 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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

Topic Property Repair

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 3, 2017

Meeting Date

1218

Bill Number (if applicable)

Topic Property Repair

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

Street

Tallahassee

FL

32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Personal Insurance Federation of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4.3.2017

Meeting Date

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

1218

*Bill Number (if applicable)*Topic Relating to Property Repair*Amendment Barcode (if applicable)*Name Ken BellJob Title LobbyistAddress 215 S. Monroe Suite 601Phone 8505211980*Street*TallahasseeFlorida32301Email kbell@gunster.com*City**State**Zip*Speaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing ASI Insurance GroupAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04.03.17

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

1218

Meeting DateBill Number (if applicable)Topic Property RepairAmendment Barcode (if applicable)Name William LargeJob Title PresidentAddress 210 South Monroe StreetPhone 850-222-0170StreetTallahasseeFL32301CityStateZipEmail William@fljustice.orgSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Justice Reform InstituteAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17

Meeting Date

1218

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Coretta Anthony-Smith

Job Title Attorney

Address 3401 S. Kirkman Rd. #610

Phone (407) 299-8589

Street

Orlando,

FL

32819

City

State

Zip

Email Carthony@anthony-smithlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

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)

1218
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic Assignment
Name Coretta Anthony-Smith
Job Title Attorney
Address 5401 S Kirkman Rd.
Street
Orlando
City State Zip

Phone (407) 299-8589
Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

4.3.17

Meeting Date

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

1218

Bill Number (if applicable)

Topic Property Repair

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E College Ave #502

Phone 222-9575

Street
Tallahassee FL 32303

City State Zip

Email akalifeh@capark.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AIF

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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

Topic

Property Repair

Amendment Barcode (if applicable)

Name

William Stander

Job Title

Exec. Dir.

Address

P.O. Box 454

Phone

850 212-3250

Street

Tallahassee FL 32302

City

State

Zip

Email

William @ William Stander.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Florida Property & Casualty 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)

4/3/17
Meeting Date

1218
Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S. Monroe St. Suite 720
Street

Phone 850-681-2615

Tallahassee FL 32301
City State Zip

Email logan.mcfaddin@pciaz.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Property Casualty Insurers Association of America

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)

4/3/17
Meeting Date

551218
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID B. ALEXANDER

Job Title _____

Address 11 S. BURNBY AVE

Street

Phone _____

ORLANDO

City

FL

State

32803

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

Topic PROPERTY ASSIGNMENT OF BENEFITS

Amendment Barcode (if applicable)

Name MARK CEDERBERG

Job Title ATTORNEY

Address 11 S. BUNBY AVE.
Street

Phone (407) 926-8710

ORLANDO FL 32803
City State Zip

Email markcbradford@w.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

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)

8/3/17

Meeting Date

SB 1218

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name DAVID B. ALEXANDER

Job Title

Address

Street

Phone

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

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)

4/
Meeting Date

1218
Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name C. GLEN GED

Job Title ATTORNEY

Address 7171 N. FEDERAL Highway

Phone 561-302-8880

Street

City

State

Zip

BOCA RATON FL

Email GGE DC EGB/ATU.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

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

4/3/17

Meeting Date

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

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic PROPERTY REPAIR

Name DAVE DEBLANDER

Job Title OWNER

Address 3255 POTTER ST #C

Street

PENSACOLA FL 32514

City

State

Zip

Phone 850-712-8711

Email davec@procleanrestoration.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

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)

4/3/17
Meeting Date

1218
Bill Number (if applicable)
310588
Amendment Barcode (if applicable)

Topic Property repair / AOB

Name David Altmaier

Job Title Commissioner

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Office of Ins. Reg.

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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Christine Ashburn

Job Title Vice President of Communications & Legislative Affairs

Address 2101 Maryland Circle

Street

Phone 850-513-3746

Tallahassee FL

City

State

32303

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Citizens Property Insurance Corporation

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)

4/3/17

Meeting Date

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic Property Repair

Name Sha'Ron James

Job Title Insurance Consumer Advocate

Address 200 E Gaines St
Street

Tallahassee FL
City State Zip

Phone (850) 413-5922

Email Sha'Ron.James@nyfloridajob.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing DPS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/3/2017

Meeting Date

1218

Bill Number (if applicable)

310588

*Amendment Barcode (if applicable)*Topic Property RepairName Foyt Ralston

Job Title _____

Address 101 North Monroe Street, Suite 900*Street*Tallahassee*City*FL*State*32301*Zip*Phone 850-222-8611Email fralston@bmolaw.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Association of Restoration SpecialistAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/3/2017

Meeting Date

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic Property Repair

Name Jeff Grant

Job Title Owner

Address 1285 Smoke Rise Ln

Street

Tallahassee

City

FL

State

32317

Zip

Phone 850-878-6469

Email bonedryrestoration@earthlink.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Bone Dry Restoration

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)

4-3-17
Meeting Date

SB 1218
Bill Number (if applicable)

Am 310588
Amendment Barcode (if applicable)

Topic PROPERTY REPAIR

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQUARE # 3-243 Phone 850-222-2772

Street

TALLAHASSEE
City

FL
State

32312
Zip

Email AFENTRISS@AOL.COM

Speaking: ☒ For ☒ Against ☐ Information
PART PART

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

Representing FEA. ROOFING + SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17

Meeting Date

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic PROPERTY REPAIR

Name RICHIE KIDWELL

Job Title ~~WATER~~ RESTORATION ASSOC. OF FL

Address 941 MORSE BLVD

Street

Phone 407-233-0493

WINTER PARK FL 32789

City

State

Zip

Email richie@AIRQUALITY
ASSESSORS.
COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

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

4/3/17

Meeting Date

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

1218

Bill Number (if applicable)

310588

Amendment Barcode (if applicable)

Topic PROPERTY REPAIR

Name Eric Valdes

Job Title Director

Address 13787 SW 152 street #204
Street

Phone 786 529 6464

Miami FL 33177
City State Zip

Email Eric@drlforceinc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

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)

4/3/17
Meeting Date

1218
Bill Number (if applicable)

Topic ASSIGNMENT OF BENEFITS

310588
Amendment Barcode (if applicable)

Name JASON MULLHOLLAND

(Strike-All)

Job Title _____

Address 9312 N. ARMENIA AVE.
Street

Phone 813 935 8256

TAMPA FL 33612
City State Zip

Email esquire@tampabay.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1316

INTRODUCER: Banking and Insurance Committee and Senator Bracy

SUBJECT: Preinsurance Inspection

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			TR	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1316 allows motor vehicle insurers an exemption from the requirement they must inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage. The inspection requirement only applies in counties with a 1988 population of 500,000 or greater. The bill requires insurers using the exemption to file a manual rule with the Office of Insurance Regulation (OIR) and also allows an insurer to file with the OIR their own pre-insurance inspection requirements before insuring a private passenger motor vehicle.

II. Present Situation:

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. The inspection must include:

- Taking a physical imprint of the vehicle identification number of the vehicle or otherwise recording the vehicle identification number in a manner prescribed by the commission.
- Recording the presence of accessories required by the commission to be recorded.
- Recording the locations of and a description of existing damage to the vehicle.

The requirement applies to a policy issued on a private passenger motor vehicle principally garaged in counties with a 1988 population of 500,000 or greater. These counties are Duval,

Palm Beach, Broward, Dade, Orange, Hillsborough, and Pinellas. There are various exemptions from the required preinsurance inspection, including exceptions for:

- new, unused motor vehicles “purchased” from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer’s order, or copy of the title,
- Vehicles added by policyholders continuously insured for 2 or more years,
- Temporary substitute motor vehicles,
- Motor vehicles leased for less than 6 months, contingent upon certain documentation,
- Vehicles 10 years old or older,
- Renewal policies,
- Vehicles or policies exempted by rule,
- Vehicles that are garaged too far from a contracted inspection facility,
- Vehicles on a commercial rated policy with five or more insured vehicles,
- Upon transfer of a book of business among insurers, and
- When an individual insured’s coverage is being transferred and initiated by a producer to a new insurer.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant’s failure to provide the required documents. However, claim payments are conditioned upon, and are not payable until, the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed \$5.¹

In 2016, the Legislature required the Department of Financial Services (DFS) to provide a report on preinsurance inspections in the state.² The report was issued on December 22, 2016.³ The required elements and reported data⁴ for 2012-2016 are:

- Total cost incurred by insurers and policyholders in order to comply with the inspections.
 - Insurers: \$12,062,089
 - Policyholders: None
- Total cost incurred by insurers to have motor vehicles inspected.
 - \$12,062,089
- Total premium savings for policyholders as a result of the inspections.
 - \$35,640
- Total number of inspected motor vehicles that had preexisting damage.
 - 125,787 motor vehicles inspected.
- Data on potential fraud within the first 125 days after issuance of a new policy.
 - 6,166 potential fraud claims.
- Total number of referrals to the National Insurance Crime Bureau (NICB) by preinsurance inspectors during the past 5 years.

¹ Section 627.744(4), F.S.

² ch. 2016-133, L.O.F.

³ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF INVESTIGATIVE & FORENSIC SERVICES, s. 627.744(8)(a), F.S. *Motor Vehicle Pre-Inspection – Reporting Requirements* (Dec. 22, 2016). (on file with the Senate Committee on Banking and Insurance.)

⁴ The survey and data request summarized in the report included responses received from 157 insurers (39 provided data).

- 626 referrals made to NICB.⁵

Many insurers argue based on the findings of this report the mandatory cost for such inspections do not justify the potential cost avoidance. However, vendors that provide these mandatory inspections argue when taking into account the average cost of repair to vehicles along with the number of vehicles noted as having damage at time of inspection, the total cost avoidance from potential fraud should be much higher than what has been reported.

III. Effect of Proposed Changes:

The bill allows motor vehicle insurers to opt out of the requirement they must inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage. Physical damage includes collision and comprehensive coverages.

The inspection requirement only applies in counties with a 1988 population of 500,000 or greater. These counties are Duval, Palm Beach, Broward, Dade, Orange, Hillsborough, and Pinellas.

When an insurer elects to opt out of inspection requirements they must file a manual rule with the OIR indicating that the insurer will not participate in the inspection program and will not require the preinsurance inspection of its insureds' motor vehicles. An insurer that files such a manual rule may also file with the OIR their own preinsurance inspection requirements as a condition to issuing a private passenger motor vehicle insurance policy. Insurers may charge applicants up to \$5 for the inspection, which is the maximum charge under current law for inspections conducted pursuant to s. 627.744, F.S.

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.

⁵ DFS also reports that 4,065 referrals were made by insurers to the Division of Investigative & Forensic Services (formerly the Division of Insurance Fraud) during the same period.

B. Private Sector Impact:

Insurers will no longer be required to pay for or preform such inspections.

Inspection companies could see an indeterminate negative impact should insurers choose not to utilize their services.⁶

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.744 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 April 3, 2017:

Requires insurers that opt out of statutory preinsurance inspections to file a manual rule with the OIR indicating its non-participation. An insurer may establish its own preinsurance requirements in the manual rule. Insurers may charge applicants up to \$5 for the inspection, which is the maximum charge under current law for inspections conducted pursuant to s. 627.744, F.S.

B. Amendments:

None.

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

⁶ In 2012-2016, one vendor reported conducting more than 584,000 inspections on behalf of 33 insurers. The total cost for these inspections was \$5,256,000 or an average of \$9 per inspection. Approximately 12 percent or roughly 71,000 of the 584,000 vehicles inspected were noted by the vendor as having existing damage at time of inspection. (information on file with the Banking and Insurance Committee).



571826

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 18 - 27

and insert:

~~(3) This subsection does not prohibit an insurer from requiring a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage.~~

(7) Notwithstanding any other provision of this section, an insurer may opt out of the inspection requirements of this section. An insurer opting out of the inspection must file a



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11 manual rule with the office indicating that the insurer will not
12 participate in the inspection program under this section. An
13 insurer that files such a manual rule with the office may
14 establish its own preinsurance inspection requirements as a
15 condition to issuing a private passenger motor vehicle insurance
16 policy. The insurer's preinsurance inspection requirements must
17 be included in the manual rule filed with the office. An
18 applicant may be required to pay the cost of the inspection, not
19 to exceed \$5.

20 ~~(8) The Division of Insurance Fraud of the Department of~~
21 ~~Financial Services shall provide a report of data from the~~
22 ~~required preinsurance inspection of motor vehicles to the~~
23 ~~Governor, the President of the Senate, and the Speaker of the~~
24 ~~House of Representatives by December 1, 2016.~~

25 ~~(a) The data must include, but need not be limited to:~~

26 ~~1. A written estimate of the total cost incurred by~~
27 ~~insurers and policyholders in order to comply with the~~
28 ~~inspections.~~

29 ~~2. A written estimate of the total cost incurred by~~
30 ~~insurers to have their motor vehicles inspected.~~

31 ~~3. Documentation regarding the total premium savings for~~
32 ~~policyholders as a result of the inspections.~~

33 ~~4. Documentation of the total number of inspected motor~~
34 ~~vehicles that had a preexisting condition.~~

35 ~~5. Documentation regarding the potential fraud in motor~~
36 ~~vehicle claims incurred within the first 125 days after issuance~~
37 ~~of a new policy.~~

38 ~~6. Documentation of the total number of referrals of~~
39 ~~fraudulent acts to the National Insurance Crime Bureau by~~



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~~preinsurance inspectors during the past 5 years.~~

~~(b) The Legislature may use the report data in determining
the future public necessity for this section.~~

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 14 - 15

and insert:

Section 1. Subsections (3) and (8) of section 627.744,
Florida Statutes, are amended, present subsections (4) through
(7) of that section are redesignated as subsections (3) through
(6), and a new subsection (7) is added to that section, to read:

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

s. 627.744, F.S.; revising construction; authorizing
insurers to opt out of preinsurance inspections of
private passenger motor vehicles; requiring insurers
opting out to file a certain manual rule with the
Office of Insurance Regulation; authorizing such
insurers to establish their own preinsurance
inspection requirements, which must be included in the
filed manual rule; providing that applicants may be
required to pay the cost of the inspection up to a
specified amount; deleting an obsolete provision;
providing an effective date.

By Senator Bracy

11-00932A-17

20171316__

A bill to be entitled

An act relating to preinsurance inspection; amending s. 627.744, F.S.; providing an exception to the requirement that an insurer inspect private passenger motor vehicles before issuing certain motor vehicle insurance policies; requiring insurers using the exception to file a manual rule with the Office of Insurance Regulation; authorizing insurers to establish their own preinsurance inspection requirements; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (2) of section 627.744, Florida Statutes, to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

(m) If an insurer elects to opt out of inspection requirements under this section. An insurer opting out of the inspection must file a manual rule with the office indicating that the insurer will not participate in the inspection program under this section and will not require the preinsurance inspection of its insureds' motor vehicles. An insurer that files such a manual rule with the office may establish its own preinsurance inspection requirements as a condition to issuing a private passenger motor vehicle insurance policy.

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

THE FLORIDA SENATE
APPEARANCE RECORD

April 3, 2017
Meeting Date

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

SB 1316
Bill Number (if applicable)

Topic Preinsurance Inspection

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title State Affairs Director - Southeast Region

Address 3933 Victoria Lakes Dr. S.
Street

Phone (317) 417-5618

Jax FL 32226
City State Zip

Email lreynolds@namic.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Assoc. of Mutual Insurance Cos.

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)

4/31/17

Meeting Date

1316

Bill Number (if applicable)

Topic Pre-owned Auto Inspections

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title _____

Address 325 W College Ave
Street

Phone 850 509 1802

TAH FL 32301
City State Zip

Email rreyes@capitolgrp.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Allstate Insurance Co

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

4-3-2017
Meeting Date

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

~~SB~~ SB 1316
Bill Number (if applicable)

Topic ~~SB~~ SB 1316 - Preinsurance inspection

Amendment Barcode (if applicable)

Name Meredith Snowden

Job Title consultant

Address 215 S. Monroe St. Suite 701

Phone 850-510-9257

Street

Tall

City

FL

State

32308

Zip

Email msnowden@colodnigas.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Property Casualty Insurance Association of America

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

4-3-17

Meeting Date

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

SB 1316

Bill Number (if applicable)

Topic Pre-inspection of Automobiles

Amendment Barcode (if applicable)

Name Bonny Gordon

Job Title SR. Counsel

Address 1 GEICO Plaza

Phone 301-986-2653
202-431-4293

Street

Washington DC 20076

City

State

Zip

Email bgordon@geico.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing GEICO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

4/3/2017

Meeting Date

1316

Bill Number (if applicable)

571826

Amendment Barcode (if applicable)

Topic Pre-insurance auto inspection

Name Jan Gorrie

Job Title _____

Address 403 E. Park Ave.
Street

Phone 813

Tallahassee FL 32301
City State Zip

Email jan@ballardfl.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CARCO

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 1582

INTRODUCER: Senator Bradley

SUBJECT: Workers' Compensation Insurance

DATE: March 31, 2017

REVISED: 4/4/17

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	Favorable
2.		AP	
3.		RC	

I. Summary:

SB 1582 amends several provisions of Florida's workers' compensation law, ch. 440, F.S., and provisions of the Insurance Code, which governs the rate making approval process for many, but not all, providers of workers' compensation coverage. The bill:

- Codifies *Westphal* by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks.
- Amends the attorney fee provision to require the Judge of Compensation Claims (JCC) to consider certain factors in determining if the attorney fees should be increased or decreased, based on a maximum hourly rate of \$250. The bill removes the criminal penalty for claimant attorneys receiving fees that are not approved by the JCCs, thereby allowing claimants to enter into retainer agreements. The bill eliminates the attorney fee cap of \$1,500 on medical-only claims.
- Requires greater specificity in the information that must be provided in petitions for benefits filed with the Office of Judges of Compensation Claims (OJCC), such as the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.
- Clarifies that deadlines within multiple provisions relating to medical care are based on business days, not calendar days. For example, the bill requires carriers to authorize or deny medical authorization requests within 3 business days.
- Revises the workers' compensation rating law. Currently, Florida law requires carriers, or rating organization filing on their behalf, to file an administered rate or full rate. The bill implements loss costs rating, which requires each insurer to seek approval for rates based on aggregate claim information filed by a rating organization with individual company data (loss costs multipliers), being used for the final rate, subject to approval by the Office of Insurance Regulation (OIR).

- Limits defense and cost containment expenses of insurers to 15 percent of incurred losses, and provides that excessive defense and cost containment fees must be returned to policyholders.

The bill will have a fiscal impact on the Office of Insurance Regulation (OIR) of \$700,000-1,000,000.

The bill will have a fiscal impact on the Office of Judges of Compensation Claims of \$18,000-\$24,720.

II. Present Situation:

Florida's Workers' Compensation Trends

In 2015, 242 commercial insurers actively wrote workers' compensation insurance in Florida. In total, these private sector insurers wrote \$2.6 billion in premium.¹ In 2014, Florida rates were ranked 28th highest in the United States. In 2016, Florida rates were ranked even lower at 33.²

Medical-Only and Indemnity Claims³

Approximately 75 percent of claims in Florida are medical-only and the average cost is \$1,378. Medical-only claims represent 10 percent of losses. In contrast, 25 percent of the claims in Florida are lost-time claims and the average cost is \$39,296. Lost time claims represent 90 percent of total losses.

Cost Drivers

According to the OIR, there are several cost drivers in the Florida workers' compensation system that the Legislature could address to induce cost savings.⁴ The OIR noted that NCCI compared the medical cost distributions for Florida versus 37 states combined to show that based on recent experience Florida has a higher portion of cost paid for drugs, hospital inpatient, and ambulatory surgical centers.⁵

Attorney Involvement

Attorney involvement is approximately 25 percent on lost-time claims.⁶ Since claimant attorney involvement is reported to NCCI as indemnity, a medical-only claim with claimant attorney involvement would be reported as a lost-time claim.⁷ For lost-time claims with attorney

¹ OIR, *2016 Workers' Compensation Annual Report*, pg. 6 (Jan. 2017). <http://floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf> (last accessed April 4, 2017)(on file with Senate Banking and Insurance Committee).

² Oregon Department of Consumer and Business Services, *2016 Oregon Workers' Compensation Premium Rate Ranking Summary* (Oct. 2016) http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf (last accessed on April 4, 2017) (on file with Senate Banking and Insurance Committee).

³ NCCI, *Workers' Compensation October 1, 2016, Law-Only Rate Filing Overview* (On file with Senate Banking and Insurance Committee).

⁴ See OIR fn. 1 at pg. 15.

⁵ See *id.*

⁶ See NCCI fn. 3 at pg. 9.

⁷ See *id.*

involvement, the cost on average is approximately three times more than lost-time claims without attorney involvement.⁸

Section 440.34, F.S., requires the reporting of all fees paid to attorneys for services rendered to the OJCC. The OJCC reported⁹ that during 2015-16, a total of \$378,573,902 was incurred on combined claimant attorneys' fees and defense attorneys' fees in the Florida system. This represents a small increase, about 2 percent, from the 2014-15 aggregate fee total of \$370,772,783. The 2015-16 aggregate fee total is also very similar to the 2013-14 aggregate total of \$379,222,337. Both claimant and defense fees decreased in 2014-15, more significantly on the claimant side. Both figures increased in 2015-16, more significantly on the defense side. The following OJCC table provides a snapshot of fees for the period of 2002-2016.

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2003-04	\$215,322,360	2.21%	\$226,585,434	4.56%
2004-05	\$211,157,073	-1.93%	\$259,021,415	14.32%
2005-06	\$208,369,260	-1.32%	\$290,172,000	12.03%
2006-07	\$191,197,443	-8.24%	\$277,286,580	-4.41%
2007-08	\$188,701,256	-1.31%	\$260,160,496	-6.21%
2008-09	\$181,660,686	-3.73%	\$269,280,414	3.51%
2009-10	\$176,996,765	-2.57%	\$269,657,104	0.14%
2010-11	\$157,081,084	-11.25%	\$259,323,175	-3.83%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%
2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%

Underwriting Performance of Carriers¹⁰

According to the OIR, “an important measure of the health of an insurance market is the underwriting performance of the insurers in the market; that is, the combination of pricing, risk management, and application of effective underwriting guidelines contributing to a viable and sustainable market.” Commonly used measures employed by the OIR in the 2016 Workers’ Compensation Annual Report include the loss ratio (defined as direct losses incurred divided by direct premiums earned) and a broader measure that includes direct losses incurred and defense cost containment expenses (DCCE) incurred as a percentage of direct premiums earned. Ratios approaching or exceeding 100 for either measure are not considered profitable. For the Florida workers’ compensation market in 2015, these aggregate ratios based on National Association of Insurance Commissioners (NAIC) Annual Statement data are:

⁸ See *id.*

⁹ OJCC, *2015-2016 Annual Report*, available at <https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#> (last viewed Mar. 30, 2017).

¹⁰ See OIR fn. 1 at pgs. 9-10.

- Direct Loss Ratio 57.76 percent
- Direct plus DCCE Ratio 65.32 percent

While there is year-to-year variation in these ratios, both of these measures are fairly consistent with the ratios (57.90 percent and 66.14 percent, respectively) based on 2014 NAIC Annual Statement data.

The combined ratio is another common measure of underwriting performance. Combined ratios measure underwriting profitability and are generally defined as the sum of losses and expenses divided by earned premium. Typically, dividend payments are included as an expense item in quantifying combined ratios. The NCCI's presentation at its 2016 State Advisory Forum shows that the Florida workers' compensation combined ratio for private carriers and self-insureds has been trending down for the past several years.

The Accident Year Combined Ratios for Florida

Accident Year	Combined Ratio
2010	124%
2011	115%
2012	106%
2013	98%
2014	96%

A combined ratio less than 100 percent indicates that insurers are achieving an underwriting gain for workers' compensation. When the combined ratio is greater than 100 percent, insurers are paying out more in losses and expenses than they are collecting in premiums. Insurers may profit in years where the combined ratio is greater than 100 percent because the ratio does not include investment income.

Recent Florida Supreme Cases

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,¹¹ involving attorney fees; *Westphal v. City of St. Petersburg*,¹² relating to temporary wage replacement benefits (i.e., indemnity); and *Miles v. City of Edgewater Police Department*,¹³ which addresses the right of an injured worker to pay for their own attorney.

Castellanos v. Next Door Company

In April 2016, the Florida Supreme Court rendered its decision in *Castellanos v. Next Door Company*. The Court concluded that:

The right of an injured worker to recover a reasonable prevail party attorney's fee has been a key feature of the state's workers' compensation law since 1941. Through the enactment of a mandatory fee schedule, however, the Legislature has

¹¹ *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. 2016).

¹² *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

¹³ *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016).

created an irrebutable presumption that every fee calculated in accordance with the fee schedule will be reasonable to compensate the attorney for his or her services. The \$1.53 hourly rate in this case clearly demonstrates that not to be true. We conclude that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions.

As a result of this ruling, judges may deviate from the statutory fee schedule if it results in an unreasonable fee.

Westphal v. City of St. Petersburg

Subsequently, in June 2016, the Florida Supreme Court, in the case of *Westphal v. City of St. Petersburg*, found the 104-week statutory limitation on temporary total disability benefits unconstitutional because it causes a statutory gap in benefits in violation of an injured worker's constitutional right of access to courts. The Court reinstated the 260-week limitation in effect prior to the 1994 law change.

Miles v. City of Edgewater Police Department

The 1st District Court of Appeals held that statutes governing payment of attorney's fees in workers' compensation proceedings violated the claimant's First Amendment rights, and thus were unconstitutional. In *Miles*, the Court invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.¹⁴ The attorney was only paid by the employer/carrier¹⁵ and only if they won the case. The Court found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney.

Recent Rate Filing by the National Council on Compensation Insurance

In response to the two 2016 Supreme court opinions, on May 27, 2016, the National Council on Compensation Insurance (NCCI), the rating organization that files rates on behalf of workers' compensation insurers, submitted a rate filing with the Office of Insurance Regulation (OIR) requesting a 17.1 percent increase in rates.¹⁶ As part of the filing, the NCCI requested a 15 percent increase as the first-year impact attributable to the 2016 *Castellanos* case and a 1.8 percent increase caused by updates in the medical provider fee schedule enacted during the 2016 Session.¹⁷ The combined estimated impact of the two components on premiums is an increase of \$623 million in premiums.¹⁸ However, on June 30, 2016, NCCI amended its rate

¹⁴ Sections 440.105(2)(c) and 440.34(1), F.S.

¹⁵ Workers' compensation insurers are referred to as carriers. Section 440.02(4), F.S., provides that the term "carrier" means any person or fund authorized under s. 440.38, F.S., to insure under this chapter and includes a self-insurer and a commercial self-insurance fund authorized under s. 624.462. .

¹⁶ NCCI, *Analysis of Florida Workers Compensation Rate Filing Proposed Effective 8/1/2016* (May 27, 2016). <http://floir.com/Sections/PandC/NCCIHearing.aspx> (last accessed April 4, 2017).

¹⁷ See NCCI fn. 17 at pg. 1.

¹⁸ See NCCI, *NCCI Proposes Florida Workers Compensation Rate Increase Effective August 1, 2016* (May 27, 2016). http://floir.com/siteDocuments/NCCI-FL_Filing_Release-8-1-16.pdf (last accessed Apr. 14, 2017) (on file with the Senate Committee on Banking and Insurance).

filing to include the estimated 2.2 percent impact of the *Westphal* decision, resulting in a filing requesting a 19.6 percent increase in rates or an estimated \$714 million increase in premiums.¹⁹

On September 27, 2016, the OIR issued its order disapproving the pending 19.6 percent rate filing and advised NCCI it would approve a 14.5 percent rate increase or \$528 million increase in premiums if NCCI submitted an amended filing within one week.²⁰ The NCCI complied and on October 5, 2016, the OIR approved a 14.5 percent increase in rates effective December 1, 2016, applicable to both new and renewal workers' compensation insurance policies.²¹

On November 23, 2016, a court order invalidated the 14.5 percent overall combined statewide average rate increase approved by the OIR,²² due to NCCI's violations of the Sunshine Laws relating to public records and meetings, as required under ch. 119, F.S., and s. 627.291, F.S. The appeal is pending in the First District Court of Appeal. The order is stayed pursuant to an order issued by the Court on December 12, 2016.²³

2003 Reforms

In 2000, Florida had the highest premiums in the country, and was ranked second highest in 2002.²⁴ In response to a downturn in the Florida economy and uncertainties in the marketplace, some insurers were not issuing new policies or renewing policies, or significantly tightening their underwriting requirements. Many small employers were forced to secure significantly more expensive coverage in the Florida Workers' Compensation Joint Underwriting Association ("insurer of last resort") due to availability issues.

In 2003, the Workers' Compensation Research Institute and the NCCI identified major cost drivers in Florida's workers' compensation system and compared Florida with national averages. These cost drivers included higher medical costs for types of claims, higher frequency of permanent total disability claims, and relatively high hospital costs as compared to national averages. The NCCI noted that attorney involvement in Florida was significant and helped explain the major cost drivers. When attorneys were not involved, the difference in claims costs between Florida and the national average was minimal. However, when attorneys were involved, Florida's claim size was nearly 40 percent higher than the national average. Prior to 2003, the average Florida claim cost was \$39,000. In contrast, the countrywide average was \$29,000.

Prior to the 2003 reforms, the JCCs used a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees would equal 20 percent of the first \$5,000 of the amount of benefits secured; 15 percent of the next \$5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured and to be provided during

¹⁹ NCCI, *NCCI Amends Pending Florida Workers Compensation Rate Filing to +19.6% Proposed Effective October 1, 2016* (July 1, 2016)(On file with the Senate Committee on Banking and Insurance)

²⁰ OIR, *Order on Rate Filing Case No. 191880-16* (Sept. 27, 2016).

²¹ OIR, *Final Order on Rate Filing Case No. 191880-16* (Oct. 5, 2016).

²² Order on Non-Jury Trial and Final Judgement Providing Declaratory and Injunctive Relief, *James F. Fee, Jr., v. the National Council on Compensation Insurance, Inc., etc., The Office of Insurance Regulation etc., and David Altmaier*, Case No. 2016 CA 2159 (Fla. 2nd Jud. Cir. 2016).

²³ Order of the Court December 12, 2016, *National Council on Compensation Insurance v. James F. Fee, Jr.*, Case No. 1D16-5408, 1D16-5416 (Fla 1st DCA 2016).

²⁴ See Oregon Department of Consumer and Business Services fn 2.

the first 10 years, and 5 percent of the benefits secured after 10 years. However, the JCCs had the discretion to increase or decrease the attorney's fee without any dollar limitation, based on the following factors:

- Time and labor involved;
- Fee customarily charged in the locality for similar services;
- Amount involved in controversy and the benefits resulting;
- Time limitation imposed by claimant or circumstances;
- Experience, reputation, and the ability of the attorney; and
- Contingency or certainty of a fee.

In 2003, the Florida Legislature enacted significant reforms intended to address the availability and affordability of coverage for employers. These reforms were designed to reduce the overall costs to the system by expediting the dispute resolution process, reducing attorney fees, providing greater enforcement tools to combat fraud, revising standards for compensability and benefits, and changing medical services and reimbursements. The 2003 reforms continued the use of the contingency fee schedule in awarding attorney's fee. However, any additional hourly fees were eliminated and the JCCs were prohibited from approving any agreement related to benefits, which provided for an attorney's fee in excess of the amount permitted under the fee schedule.²⁵ As an alternative to the contingency fee schedule, the JCC were authorized to approve an attorney's fee not to exceed \$1,500 once per accident if the JCC determined that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

In late 2003, in response to the passage of the reforms, the OIR approved a rate filing submitted by the NCCI that resulted in a 14 percent rate decrease, which represented a \$420 million decrease in workers' compensation insurance costs for employers.²⁶ Since the implementation of the reforms, the Office of Insurance Regulation (OIR) has approved workers' compensation rate decreases totaling over 60 percent.

Administration of the Workers Compensation System in Florida

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. These functions include the enforcement of coverage requirements,²⁷ administration of workers' compensation health care delivery system,²⁸ data collection,²⁹ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.³⁰ Workers' compensation is the injured employee's remedy

²⁵ Sections 440.34 and 440.105, F.S.

²⁶ OIR, Final Order on Rate Filing (Aug. 12, 2003) available at <http://www.floir.com/siteDocuments/NCCI.pdf> (last viewed Mar. 30, 2017).

²⁷ Section 440.107(3), F.S.

²⁸ Section 440.13, F.S.

²⁹ Section 440.185 and 440.593, F.S.

³⁰ Section 440.191, F.S.

for “compensable” workplace injuries.³¹ Employees generally cannot sue a covered employer for workplace injuries.³²

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.³³ Medical services must be provided by a health care provider authorized by the carrier prior to being provided (except for emergency care).³⁴ When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers’ compensation provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached “maximum medical improvement.”³⁵ Injured employees are entitled to one change of physician during the course of treatment for any one accident.³⁶ After the initial examination and diagnosis, the workers’ compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.³⁷

Indemnity Benefits

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.³⁸ The first 7 days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.³⁹ These benefits are generally payable at 66 2/3 percent of the employee’s average weekly wage (AWW),⁴⁰ up to the maximum weekly benefit established by law.⁴¹ For 2016, this amount is \$863, which is the statewide average

³¹ “Compensable” means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

³² Section 440.11(1), F.S. Employers who fail to obtain required workers’ compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers’ compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

³³ Section 440.13(2)(a), F.S.

³⁴ Section 440.13(3)(a), F.S.

³⁵ The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

³⁶ Section 440.13(2)(f), F.S.

³⁷ Section 440.13(2)(e), F.S.

³⁸ Section 440.12(1), F.S.

³⁹ *Id.*

⁴⁰ An injured workers’ average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

⁴¹ Section 440.15(1)-(4), F.S.

weekly wage (SAWW).⁴² Payments are due every two weeks.⁴³ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁴⁴
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.⁴⁵
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for 5 years.⁴⁶

Office of the Judges of Compensation Claims

The OJCC is responsible for resolving workers' compensation benefit disputes.⁴⁷ Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.⁴⁸ Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.⁴⁹ Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.⁵⁰ If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a petition for benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.⁵¹

Workers' Compensation Coverage

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.⁵² Employers that are not self-insured and are unable to secure coverage from a carrier

⁴² "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the Department of Economic Opportunity on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at <http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk> (last viewed Apr. 4, 2017).

⁴³ Section 440.20(2)(a), F.S.

⁴⁴ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

⁴⁵ Section 440.15(3), F.S.

⁴⁶ Section 440.15(1), F.S.

⁴⁷ Section 440.192, F.S.

⁴⁸ Section 440.192(1), F.S.

⁴⁹ Section 440.192(8), F.S.

⁵⁰ Section 440.25, F.S.

⁵¹ Section 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. Apr. 28, 2016).

⁵² Section 440.38, F.S.

may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).⁵³ The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

Florida Workers Compensation Rating System

The OIR regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. Seven states use an administered pricing or full rate system.

The insurance rate is the "unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or coverage there under is multiplied to determine the premium."⁵⁴ A manual rate per \$100 of payroll is developed for each of the 600 classification codes that reflects the potential for loss associated with a group of employers engaged in the same type of business or industry. This rate is multiplied by the employer's payroll to determine the unadjusted premium. Then, the unadjusted premium is multiplied by the employer's experience modification factor to determine the adjusted premium. An experience rating compares an employer's actual losses and the losses that would be expected to occur for an average employer with a similar business.

The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.⁵⁵ In determining whether to approve or disapprove a workers' compensation rate filing, the OIR considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.⁵⁶ The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.⁵⁷ However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.⁵⁸ All workers' compensation insurers in Florida have chosen to become members of the NCCI.

The law and the rating plans approved by OIR allow for mechanisms for insurers to vary premiums. Insurers may use the following pricing tools to compete on price, as described below:⁵⁹

- **Consent to Rate** – The insurer and employer agree to a rate in excess of the approved rate. The insurer must limit this option to no more than 10 percent of policies written or renewed in each calendar year.

⁵³ Section 627.311(5)(a), F.S.

⁵⁴ Section 627.091, F.S.

⁵⁵ Section 627.101, F.S.

⁵⁶ Section 627.151, F.S.

⁵⁷ Section 627.211, F.S.

⁵⁸ Section 627.091, F.S.

⁵⁹ OIR fn. 1 at pg. 30-31. .

- **Deviations** – An insurer is allowed to file a uniform percentage increase or decrease applicable to all rates an insurer charges or to rates for a particular class or group of classes of insurance.
- **Intermediate Deductibles** – For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount. Intermediate deductibles range from \$5,000 to \$75,000. Similar to small deductible policies the insurer is responsible from first dollar of loss (i.e. losses below the deductible).
- **Large Deductibles** – Large deductible policies operate similarly to the small and intermediate deductible, but have a deductible amount of \$100,000 and above. In order to qualify for the large deductible program, an employer must have a standard premium of at least \$500,000.
- **Large Risk Alternative Rating Option (LRARO)** – In most states, LRARO is defined as a flexible retrospective rating plan mutually agreed to by the employer and carrier. In Florida, LRARO is a provision within the currently approved retrospective rating plan that allows for negotiation of a premium between the employer and the insurer.
- **Policyholder Dividends** – Insurers reward their policyholders by returning some of their profit at the expiration of the policy by issuing policyholder dividends, which may be based on the policyholder's experience, the carrier's experience, and other factors.

In contrast to Florida's full rate system, approximately 38 states use a loss costs system.⁶⁰ Generally, loss costs are all of the components of a full rate, excluding expenses and profits. The loss costs represent the rate an insurer must charge in order to cover the losses associated with covering all claims for the year. Depending on the state, loss costs may or may not include all expenses associated with loss adjustment. In the majority of states where an advisory or rating organization makes a loss costs filing, an individual insurer may base their rates on their individual loss costs or the advisory loss costs modified by a loss costs multiplier. The loss costs multiplier is a factor that represents an individual insurer's profit and expense portion of the full workers' compensation rate.⁶¹

III. Effect of Proposed Changes:

Section 1 revises the definition of the term, "specificity," thereby requiring additional information to be provided in the petition for benefits filed with the OJCC. This includes specific information for each requested benefit, the specific amount of each requested benefit, and the calculation used for computing the requested benefits.

Section 2 provides a technical, conforming change.

Section 3 eliminates the provision that prohibits an attorney or other person from receiving any fee from a person because of services rendered for a person in connection with any preceding arising under ch. 440, F.S., unless such fee is approved by the JCCs.

Section 4 defines a business day, and clarifies deadlines for carriers to respond to requests for medical care. The bill requires a carrier to respond to a request for a change in physician within 5 business days rather than 5 days. The bill clarifies that a carrier must respond to a request for

⁶⁰ NCCI Correspondence (Dec. 6, 2016) (on file with Senate Banking and Insurance Committee).

⁶¹ *Id.*

authorization from an authorized health care provider by either authorizing or declining the request by the close of the third business day after receipt of the request. Other provisions are amended to require responses to requests in the context of business days instead of calendar days.

Section 5 codifies *Westphal* by increasing temporary total disability benefits and temporary partial disability benefits to 260 weeks instead of 104 weeks.

Section 6 revises provisions relating to the OJCC. The bill requires the JCC to review each petition for benefits and must dismiss each petition or portion of a petition that does not meet on its face the requirements of s. 440.192, F.S., and the definition of specificity under s. 440.02, F.S. Further, the petition must specify additional information regarding the location of the injury, such as Florida county, or the state, if outside of Florida. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin. Additionally, the greater specificity is required for disputes regarding the calculation of average weekly wage.

Upon a motion that a petition or portion of a petition be dismissed for lack of specificity, the JCC is required to enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed, or if good cause for a hearing is shown, within 20 days after hearing on the motion.

Section 7 revises provisions relating to attorney fees. The bill requires the JCC to consider certain factors in each case and may increase or decrease the attorney fees, based on a maximum hourly rate of \$250 per hour, if the JCC in his or her judgment finds that the circumstances of the particular case warrant such action. The bill eliminates the \$1,500 cap on medical-only claims.

Sections 8 - 16 and 18 - 21 revises the current rating system in Florida by implementing a loss costs system. Each insurer would be required to file its own proposed rates. An insurer may satisfy this requirement by adopting the OIR's approved loss costs and complying with the other provisions in this part. The bill authorizes a licensed rating organization to develop and file for approval with the OIR reference filings containing prospective loss costs and the underlying loss data, and other documentation. Once the loss cost filing is approved, the rating organization would provide its member subscribers with a copy of the approved reference filing. A rating organization may file supplementary rating information and an insurer may use such information approved by the OIR. An insurer may use the approved prospective loss costs filed by a rating organization in combination with the insurer's own approved loss cost multiplier and loss cost modifier. The bill provides technical, conforming changes. Section 16 also revises the scope of the annual report by the OIR to include information about insurer solvency.

Section 17 defines the term, "defense and cost containment expenses," or DCCE to mean insurance company attorney fees and other specified expenses. The bill establishes a cap on defense and cost containment expenses. Excessive DCCE occurs when the Florida defense and cost containment expenses for workers' compensation exceed 15 percent of Florida workers' compensation incurred losses by the insurer or insurer group for the three most recent calendar years for which data is to be filed with OIR. Any excess DCCE refunded to the policyholders in the form of cash or credit toward the future purchase of coverage.

Section 22 provides the act will take 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide greater guidance and clarity in the administration of various provisions of ch. 440, F.S.

Carriers may incur additional, indeterminate costs associated with revising their systems to accommodate loss cost filings.

Placing caps on hourly claimant attorney fees may reduce costs to the workers' compensation system for employers and carriers.

NCCI estimates that the combination of the changes provided in the bill would result in a small to moderate decrease on overall workers compensation system costs in Florida.⁶² The NCCI defines small as less than 1 percent and moderate as between 1 to 3 percent of system costs. According to NCCI,

1% impact = \$36,450,000

3% impact = \$109,350,000

5% impact = \$182,250,000

⁶² NCCI, *Preliminary Cost Impact Analysis, SB 1582* (Mar. 3, 2017) (on file with Senate Banking and Insurance Committee).

C. Government Sector Impact:

As indicated in the Private Sector Impact, above, NCCI estimates that the combination of the changes provided in the bill would result in a small to moderate decrease on overall workers compensation system costs in Florida.

Division of Risk Management/Department of Financial Services

The Division of Risk Management (DRM) is a provider of workers' compensation benefits to state and public university employees. The DRM could be impacted in the following manner:⁶³

- Requiring the claimant to show the calculation for the benefits requested has the potential to increase efficiency of claim management. Frequently petitions are filed that are not definitive on the specific time or amount of benefit alleged to be unpaid. The carrier may be unable to double check or determine if an error in payment has occurred. Failure to correct this error within 30 days of the petition for benefits being filed may result in payment of attorney fees and litigation costs that exceed the amount of the unpaid benefit.
- Clarifying the number of days in terms of business days for many responsive deadlines related to medical care will provide more opportunities for the DRM to respond within statutory requirements since days DRM staff are not at work are not included.
- Limiting attorney fee awards to \$250 per hour may reduce the amount of claimant paid attorney fees paid by the DRM. Current hourly awards frequently exceed \$250. A cost reduction will only occur if the hours awarded by JCCs are not impacted by the statutory cap.
- Requiring specificity in pleadings may result in avoidance of employer/carrier paid claimant fees and enhance claim processing efficiencies.
- Changing the rating law would not affect the DRM since the DRM funds claim expenses.

Office of Insurance Regulation⁶⁴

The bill makes a substantial change in the manner workers' compensation rates are set in Florida, and therefore it will have a significant impact on OIR's regulatory process for reviewing rates. The OIR provided the following estimate of staffing needs and costs that would be necessary to implement the bill. The total estimated fiscal impact on the OIR is between \$700,000 and \$1,000,000. The following is a breakout of the estimated fiscal:

Additional Positions: 8 FTE's

Additional Rate, Salary, and Benefits: \$650,000 - \$900,000

Additional IT enhancements: \$50,000 - \$100,000

⁶³ Department of Financial Services, *Analysis of SB 1582* (Mar. 17, 2017) (on file with Senate Banking and Insurance Committee).

⁶⁴ Email from the Office of Insurance Regulation (Mar. 31, 2017) (on file with Senate Banking and Insurance Committee).

Office of Judges of Compensation Claims

According to the OJCC,⁶⁵ the nonrecurring programming costs and OPS staffing expenses associated with the implementation of the bill are expected to be \$18,000 and \$6,720, respectively.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Assessment provisions relating to the Special Disability Trust Fund (s. 440.49, F.S.), the Workers' Compensation Administration Trust Fund (s. 440.51, F.S.), and the Florida Self-Insurers Guaranty Association, Inc., (s. 440.385, F.S.), may need to be amended to reflect the changes in the rating law and terminology provided in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.102, 440.105, 440.13, 440.15, 440.192, 440.34, 624.482, 627.041, 627.0612, 627.062, 627.072, 627.091, 627.093, 627.101, 627.211, 627.291, 627.318, 627.361, 627.371.

This bill creates section 627.2151 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.

⁶⁵ Office of Judges of Compensation Claims of the Division of Administrative Hearings, *Analysis of SB 1582 (Mar. 22, 2017)* (on file with Senate Banking and Insurance Committee).

By Senator Bradley

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1 A bill to be entitled
 2 An act relating to workers' compensation insurance;
 3 amending s. 440.02, F.S.; redefining the term
 4 "specificity"; amending s. 440.102, F.S.; conforming a
 5 cross-reference; amending s. 440.105, F.S.; deleting a
 6 prohibition against receiving certain fees,
 7 consideration, or gratuities under certain
 8 circumstances; amending s. 440.13, F.S.; defining the
 9 term "business day"; specifying certain timeframes in
 10 terms of business days, rather than days; requiring
 11 carriers to authorize or decline, rather than respond
 12 to, certain requests for authorization within a
 13 specified time; revising construction; revising a
 14 specified interval for certain notices furnished by
 15 treating physicians to employers or carriers; amending
 16 s. 440.15, F.S.; revising the maximum period of
 17 specified temporary disability benefits; amending s.
 18 440.192, F.S.; revising conditions under which the
 19 Office of the Judges of Compensation Claims must
 20 dismiss petitions for benefits; revising requirements
 21 for such petitions; revising construction relating to
 22 dismissals of petitions or portions thereof; requiring
 23 judges of compensation claims to enter orders on
 24 certain motions to dismiss within specified
 25 timeframes; amending s. 440.34, F.S.; requiring judges
 26 of compensation claims to consider specified factors
 27 in increasing or decreasing attorney fees; specifying
 28 a basis for a maximum hourly rate for attorney fees;
 29 deleting a provision authorizing such judges to

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30 approve alternative attorney fees under certain
 31 circumstances; conforming cross-references; amending
 32 s. 624.482, F.S.; conforming a provision to changes
 33 made by the act; amending s. 627.041, F.S.; redefining
 34 terms; amending s. 627.0612, F.S.; adding prospective
 35 loss costs to a list of reviewable matters in certain
 36 proceedings by appellate courts; amending s. 627.062,
 37 F.S.; requiring insurers and rating organizations to
 38 establish and use prospective loss costs for a
 39 specified purpose; requiring copies of prospective
 40 loss costs to be filed with the Office of Insurance
 41 Regulation; amending s. 627.072, F.S.; deleting a
 42 specified methodology that may be used by the office
 43 in rate determinations; amending s. 627.091, F.S.;
 44 defining terms; requiring insurers writing workers'
 45 compensation and employer's liability insurances to
 46 independently and individually file their proposed
 47 final rates; specifying requirements for such filings;
 48 deleting a requirement that such filings contain
 49 certain information; revising requirements for
 50 supporting information required to be furnished to the
 51 office under certain circumstances; deleting a
 52 specified method for insurers to satisfy filing
 53 obligations; specifying requirements for a licensed
 54 rating organization that elects to develop and file
 55 certain reference filings and certain other
 56 information; authorizing insurers to use supplementary
 57 rating information approved by the office; revising
 58 applicability of public meetings and records

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59 requirements to certain meetings of recognized rating
 60 organization committees; amending s. 627.093, F.S.;
 61 revising applicability of public meetings and records
 62 requirements to prospective loss cost filings or
 63 appeals; amending s. 627.101, F.S.; conforming a
 64 provision to changes made by the act; amending s.
 65 627.211, F.S.; deleting provisions relating to
 66 deviations; revising requirements for the office's
 67 annual report to the Legislature relating to the
 68 workers' compensation insurance market; creating s.
 69 627.2151, F.S.; defining the term "defense and cost
 70 containment expenses" or "DCCE"; requiring insurer
 71 groups or insurers writing workers' compensation
 72 insurance to file specified schedules with the office
 73 at specified intervals; providing construction
 74 relating to excessive DCCE; requiring the office to
 75 order returns of excess amounts of DCCE, subject to
 76 certain hearing requirements; providing requirements
 77 for, and an exception from, the return of excessive
 78 DCCE amounts; providing construction; amending s.
 79 627.291, F.S.; providing applicability of certain
 80 disclosure and hearing requirements for rating
 81 organizations filing prospective loss costs; amending
 82 s. 627.318, F.S.; providing applicability of certain
 83 recordkeeping requirements for rating organizations or
 84 insurers filing or using prospective loss costs,
 85 respectively; amending s. 627.361, F.S.; providing
 86 applicability of a prohibition against false or
 87 misleading information relating to prospective loss

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88 costs; amending s. 627.371, F.S.; providing
 89 applicability of certain hearing procedures and
 90 requirements relating to the application, making, or
 91 use of prospective loss costs; providing an effective
 92 date.
 93

94 Be It Enacted by the Legislature of the State of Florida:
 95

96 Section 1. Subsection (40) of section 440.02, Florida
 97 Statutes, is amended to read:

98 440.02 Definitions.—When used in this chapter, unless the
 99 context clearly requires otherwise, the following terms shall
 100 have the following meanings:

101 (40) "Specificity" means information on the petition for
 102 benefits sufficient to put the employer or carrier on notice of
 103 the exact statutory classification and outstanding time period
 104 for each requested benefit, the specific amount of each
 105 requested benefit, the calculation used for computing the
 106 requested benefit, of benefits being requested and includes a
 107 detailed explanation of any benefits received that should be
 108 increased, decreased, changed, or otherwise modified. If the
 109 petition is for medical benefits, the information must ~~shall~~
 110 include specific details as to why such benefits are being
 111 requested, why such benefits are medically necessary, and why
 112 current treatment, if any, is not sufficient. Any petition
 113 requesting alternate or other medical care, including, but not
 114 limited to, petitions requesting psychiatric or psychological
 115 treatment, must specifically identify the physician, as defined
 116 in s. 440.13(1), who is recommending such treatment. A copy of a

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report from such physician making the recommendation for alternate or other medical care ~~must shall~~ also be attached to the petition. A judge of compensation claims ~~may shall~~ not order such treatment if a physician is not recommending such treatment.

Section 2. Paragraph (p) of subsection (5) of section 440.102, Florida Statutes, is amended to read:

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

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

(p) All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under this section must be paid for by the carrier or self-insurer. However, the carrier or self-insurer must have given reasonable notice to all affected health care providers that payment for treatment, care, and attendance provided to the employee after a future date certain will be denied. A health care provider, as defined in s. 440.13(1) ~~s. 440.13(1)(g)~~, that refuses, without good cause, to continue treatment, care, and attendance before the provider receives notice of benefit denial commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Paragraph (c) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

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440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~(e) It is unlawful for any attorney or other person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.~~

Section 4. Present paragraphs (c) through (s) of subsection (1) of section 440.13, Florida Statutes, are redesignated as paragraphs (d) through (t), respectively, and a new paragraph (c) is added to that subsection, and paragraph (f) of subsection (2), paragraphs (d) and (i) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (c) of subsection (5), and paragraphs (c) and (d) of subsection (9) of that section are amended, to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

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

(c) "Business day" means Monday through Friday, excluding the following holidays: New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday after

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175 Thanksgiving, and Christmas Day. If any of the holidays falls on
 176 Saturday or Sunday, the term does not include the day on Monday
 177 through Friday on which the holiday is observed.

178 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

179 (f) Upon the written request of the employee, the carrier
 180 shall give the employee the opportunity for one change of
 181 physician during the course of treatment for any one accident.
 182 Upon the granting of a change of physician, the originally
 183 authorized physician in the same specialty as the changed
 184 physician shall become deauthorized upon written notification by
 185 the employer or carrier. The carrier shall authorize an
 186 alternative physician who shall not be professionally affiliated
 187 with the previous physician within 5 business days after receipt
 188 of the request. If the carrier fails to provide a change of
 189 physician as requested by the employee, the employee may select
 190 the physician and such physician shall be considered authorized
 191 if the treatment being provided is compensable and medically
 192 necessary.

193
 194 Failure of the carrier to timely comply with this subsection
 195 shall be a violation of this chapter and the carrier shall be
 196 subject to penalties as provided for in s. 440.525.

197 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

198 (d) A carrier ~~must respond~~, by telephone or in writing,
 199 must authorize or decline to a request for authorization from an
 200 authorized health care provider by the close of the third
 201 business day after receipt of the request. A carrier authorizes
 202 the request if it ~~who~~ fails to respond to a written request for
 203 authorization for referral for medical treatment by the close of

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204 the third business day after receipt of the request ~~consents to~~
 205 ~~the medical necessity for such treatment.~~ All such requests must
 206 be made to the carrier. Notice to the carrier does not include
 207 notice to the employer.

208 (i) Notwithstanding paragraph (d), a claim for specialist
 209 consultations, surgical operations, physiotherapeutic or
 210 occupational therapy procedures, X-ray examinations, or special
 211 diagnostic laboratory tests that cost more than \$1,000 and other
 212 specialty services that the department identifies by rule is not
 213 valid and reimbursable unless the services have been expressly
 214 authorized by the carrier, unless the carrier has failed to
 215 respond within 10 business days to a written request for
 216 authorization, or unless emergency care is required. The insurer
 217 shall authorize such consultation or procedure unless the health
 218 care provider or facility is not authorized, unless such
 219 treatment is not in accordance with practice parameters and
 220 protocols of treatment established in this chapter, or unless a
 221 judge of compensation claims has determined that the
 222 consultation or procedure is not medically necessary, not in
 223 accordance with the practice parameters and protocols of
 224 treatment established in this chapter, or otherwise not
 225 compensable under this chapter. Authorization of a treatment
 226 plan does not constitute express authorization for purposes of
 227 this section, except to the extent the carrier provides
 228 otherwise in its authorization procedures. This paragraph does
 229 not limit the carrier's obligation to identify and disallow
 230 overutilization or billing errors.

231 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
 232 DEPARTMENT.—

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(a) Any health care provider providing necessary remedial treatment, care, or attendance to any injured worker shall submit treatment reports to the carrier in a format prescribed by the department. A claim for medical or surgical treatment is not valid or enforceable against such employer or employee, unless, by the close of the third business day following the first treatment, the physician providing the treatment furnishes to the employer or carrier a preliminary notice of the injury and treatment in a format prescribed by the department and, within 15 business days thereafter, furnishes to the employer or carrier a complete report, and subsequent thereto furnishes progress reports, if requested by the employer or insurance carrier, at intervals of not less than 15 business days ~~3 weeks~~ apart or at less frequent intervals if requested in a format prescribed by the department.

(5) INDEPENDENT MEDICAL EXAMINATIONS.—

(a) In any dispute concerning overutilization, medical benefits, compensability, or disability under this chapter, the carrier or the employee may select an independent medical examiner. If the parties agree, the examiner may be a health care provider treating or providing other care to the employee. An independent medical examiner may not render an opinion outside his or her area of expertise, as demonstrated by licensure and applicable practice parameters. The employer and employee shall be entitled to only one independent medical examination per accident and not one independent medical examination per medical specialty. The party requesting and selecting the independent medical examination shall be responsible for all expenses associated with said examination,

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including, but not limited to, medically necessary diagnostic testing performed and physician or medical care provider fees for the evaluation. The party selecting the independent medical examination shall identify the choice of the independent medical examiner to all other parties within 15 business days after the date the independent medical examination is to take place. Failure to timely provide such notification shall preclude the requesting party from submitting the findings of such independent medical examiner in a proceeding before a judge of compensation claims. The independent medical examiner may not provide followup care if such recommendation for care is found to be medically necessary. If the employee prevails in a medical dispute as determined in an order by a judge of compensation claims or if benefits are paid or treatment provided after the employee has obtained an independent medical examination based upon the examiner's findings, the costs of such examination shall be paid by the employer or carrier.

(c) The carrier may, at its election, contact the claimant directly to schedule a reasonable time for an independent medical examination. The carrier must confirm the scheduling agreement in writing with the claimant and the claimant's counsel, if any, at least 7 business days before the date upon which the independent medical examination is scheduled to occur. An attorney representing a claimant is not authorized to schedule the self-insured employer's or carrier's independent medical evaluations under this subsection. Neither the self-insured employer nor the carrier shall be responsible for scheduling any independent medical examination other than an employer or carrier independent medical examination.

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291 (9) EXPERT MEDICAL ADVISORS.—

292 (c) If there is disagreement in the opinions of the health
 293 care providers, if two health care providers disagree on medical
 294 evidence supporting the employee's complaints or the need for
 295 additional medical treatment, or if two health care providers
 296 disagree that the employee is able to return to work, the
 297 department may, and the judge of compensation claims shall, upon
 298 his or her own motion or within 15 business days after receipt
 299 of a written request by either the injured employee, the
 300 employer, or the carrier, order the injured employee to be
 301 evaluated by an expert medical advisor. The injured employee and
 302 the employer or carrier may agree on the health care provider to
 303 serve as an expert medical advisor. If the parties do not agree,
 304 the judge of compensation claims shall select an expert medical
 305 advisor from the department's list of certified expert medical
 306 advisors. If a certified medical advisor within the relevant
 307 medical specialty is unavailable, the judge of compensation
 308 claims shall appoint any otherwise qualified health care
 309 provider to serve as an expert medical advisor without obtaining
 310 the department's certification. The opinion of the expert
 311 medical advisor is presumed to be correct unless there is clear
 312 and convincing evidence to the contrary as determined by the
 313 judge of compensation claims. The expert medical advisor
 314 appointed to conduct the evaluation shall have free and complete
 315 access to the medical records of the employee. An employee who
 316 fails to report to and cooperate with such evaluation forfeits
 317 entitlement to compensation during the period of failure to
 318 report or cooperate.

319 (d) The expert medical advisor must complete his or her

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320 evaluation and issue his or her report to the department or to
 321 the judge of compensation claims within 15 business days after
 322 receipt of all medical records. The expert medical advisor must
 323 furnish a copy of the report to the carrier and to the employee.

324 Section 5. Paragraph (a) of subsection (2) and paragraph
 325 (e) of subsection (4) of section 440.15, Florida Statutes, are
 326 amended to read:

327 440.15 Compensation for disability.—Compensation for
 328 disability shall be paid to the employee, subject to the limits
 329 provided in s. 440.12(2), as follows:

330 (2) TEMPORARY TOTAL DISABILITY.—

331 (a) Subject to subsection (7), in case of disability total
 332 in character but temporary in quality, 66 2/3 or 66.67 percent
 333 of the average weekly wages shall be paid to the employee during
 334 the continuance thereof, not to exceed 260 ~~104~~ weeks except as
 335 provided in this subsection, s. 440.12(1), and s. 440.14(3).
 336 Once the employee reaches the maximum number of weeks allowed,
 337 or the employee reaches the date of maximum medical improvement,
 338 whichever occurs earlier, temporary disability benefits shall
 339 cease and the injured worker's permanent impairment shall be
 340 determined.

341 (4) TEMPORARY PARTIAL DISABILITY.—

342 (e) Such benefits shall be paid during the continuance of
 343 such disability, not to exceed a period of 260 ~~104~~ weeks, as
 344 provided by this subsection and subsection (2). Once the injured
 345 employee reaches the maximum number of weeks, temporary
 346 disability benefits cease and the injured worker's permanent
 347 impairment must be determined. If the employee is terminated
 348 from postinjury employment based on the employee's misconduct,

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temporary partial disability benefits are not payable as provided for in this section. The department shall by rule specify forms and procedures governing the method and time for payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

Section 6. Subsections (2) and (5) of section 440.192, Florida Statutes, are amended to read:

440.192 Procedure for resolving benefit disputes.—

(2) Upon receipt, the Office of the Judges of Compensation Claims shall review each petition and shall dismiss each petition or any portion of such a petition that does not on its face meet the requirements of this section and the definition of specificity under s. 440.02, and specifically identify or itemize the following:

(a) The name, address, and telephone number,~~and social security number~~ of the employee.

(b) The name, address, and telephone number of the employer.

(c) A detailed description of the injury and cause of the injury, including the Florida county or, if outside of Florida, the state location of the occurrence and the date or dates of the accident.

(d) A detailed description of the employee's job, work responsibilities, and work the employee was performing when the injury occurred.

(e) The specific time period for which compensation and the specific classification of compensation were not timely provided.

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(f) The specific date of maximum medical improvement, character of disability, and specific statement of all benefits or compensation that the employee is seeking. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.

(g) All specific travel costs to which the employee believes she or he is entitled, including dates of travel and purpose of travel, means of transportation, and mileage and including the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier.

(h) A specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment.

(i) The type or nature of treatment care or attendance sought and the justification for such treatment. If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) The specific amount of compensation claimed to be accurate and the methodology claimed to accurately calculate the average weekly wage, if the average weekly wage calculated by the employer or carrier is disputed. If the petition does not include a claim under this paragraph, the average weekly wage and corresponding compensation calculated by the employer or carrier are presumed to be accurate.

~~(k) (j)~~ A specific explanation of any other disputed issue that a judge of compensation claims will be called to rule upon.

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The dismissal of any petition or portion of such a petition under this ~~subsection~~ ~~section~~ is without prejudice and does not require a hearing.

(5) (a) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. Dismissal of any petition or portion of a petition under this subsection is without prejudice.

(b) Upon motion that a petition or portion of a petition be dismissed for lack of specificity, the judge of compensation claims shall enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed or, if good cause for hearing is shown, within 20 days after hearing on the motion. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

Section 7. Section 440.34, Florida Statutes, is amended to read:

440.34 Attorney ~~Attorney's~~ fees; costs.—

(1) (a) A fee, gratuity, or other consideration may not be paid for a claimant in connection with any proceedings arising under this chapter, unless approved by the judge of compensation claims or court having jurisdiction over such proceedings. Any attorney fees ~~attorney's fee~~ approved by a judge of compensation

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claims for benefits secured on behalf of a claimant must equal to 20 percent of the first \$5,000 of the amount of the benefits secured, 15 percent of the next \$5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years.

(b) However, the judge of compensation claims shall consider the following factors in each case and may increase or decrease the attorney fees, based on a maximum hourly rate of \$250 per hour, if in his or her judgment he or she expressly finds that the circumstances of the particular case warrant such action:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

2. The fee customarily charged in the locality for similar legal services.

3. The amount involved in the controversy and the benefits resulting to the claimant.

4. The time limitation imposed by the claimant or the circumstances.

5. The experience, reputation, and ability of the attorney or attorneys performing services.

6. The contingency or certainty of a fee.

(c) The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this

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chapter which provides for attorney fees ~~an attorney's fee~~ in excess of the amount permitted by this section. The judge of compensation claims is not required to approve any retainer agreement between the claimant and his or her attorney. The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection ~~or subsection (7)~~.

(2) In awarding a claimant's attorney fees ~~attorney's fee~~, the judge of compensation claims shall consider only those benefits secured by the attorney. An attorney is not entitled to attorney ~~attorney's~~ fees for representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not addressed, during the pendency of other issues for the same injury. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney ~~attorney's~~ fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed. In the event an offer to settle an issue pending before a judge of compensation claims, including attorney ~~attorney's~~ fees as provided for in this section, is communicated in writing to the claimant or the claimant's attorney at least 30 days prior to the trial date on such issue, for purposes of calculating the amount of attorney ~~attorney's~~ fees to be taxed against the employer or carrier, the term "benefits secured" shall be deemed to include only that amount awarded to the claimant above the amount specified in the offer to settle. If multiple issues are pending before the judge of compensation

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claims, said offer of settlement shall address each issue pending and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim.

(3) If any party should prevail in any proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney ~~attorney's~~ fees. A claimant is responsible for the payment of her or his own attorney ~~attorney's~~ fees, except that a claimant is entitled to recover attorney fees ~~an attorney's fee~~ in an amount equal to the amount provided for in subsection (1) ~~or subsection (7)~~ from a carrier or employer:

(a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for disability, permanent impairment, wage-loss, or death benefits, arising out of the same accident;

(b) In any case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and the injured person has employed an attorney in the successful prosecution of the petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases where the claimant successfully prevails in

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proceedings filed under s. 440.24 or s. 440.28.

Regardless of the date benefits were initially requested, ~~attorney attorney's~~ fees shall not attach under this subsection until 30 days after the date the carrier or employer, if self-insured, receives the petition.

(4) In such cases in which the claimant is responsible for the payment of her or his own ~~attorney attorney's~~ fees, such fees are a lien upon compensation payable to the claimant, notwithstanding s. 440.22.

(5) If any proceedings are had for review of any claim, award, or compensation order before any court, the court may award the injured employee or dependent attorney fees ~~an attorney's fee~~ to be paid by the employer or carrier, in its discretion, which shall be paid as the court may direct.

(6) A judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee's compensation into an escrow account until benefits have been secured.

~~(7) If an attorney's fee is owed under paragraph (3)(a), the judge of compensation claims may approve an alternative attorney's fee not to exceed \$1,500 only once per accident, based on a maximum hourly rate of \$150 per hour, if the judge of compensation claims expressly finds that the attorney's fee amount provided for in subsection (1), based on benefits secured, fails to fairly compensate the attorney for disputed medical only claims as provided in paragraph (3)(a) and the circumstances of the particular case warrant such action.~~

Section 8. Subsection (10) of section 624.482, Florida

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Statutes, is amended to read:

624.482 Making and use of rates.—

(10) Any self-insurance fund that writes workers' compensation insurance and employer's liability insurance is subject to, and shall make all rate filings for workers' compensation insurance and employer's liability insurance in accordance with, ss. 627.091, 627.101, 627.111, 627.141, 627.151, 627.171, and 627.191, ~~and 627.211~~.

Section 9. Subsections (3), (4), and (6) of section 627.041, Florida Statutes, are amended to read:

627.041 Definitions.—As used in this part:

(3) "Rating organization" means every person, other than an authorized insurer, whether located within or outside this state, who has as his or her object or purpose the making of prospective loss costs, rates, rating plans, or rating systems. Two or more authorized insurers that act in concert for the purpose of making prospective loss costs, rates, rating plans, or rating systems, and that do not operate within the specific authorizations contained in ss. 627.311, 627.314(2), (4), and 627.351, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Advisory organization" means every group, association, or other organization of insurers, whether located within or outside this state, which prepares policy forms or makes underwriting rules incident to but not including the making of prospective loss costs, rates, rating plans, or rating systems or which collects and furnishes to authorized insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished

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581 from a ratemaking, capacity.

582 (6) "Subscriber" means an insurer which is furnished at its
583 request:

584 (a) With prospective loss costs, rates, and rating manuals
585 by a rating organization of which it is not a member; or

586 (b) With advisory services by an advisory organization of
587 which it is not a member.

588 Section 10. Subsection (1) of section 627.0612, Florida
589 Statutes, is amended to read:

590 627.0612 Administrative proceedings in rating
591 determinations.—

592 (1) In any proceeding to determine whether prospective loss
593 costs, rates, rating plans, or other matters governed by this
594 part comply with the law, the appellate court shall set aside a
595 final order of the office if the office has violated s.

596 120.57(1)(k) by substituting its findings of fact for findings
597 of an administrative law judge which were supported by competent
598 substantial evidence.

599 Section 11. Paragraph (a) of subsection (2) of section
600 627.062, Florida Statutes, is amended to read:

601 627.062 Rate standards.—

602 (2) As to all such classes of insurance:

603 (a) Insurers or rating organizations shall establish and
604 use prospective loss costs, rates, rating schedules, or rating
605 manuals that allow the insurer a reasonable rate of return on
606 the classes of insurance written in this state. A copy of
607 prospective loss costs, rates, rating schedules, rating manuals,
608 premium credits or discount schedules, and surcharge schedules,
609 and changes thereto, must be filed with the office under one of

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610 the following procedures:

611 1. If the filing is made at least 90 days before the
612 proposed effective date and is not implemented during the
613 office's review of the filing and any proceeding and judicial
614 review, such filing is considered a "file and use" filing. In
615 such case, the office shall finalize its review by issuance of a
616 notice of intent to approve or a notice of intent to disapprove
617 within 90 days after receipt of the filing. The notice of intent
618 to approve and the notice of intent to disapprove constitute
619 agency action for purposes of the Administrative Procedure Act.
620 Requests for supporting information, requests for mathematical
621 or mechanical corrections, or notification to the insurer by the
622 office of its preliminary findings does not toll the 90-day
623 period during any such proceedings and subsequent judicial
624 review. The rate shall be deemed approved if the office does not
625 issue a notice of intent to approve or a notice of intent to
626 disapprove within 90 days after receipt of the filing.

627 2. If the filing is not made in accordance with
628 subparagraph 1., such filing must be made as soon as
629 practicable, but within 30 days after the effective date, and is
630 considered a "use and file" filing. An insurer making a "use and
631 file" filing is potentially subject to an order by the office to
632 return to policyholders those portions of rates found to be
633 excessive, as provided in paragraph (h).

634 3. For all property insurance filings made or submitted
635 after January 25, 2007, but before May 1, 2012, an insurer
636 seeking a rate that is greater than the rate most recently
637 approved by the office shall make a "file and use" filing. For
638 purposes of this subparagraph, motor vehicle collision and

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comprehensive coverages are not considered property coverages.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 12. Subsection (5) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.-

~~(5) (a) In the case of workers' compensation and employer's liability insurance, the office shall consider utilizing the following methodology in rate determinations: Premiums, expenses, and expected claim costs would be discounted to a common point of time, such as the initial point of a policy year, in the determination of rates; the cash-flow pattern of premiums, expenses, and claim costs would be determined initially by using data from 8 to 10 of the largest insurers writing workers' compensation insurance in the state; such insurers may be selected for their statistical ability to report the data on an accident-year basis and in accordance with subparagraphs (b) 1., 2., and 3., for at least 2 1/2 years; such a cash-flow pattern would be modified when necessary in accordance with the data and whenever a radical change in the payout pattern is expected in the policy year under consideration.~~

~~(b) If the methodology set forth in paragraph (a) is utilized, to facilitate the determination of such a cash-flow pattern methodology:~~

~~1. Each insurer shall include in its statistical reporting to the rating bureau and the office the accident year by~~

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~~calendar quarter data for paid claim costs;~~

~~2. Each insurer shall submit financial reports to the rating bureau and the office which shall include total incurred claim amounts and paid claim amounts by policy year and by injury types as of December 31 of each calendar year; and~~

~~3. Each insurer shall submit to the rating bureau and the office paid premium data on an individual risk basis in which risks are to be subdivided by premium size as follows:~~

Number of Risks in

Premium Range	Standard Premium Size
... (to be filled in by carrier) ...	\$300-999
... (to be filled in by carrier) ...	1,000-4,999
... (to be filled in by carrier) ...	5,000-49,999
... (to be filled in by carrier) ...	50,000-99,999
... (to be filled in by carrier) ...	100,000 or more
Total:	

Section 13. Section 627.091, Florida Statutes, is amended to read:

627.091 Rate filings; workers' compensation and employer's liability insurances.-

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

(a) "Expenses" means the portion of a rate which is attributable to acquisition, field supervision, collection expenses, taxes, assessments, and general expenses.

(b) "Loss cost modifier" means an adjustment to, or a deviation from, the approved prospective loss costs filed by a licensed rating organization.

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(c) "Loss cost multiplier" means the profit and expense factor, expressed as a single nonintegral number to be applied to the prospective loss costs other than loss adjustment expenses, which is associated with writing workers' compensation and employer's liability insurance and which is approved by the office in making rates for each classification of risks used by that insurer.

(d) "Prospective loss costs" means the portion of a rate which reflects historical industry average aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. The term does not include provisions for profit or expenses other than loss adjustment expense.

(2)(1) As to workers' compensation and employer's liability insurances, every insurer shall file with the office every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use. Each insurer shall independently and individually file with the office the final rates it proposes to use. An insurer may satisfy this filing requirement by adopting the office's approved loss costs and otherwise complying with this part. Each insurer shall file data in accordance with the uniform statistical plan approved by the office. Every filing under this subsection:

(a) Must state the proposed effective date and must be made at least 30 days before such proposed effective date;

(b) Must indicate the character and extent of the coverage contemplated;

(c) May use the approved prospective loss costs filed by a

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licensed rating organization in combination with the insurer's own approved loss cost multiplier and loss cost modifier;

(d) May include deductible provisions in its manual of classifications, rules, and rates. All deductibles must be in a form and manner that is consistent with the underlying purpose of chapter 440;

(e) May use variable or fixed expense loads or a combination thereof, and may vary the expense, profit, or contingency provisions by class or group of classes, if the insurer files supporting data justifying such variations; and

(f) May include a schedule of proposed premium discounts, credits, and surcharges. The office may not approve discounts, credits, and surcharges unless they are based on objective criteria that bear a reasonable relationship to the expected loss, expense, or profit experience of an individual policyholder or a class of policyholders. Every insurer is authorized to include deductible provisions in its manual of classifications, rules, and rates. Such deductibles shall in all cases be in a form and manner which is consistent with the underlying purpose of chapter 440.

(3)(2) Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a prospective loss cost, loss cost multiplier, or loss cost modifier filing is not accompanied by the information upon which the insurer or rating organization supports the filing and the office does not have sufficient information to determine whether the filing meets the applicable requirements of this part, the office ~~it~~ shall within 15 days after the date of filing require the insurer or rating

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755 organization to furnish the information upon which it supports
 756 the filing. The information furnished in support of a filing may
 757 include:

758 (a) The experience or judgment of the insurer or rating
 759 organization making the filing;

760 (b) The its interpretation of any statistical data which
 761 the insurer or rating organization making the filing it relies
 762 upon;

763 (c) The experience of other insurers or rating
 764 organizations; or

765 (d) Any other factors which the insurer or rating
 766 organization making the filing deems relevant.

767 (4)(3) A filing and any supporting information are ~~shall be~~
 768 open to public inspection as provided in s. 119.07(1).

769 ~~(4) An insurer may satisfy its obligation to make such~~
 770 ~~filings by becoming a member of, or a subscriber to, a licensed~~
 771 ~~rating organization which makes such filings and by authorizing~~
 772 ~~the office to accept such filings in its behalf, but nothing~~
 773 ~~contained in this chapter shall be construed as requiring any~~
 774 ~~insurer to become a member or a subscriber to any rating~~
 775 ~~organization.~~

776 (5) A licensed rating organization may develop and file for
 777 approval with the office reference filings containing
 778 prospective loss costs and the underlying loss data, and other
 779 supporting statistical and actuarial information. A rating
 780 organization may not develop or file final rates or multipliers
 781 for expenses, profit, or contingencies. After a loss cost
 782 reference filing is filed with the office and is approved, the
 783 rating organization must provide its member subscribers with a

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784 copy of the approved reference filing.

785 (6) A rating organization may file supplementary rating
 786 information that includes policywriting rules, rating plan
 787 classification codes and descriptions, experience modification
 788 plans, and rules that include factors or relativities, such as
 789 increased limits factors, classification relativities, or
 790 similar factors, but that exclude minimum premiums. An insurer
 791 may use supplementary rating information approved by the office.

792 (7)(5) Pursuant to the provisions of s. 624.3161, the
 793 office may examine the underlying statistical data used in such
 794 filings.

795 (8)(6) Whenever the committee of a recognized rating
 796 organization with authority to file prospective loss costs for
 797 use by insurers in determining responsibility for workers'
 798 compensation and employer's liability insurance rates in this
 799 state meets to discuss the necessity for, or a request for,
 800 Florida rate increases or decreases in prospective loss costs in
 801 this state, the determination of prospective loss costs in this
 802 state Florida rates, the prospective loss costs rates to be
 803 requested in this state, and any other matters pertaining
 804 specifically and directly to prospective loss costs in this
 805 state such Florida rates, such meetings shall be held in this
 806 state and are shall be subject to s. 286.011. The committee of
 807 such a rating organization shall provide at least 3 weeks' prior
 808 notice of such meetings to the office and shall provide at least
 809 14 days' prior notice of such meetings to the public by
 810 publication in the Florida Administrative Register.

811 Section 14. Section 627.093, Florida Statutes, is amended
 812 to read:

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627.093 Application of s. 286.011 to workers' compensation and employer's liability insurances.—Section 286.011 shall be applicable to every prospective loss cost and rate filing, approval or disapproval of filing, rating deviation from filing, or appeal from any of these regarding workers' compensation and employer's liability insurances.

Section 15. Subsection (1) of section 627.101, Florida Statutes, is amended to read:

627.101 When filing becomes effective; workers' compensation and employer's liability insurances.—

(1) The office shall review all required filings as to workers' compensation and employer's liability insurances as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this part. If the office determines that part of a required rate filing does not meet the applicable requirements of this part, it may reject so much of the filing as does not meet these requirements, and approve the remainder of the filing.

Section 16. Section 627.211, Florida Statutes, is amended to read:

627.211 Annual report by the office on the workers' compensation insurance market Deviations; workers' compensation and employer's liability insurances.—

~~(1) Every member or subscriber to a rating organization shall, as to workers' compensation or employer's liability insurance, adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the office for permission to file a uniform percentage decrease or increase to be applied to the premiums~~

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~~produced by the rating system so filed for a kind of insurance, for a class of insurance which is found by the office to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of workers' compensation or employer's liability insurance.~~
~~(a) Comprised of a group of manual classifications which is treated as a separate unit for ratemaking purposes; or~~
~~(b) For which separate expense provisions are included in the filings of the rating organization.~~

Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.

(2) Every member or subscriber to a rating organization may, as to workers' compensation and employer's liability insurance, file a plan or plans to use deviations that vary according to factors present in each insured's individual risk. The insurer that files for the deviations provided in this subsection shall file the qualifications for the plans, schedules of rating factors, and the maximum deviation factors which shall be subject to the approval of the office pursuant to s. 627.091. The actual deviation which shall be used for each insured that qualifies under this subsection may not exceed the maximum filed deviation under that plan and shall be based on the merits of each insured's individual risk as determined by using schedules of rating factors which shall be applied uniformly. Insurers shall maintain statistical data in accordance with the schedule of rating factors. Such data shall

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871 be available to support the continued use of such varying
872 deviations.

873 ~~(3) In considering an application for the deviation, the~~
874 ~~office shall give consideration to the applicable principles for~~
875 ~~ratemaking as set forth in ss. 627.062 and 627.072 and the~~
876 ~~financial condition of the insurer. In evaluating the financial~~
877 ~~condition of the insurer, the office may consider: (1) the~~
878 ~~insurer's audited financial statements and whether the~~
879 ~~statements provide unqualified opinions or contain significant~~
880 ~~qualifications or "subject to" provisions; (2) any independent~~
881 ~~or other actuarial certification of loss reserves; (3) whether~~
882 ~~workers' compensation and employer's liability reserves are~~
883 ~~above the midpoint or best estimate of the actuary's reserve~~
884 ~~range estimate; (4) the adequacy of the proposed rate; (5)~~
885 ~~historical experience demonstrating the profitability of the~~
886 ~~insurer; (6) the existence of excess or other reinsurance that~~
887 ~~contains a sufficiently low attachment point and maximums that~~
888 ~~provide adequate protection to the insurer; and (7) other~~
889 ~~factors considered relevant to the financial condition of the~~
890 ~~insurer by the office. The office shall approve the deviation if~~
891 ~~it finds it to be justified, it would not endanger the financial~~
892 ~~condition of the insurer, and it would not constitute predatory~~
893 ~~pricing. The office shall disapprove the deviation if it finds~~
894 ~~that the resulting premiums would be excessive, inadequate, or~~
895 ~~unfairly discriminatory, would endanger the financial condition~~
896 ~~of the insurer, or would result in predatory pricing. The~~
897 ~~insurer may not use a deviation unless the deviation is~~
898 ~~specifically approved by the office. An insurer may apply the~~
899 ~~premiums approved pursuant to s. 627.091 or its uniform~~

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900 deviation approved pursuant to this section to a particular
901 insured according to underwriting guidelines filed with and
902 approved by the office, such approval to be based on ss. 627.062
903 and 627.072.

904 ~~(4) Each deviation permitted to be filed shall be effective~~
905 ~~for a period of 1 year unless terminated, extended, or modified~~
906 ~~with the approval of the office. If at any time after a~~
907 ~~deviation has been approved the office finds that the deviation~~
908 ~~no longer meets the requirements of this code, it shall notify~~
909 ~~the insurer in what respects it finds that the deviation fails~~
910 ~~to meet such requirements and specify when, within a reasonable~~
911 ~~period thereafter, the deviation shall be deemed no longer~~
912 ~~effective. The notice shall not affect any insurance contract or~~
913 ~~policy made or issued prior to the expiration of the period set~~
914 ~~forth in the notice.~~

915 ~~(5) For purposes of this section, the office, when~~
916 ~~considering the experience of any insurer, shall consider the~~
917 ~~experience of any predecessor insurer when the business and the~~
918 ~~liabilities of the predecessor insurer were assumed by the~~
919 ~~insurer pursuant to an order of the office which approves the~~
920 ~~assumption of the business and the liabilities.~~

921 ~~(6) The office shall submit an annual report to the~~
922 ~~President of the Senate and the Speaker of the House of~~
923 ~~Representatives by January 15 of each year which evaluates~~
924 insurance company solvency and competition in the workers'
925 compensation insurance market in this state. The report must
926 contain an analysis of the availability and affordability of
927 workers' compensation coverage and whether the current market
928 structure, conduct, and performance are conducive to

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competition, based upon economic analysis and tests. The report must also contain an analysis of each insurer's capital compared to minimum risk-based capital. The purpose of this report is to aid the Legislature in determining whether changes to the workers' compensation rating laws are warranted. The report must also document that the office has complied with the provisions of s. 627.096 which require the office to investigate and study all workers' compensation insurers in the state and to study the data, statistics, schedules, or other information as it finds necessary to assist in its review of workers' compensation rate filings.

Section 17. Section 627.2151, Florida Statutes, is created to read:

627.2151 Workers' compensation excessive defense and cost containment expenses.-

(1) As used in this section, the term "defense and cost containment expenses" or "DCCE" includes the following Florida expenses of an insurer group or insurer writing workers' compensation insurance:

- (a) Insurance company attorney fees;
- (b) Expert witnesses;
- (c) Medical examinations and autopsies;
- (d) Medical fee review panels;
- (e) Bill auditing;
- (f) Treatment utilization reviews;
- (g) Preferred provider network expenses; and
- (h) Vocational rehabilitation.

(2) Each insurer group or insurer writing workers' compensation insurance shall file with the office a schedule of

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Florida defense and cost containment expenses and total Florida incurred losses for each of the 3 years before the most recent accident year. The DCCE and incurred losses must be valued as of December 31 of the first year following the latest accident year to be reported, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year. The first year reported shall be accident year 2018, so that the reporting of 3 accident years under this evaluation will not take place until accident years 2019 and 2020 have become available.

(3) Excessive DCCE occurs when the Florida defense and cost containment expenses for workers' compensation exceed 15 percent of Florida workers' compensation incurred losses by the insurer or insurer group for the 3 most recent calendar years for which data is to be filed under this section.

(4) If the insurer or insurer group realizes excessive DCCE, the office must order a return of the excess amounts after affording the insurer or insurer group an opportunity for a hearing and otherwise complying with the requirements of chapter 120. Excessive DCCE amounts must be returned in all instances unless the insurer or insurer group affirmatively demonstrates to the office that the refund of the excessive DCCE amounts will render a member of the insurer group financially impaired or will render it insolvent under provisions of the Florida Insurance Code.

(5) Any excess DCCE amount must be returned to policyholders in the form of a cash refund or credit toward the future purchase of insurance. The refund or credit must be made

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on a pro rata basis in relation to the final compilation year earned premiums to the policyholders of record of the insurer or insurer group on December 31 of the final compilation year. Cash refunds and data in required reports to the office may be rounded to the nearest dollar and must be consistently applied.

(6) (a) Refunds must be completed in one of the following ways:

1. A cash refund must be completed within 60 days after entry of a final order indicating that excessive DCCE has been realized.

2. A credit to renewal policies must be applied to policy renewal premium notices that are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive DCCE has been realized. If the insured thereafter cancels a policy or otherwise allows the policy to terminate, the insurer or insurer group must make a cash refund not later than 60 days after coverage termination.

(b) Upon completion of the renewal credits or refunds, the insurer or insurer group shall immediately certify having made the refunds to the office.

(7) Any refund or renewal credit made pursuant to this section is treated as a policyholder dividend applicable to the year immediately succeeding the compilation period giving rise to the refund or credit, for purposes of reporting under this section for subsequent years.

Section 18. Section 627.291, Florida Statutes, is amended to read:

627.291 Information to be furnished insureds; appeal by insureds; workers' compensation and employer's liability

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insurances.—

(1) As to workers' compensation and employer's liability insurances, every rating organization filing prospective loss costs and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) As to workers' compensation and employer's liability insurances, every rating organization filing prospective loss costs and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization filing prospective loss costs or the insurer making its own rates fails to grant or rejects such request within 30 days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization filing prospective loss costs or insurer making its own rates on such request may, within 30 days after written notice of such action, appeal to the office, which may affirm or reverse such action.

Section 19. Section 627.318, Florida Statutes, is amended to read:

627.318 Records.—Every insurer, rating organization filing

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prospective loss costs, and advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the prospective loss costs, rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the office to determine whether such organization, insurer, group, or association, and, in the case of an insurer or rating organization, every prospective loss cost, rate, rating plan, and rating system made or used by it, complies with the provisions of this part applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any such insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the prospective loss costs, rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the department at any time upon reasonable notice.

Section 20. Section 627.361, Florida Statutes, is amended to read:

627.361 False or misleading information.—No person shall

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

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willfully withhold information from or knowingly give false or misleading information to the office, any statistical agency designated by the office, any rating organization, or any insurer, which will affect the prospective loss costs, rates, or premiums chargeable under this part.

Section 21. Subsections (1) and (2) of section 627.371, Florida Statutes, are amended to read:

627.371 Hearings.—

(1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer, and any person aggrieved by any rating plan, rating system, or underwriting rule followed or adopted by a rating organization, may herself or himself or by her or his authorized representative make written request of the insurer or rating organization to review the manner in which the prospective loss cost, rate, plan, system, or rule has been applied with respect to insurance afforded her or him. If the request is not granted within 30 days after it is made, the requester may treat it as rejected. Any person aggrieved by the refusal of an insurer or rating organization to grant the review requested, or by the failure or refusal to grant all or part of the relief requested, may file a written complaint with the office, specifying the grounds relied upon. If the office has already disposed of the issue as raised by a similar complaint or believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, it shall so notify the complainant. Otherwise, and if it also finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, it shall proceed as

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provided in subsection (2).

(2) If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, upon the basis of other information, or upon sufficient complaint as provided in subsection (1), the office has good cause to believe that such insurer, organization, group, or association, or any prospective loss cost, rate, rating plan, or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this part applicable to it, it shall, unless it has good cause to believe such noncompliance is willful, give notice in writing to such insurer, organization, group, or association stating therein in what manner and to what extent noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which the noncompliance may be corrected, including any premium adjustment.

Section 22. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

4-3-17

Meeting Date

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

SB 1582

Bill Number (if applicable)

Topic WORKERS' COMP

Amendment Barcode (if applicable)

Name AM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQUARE # 3-243

Phone 850-222-2772

Street

TALL

City

FL

State

32312

Zip

Email AFENTRISS@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. ROOFING & SHEET METAL CONTRACTORS ASSN

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)

4-3-17

Meeting Date

SB 1582

Bill Number (if applicable)

Topic WORKERS' COMP

Amendment Barcode (if applicable)

Name PAUL FENTRIS

Job Title LOBBYIST

Address 1400 VILLAGE SQUARE # 3-243

Phone 850-222-2772

Street

JAL
City

FL
State

32312
Zip

Email FENTRIS@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLA. REFRIGERATION & AIR CONDITIONING CONTRACTORS

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)

4-3-17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Tom Stahl

Job Title Executive Director

Address 116 S. Monroe St.

Phone 850-508-8293

Street

Tallahassee FL 32308

City

State

Zip

Email tstahl@fuba.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FUBA - Florida United Businesses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17

Meeting Date

SB 1582

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Jim McConnaughay

Job Title Consultant

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Phone 850-681-0416

Tallahassee FL 32301
City State Zip

Email tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

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)

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/3/17

Meeting Date

81582

Bill Number (if applicable)

Topic Worker's Comp.

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277
Street

Phone 850-570-0033

Tallahassee FL 32317
City State Zip

Email lawson.deborah.e@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Roof Deck Assn & NACM

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)

4/3/17

Meeting Date

SB 1582

Bill Number (if applicable)

Topic Workers Comp

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 230 West Bay Ave

Street

Phone 407 830 1882

City

Longwood

State

FL

Zip

32750

Email RBKershner@att.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southeast Glass Assn.

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)

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title VP & General Counsel

Address 227 S. Adams St.

Phone 227-4082

Street

Tallahassee

FL 32301

City

State

Zip

Email Samantha@fla.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

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)

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic WORKERS COMP

Amendment Barcode (if applicable)

Name NANCY STEPHENS

Job Title

Address 1625 SUMMIT LAKE DR, STE 300

Street

Phone 850 402 2954

TALLAHASSEE FL

City

32317

State

Zip

Email nancy@nstephens.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

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

Representing

MANUFACTURERS ASSOCIATION
OF FLORIDA
AND FLORIDA BUILDING MATERIALS ASSOCIATION
AND FLORIDA POULTRY 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)

04/03/2017
Meeting Date

SB 1582
Bill Number (if applicable)

Topic WORKERS COMP INSURANCE

Amendment Barcode (if applicable)

Name HOWARD E. GENE "ADAMS"

Job Title ATTORNEY, PENNINGTON LAW FIRM

Address 215 SOUTH MONROE ST., 2ND FLOOR
Street

Phone 850-222-3533

TALLAHASSEE FLA 32301-1839
City State Zip

Email GENE@PENNINGTON
LAW.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA SHERIFFS RISK MANAGEMENT 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.

THE FLORIDA SENATE

APPEARANCE RECORD

Apr. 3, 2017
Meeting Date

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

SB 1582
Bill Number (if applicable)

Topic Workers' Compensation Insurance

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title Director of State Affairs - Southeast Region

Address 3933 Victoria Lake Dr. S.
Street

Phone (317) 417-5618

Jay
City

FL
State

32226
Zip

Email reynolds@namics.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Assoc. of Mutual Insurance Companies

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)

4/5/17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S. Monroe St. Suite 720

Phone 850-681-2615

Street

Tallahassee FL 32301

City

State

Zip

Email logan.mcfaddin@pciaa.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Property Casualty Insurers Association of America

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)

04.03.2017

Meeting Date

513 1582
Bill Number (if applicable)

Topic 1126 (H.R.)' S. Amendment

Amendment Barcode (if applicable)

Name Ron Jackson

Job Title Vice President, State Affairs Southeast REgion

Address 2107 N. Decatur Road, Suite 257

Phone 404.261.8834

Street

Decatur

GA

30033

Email rjackson@aiadc.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/13
Meeting Date

1582
Bill Number (if applicable)

Topic Workers' comp

Amendment Barcode (if applicable)

Name Rich Temple

Job Title _____

Address 135 S. Monroe
Street

Phone 850-224-0926

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

4/3/17

Meeting Date

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

56 1582

Bill Number (if applicable)

Topic WORKERS' COMPENSATION

Amendment Barcode (if applicable)

Name RICHARD CHAIT

Job Title ATTORNEY

Address 2030 S. DOUGLAS RD - STE 217

Street

CORAL GABLES, FL

City

State

33134

Zip

Phone 305 442 2318

Email RICHARD.CHAIT@
FORTNEWORKERS.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

04.03.17

Meeting Date

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

1582

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Kimberly Fernandes

Job Title _____

Address 201 South Monroe Street - Suite 5

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-577-1301Email Kfernandes@kelleykronberg.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Justice Reform InstituteAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name THOMAS KOVAL

Job Title FVP + Gen Counsel

Address 6300 UNIVERSITY PKWY
Street

Phone _____

SARASOTA
City

FLA
State

34238
Zip

Email TKOVAL@FLS -
GOV.FL

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLCI INSURANCE GROUP

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)

4/3/17

Meeting Date

1582

Bill Number (if applicable)

Topic WORKERS COMP

Amendment Barcode (if applicable)

Name C. G. GUNGED

Job Title Attorney

Address 7171 N. FEDERAL Highway

Phone _____

Street

Boca Raton FL 33483

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

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 1684

INTRODUCER: Banking and Insurance Committee and Senator Farmer

SUBJECT: Insurance Rates

DATE: April 5, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1684 provides that attorney fees awarded pursuant to s. 440.34, F.S., and s. 627.428, F.S., may not be included in an insurer's rate base and may not be used to justify a rate or rate change. This bill will bar the inclusion of such attorney fees in rate making in property, casualty, surety, motor vehicle, workers' compensation, employer liability, title, wet marine, credit life or credit disability, and health insurance.

Section 627.428, F.S., requires an insurer to pay its insured's attorney fees if the insured prevails in an action against an insurer. That section applies to many insurance lines. Section 440.34, F.S., applies to workers' compensation insurance.

The bill takes effect July 1, 2017.

II. Present Situation:

Insurance Rates

Section 627.062, F.S., specifies the rate filing process for property and casualty insurers and provides rating standards for these insurers. The rating law applies to property, casualty and surety insurance and prohibits rates that are excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. The Office of Insurance Regulation (OIR) regulates insurer rate and form filing.

A rate is excessive if:

- It is likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved or if expenses are unreasonably high in relation to the services rendered.
- The rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when the replacement is attributable to investment losses.¹

A rate is inadequate if:

- It is clearly insufficient, together with the investment income attributable to them to sustain projected losses and expenses in the class of business to which it applies.
- If discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group or risks.²

A rate is unfairly discriminatory if:

- The rating plan, including discounts, credits, or surcharges fails to clearly and equitably reflect consideration of the policyholder's participation in a risk management program pursuant to s. 627.0625, F.S.
- As to a risk or group of risks, the application of premium discounts, credits, or surcharges among the risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.³

Section 627.0651, F.S., is the rating law for motor vehicle insurance. It is similar to the law for property. Rates must not be excessive, inadequate, or unfairly discriminatory. At the same time, an insurer is allowed a reasonable rate of return. Workers' compensation insurance rate filings must meet the requirements of ss. 627.062, F.S., and 627.072, F.S.⁴ Section 627.410, F.S., governs health insurance filings and rates. The OIR reviews health insurance filings to determine the reasonableness of benefits in relation to premiums charged.

Attorney Fees in Insurance Litigation

Section 627.428, F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

This statute allows the insured or the insured's assignee⁵ to recover attorney's fees if the insured or assignee prevails in an action against an insurer. Florida courts have interpreted the statute

¹ ss. 627.062(2)(e)1. and 2., F.S.

² ss. 627.062(2)(e)3. and 5., F.S.

³ ss. 627.062(2)(e)4. and 6., F.S.

⁴ s. 627.151, F.S.

⁵ *All Ways Reliable Bldg. Maintenance, Inc. v. Moore*, 261 So.2d 131 (Fla. 1972).

broadly to allow recovery of fees when the insurer ultimately settles the case before trial.⁶ Fees are awarded pursuant to the statute even if the insurer does not act in bad faith.⁷ The Florida Supreme Court recently explained the purpose of the statute:

The need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to "level the playing field" between the economically-advantaged and sophisticated insurance companies and the individual citizen. Most assuredly, the average policyholder has neither the finances nor the expertise to single-handedly take on an insurance carrier. Without the funds necessary to compete with an insurance carrier, often a concerned policyholder's only means to take protective action is to hire that expertise in the form of legal counsel... For this reason, the Legislature recognized that an insured is not made whole when an insurer simply grants the previously denied benefits without fees. The reality is that once the benefits have been denied and the plaintiff retains counsel to dispute that denial, additional costs that require relief have been incurred. Section 627.428, F.S., takes these additional costs into consideration and levels the scales of justice for policyholders by providing that the insurer pay the attorney's fees resulting from incorrectly denied benefits.⁸

Section 440.34, F.S., provides attorney fees to claimant's attorney if they prevail in workers' compensation cases. The statute's attorney fee cap was recently declared unconstitutional by the Florida Supreme Court.⁹ The court held that attorney fees pursuant s. 440.34, F.S., must be "reasonable."¹⁰

Attorney Fees in Insurance Rates

Generally, attorney fees, including those paid pursuant to s. 627.428, F.S., are expenses that insurers can use to justify a rate.¹¹ However, motor vehicle insurers cannot use attorney fees to justify a rate or rate change if those fees are related to bad faith or punitive damages.¹² Medical malpractice insurers are likewise prohibited from using attorney fees related to bad faith to justify a rate or rate change.¹³

Section 627.062(10), F.S., provides that an insurer cannot include interest paid to a policyholder when an insurer does not act on a claim within statutory time limits.

⁶ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215 (Fla. 2016)(noting that "it is well settled that the payment of a previously denied claim following the initiation of an action for recovery, but prior to the issuance of a final judgment, constitutes the functional equivalent of a confession of judgment").

⁷ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1216 (Fla. 2016)(noting "the insurer's intentions do not factor into a policyholder's recovery of fees; it is the fact that the denial of benefits was ultimately incorrect that triggers the statute"); *Ins. Co. of N. Am. v. Lexow*, 602 So.2d 928, 531 (Fla. 1992)("INA's good faith in bringing this suit is irrelevant. If the dispute is within the scope of s. 627.428, F.S., and the insurer loses, the insurer is always obligated for attorney's fees").

⁸ *Johnson v. Omega Ins. Co.*, 200 So.3d 1207, 1215-1216 (Fla. 2016)(internal citations omitted).

⁹ *Castellanos v. Next Door Co.*, 192 So.3d 431 (Fla. 2016).

¹⁰ *Id.*

¹¹ See, e.g., s. 627.062(2)(b), F.S. (requiring the OIR to consider expenses when reviewing a rate filing).

¹² s. 627.0651(12), F.S.

¹³ s. 627.062(7)(a), F.S.

III. Effect of Proposed Changes:

The bill amends s. 627.062, F.S., to provide that attorney fees paid pursuant to s. 440.34, F.S., or s. 627.428, F.S., may not be included in the insurer's rate base and may not be used to justify a rate or rate change. These provisions will bar the use of attorney fees paid pursuant to s. 440.34, F.S., or s. 627.428, F.S., in rate making in property, casualty, surety, motor vehicle, workers' compensation, employer liability, title, wet marine, credit life or credit disability, and health insurance.

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.

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

None.

B. Private Sector Impact:

The OIR reports that if insurers are not allowed to use attorney fees to set rates, the OIR might be forced to approve rates that are insufficient to cover the costs of the policy.¹⁴ Another concern is that insurers will simply pay all claims and never litigate over potential fraudulent claims or even claims where there is no coverage. This could lead to rate increases.¹⁵ These concerns were raised by the OIR about a prior version of this bill which excluded more attorney fees from rate base than this version of the bill. The OIR has not completed its analysis of the committee substitute.

¹⁴ Office of Insurance Regulation, *Analysis of SB 1684* (March 28, 2017) at p. 2 (on file with the Committee on Banking and Insurance).

¹⁵ *Id.* at p. 5.

C. Government Sector Impact:

The OIR believes that if property insurers were to stop writing policies in parts of the state where litigation is the highest, many property owners would likely buy property insurance from Citizens.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.428.

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 April 3, 2017:

The bill provides that attorney fees awarded pursuant to s. 440.34, F.S., and s. 627.428, F.S., may not be used to justify a rate or rate change. The original bill provided that attorney fees in which the insurer prevailed in the action and the attorney fees an insurer paid defending an action could not be used to justify a rate or rate change.

B. Amendments:

None.

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

¹⁶ *Id.* at p. 5.



164156

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (11) is added to section 627.062,
Florida Statutes, to read:

627.062 Rate standards.—

(11) Attorney fees paid pursuant to s. 440.34 or s. 627.428
may not be included in the insurer's rate base and may not be
used to justify a rate or rate change.



164156

Section 2. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney's fee.—

(4) Attorney fees paid pursuant to this section may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

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 insurance rates; amending ss.
627.062 and 627.428, F.S.; providing that attorney
fees paid pursuant to specified provisions may not be
included in an insurer's base rate and may not be used
to justify a rate or rate change; providing an
effective date.

By Senator Farmer

34-01474-17

20171684__

1 A bill to be entitled
 2 An act relating to insurance rates; amending s.
 3 627.062, F.S.; providing that certain attorney fees,
 4 costs, and expenses may not be considered expenses by
 5 the Office of Insurance Regulation when the office is
 6 determining whether a rate is excessive, inadequate,
 7 or unfairly discriminatory; providing that certain
 8 attorney fees, costs, and expenses may not be included
 9 in an insurer's rate base and may not be used to
 10 justify a rate or rate change; amending s. 627.0651,
 11 F.S.; providing that certain attorney fees, costs, and
 12 expenses may not be included in a motor vehicle
 13 insurer's rate base and may not be used to justify a
 14 rate or rate change; amending s. 627.072, F.S.;
 15 providing that as to workers' compensation and
 16 employer's liability insurance, certain attorney fees,
 17 costs, and expenses may not be included in an
 18 insurer's rate base and may not be used to justify a
 19 rate or rate change; amending s. 627.410, F.S.;
 20 providing that certain attorney fees, costs, and
 21 expenses may not be included in an insurer's rate base
 22 and may not be used to justify a rate or rate change;
 23 amending s. 627.428, F.S.; providing that certain
 24 attorney fees, costs, and expenses may not be included
 25 in an insurer's rate base and may not be used to
 26 justify a rate or rate change; amending s. 627.640,
 27 F.S.; providing that certain attorney fees, costs, and
 28 expenses may not be included in an insurer's rate;
 29 providing an effective date.

Page 1 of 6

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

34-01474-17

20171684__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Paragraph (b) of subsection (2) of section
 34 627.062, Florida Statutes, is amended, and subsection (11) is
 35 added to that section, to read:
 36 627.062 Rate standards.—
 37 (2) As to all such classes of insurance:
 38 (b) Upon receiving a rate filing, the office shall review
 39 the filing to determine if a rate is excessive, inadequate, or
 40 unfairly discriminatory. In making that determination, the
 41 office shall, in accordance with generally accepted and
 42 reasonable actuarial techniques, consider the following factors:
 43 1. Past and prospective loss experience within and without
 44 this state.
 45 2. Past and prospective expenses. Attorney fees, costs, and
 46 expenses associated with any adversarial proceeding against an
 47 insured or named beneficiary may not be considered as expenses.
 48 3. The degree of competition among insurers for the risk
 49 insured.
 50 4. Investment income reasonably expected by the insurer,
 51 consistent with the insurer's investment practices, from
 52 investable premiums anticipated in the filing, plus any other
 53 expected income from currently invested assets representing the
 54 amount expected on unearned premium reserves and loss reserves.
 55 The commission may adopt rules using reasonable techniques of
 56 actuarial science and economics to specify the manner in which
 57 insurers calculate investment income attributable to classes of
 58 insurance written in this state and the manner in which

Page 2 of 6

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

34-01474-17 20171684__

59 investment income is used to calculate insurance rates. Such
 60 manner must contemplate allowances for an underwriting profit
 61 factor and full consideration of investment income that produces
 62 a reasonable rate of return; however, investment income from
 63 invested surplus may not be considered.

64 5. The reasonableness of the judgment reflected in the
 65 filing.

66 6. Dividends, savings, or unabsorbed premium deposits
 67 allowed or returned to policyholders, members, or subscribers in
 68 this state.

69 7. The adequacy of loss reserves.

70 8. The cost of reinsurance. The office may not disapprove a
 71 rate as excessive solely due to the insurer having obtained
 72 catastrophic reinsurance to cover the insurer's estimated 250-
 73 year probable maximum loss or any lower level of loss.

74 9. Trend factors, including trends in actual losses per
 75 insured unit for the insurer making the filing.

76 10. Conflagration and catastrophe hazards, if applicable.

77 11. Projected hurricane losses, if applicable, which must
 78 be estimated using a model or method found to be acceptable or
 79 reliable by the Florida Commission on Hurricane Loss Projection
 80 Methodology, and as further provided in s. 627.0628.

81 12. Projected flood losses for personal residential
 82 property insurance, if applicable, which may be estimated using
 83 a model or method, or a straight average of model results or
 84 output ranges, independently found to be acceptable or reliable
 85 by the Florida Commission on Hurricane Loss Projection
 86 Methodology and as further provided in s. 627.0628.

87 13. A reasonable margin for underwriting profit and

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88 contingencies.

89 14. The cost of medical services, if applicable.

90 15. Other relevant factors that affect the frequency or
 91 severity of claims or expenses.

92

93 The provisions of this subsection do not apply to workers'
 94 compensation, employer's liability insurance, and motor vehicle
 95 insurance.

96 (11) Attorney fees, costs, and expenses associated with any
 97 adversarial proceeding against an insured or named beneficiary
 98 may not be included in the insurer's rate base and may not be
 99 used to justify a rate or rate change.

100 Section 2. Subsection (15) is added to section 627.0651,
 101 Florida Statutes, to read:
 102 627.0651 Making and use of rates for motor vehicle
 103 insurance.—

104 (15) Attorney fees, costs, and expenses associated with any
 105 adversarial proceeding against an insured or named beneficiary
 106 may not be included in the insurer's rate base and may not be
 107 used to justify a rate or rate change.

108 Section 3. Subsection (6) is added to section 627.072,
 109 Florida Statutes, to read:
 110 627.072 Making and use of rates.—

111 (6) Attorney fees, costs, and expenses associated with any
 112 adversarial proceeding against a claimant may not be included in
 113 an insurer's rate base and may not be used to justify a rate or
 114 rate change.

115 Section 4. Subsection (9) is added to section 627.410,
 116 Florida Statutes, to read:

34-01474-17

20171684__

627.410 Filing, approval of forms.—

(9) Attorney fees, costs, and expenses associated with any adversarial proceeding against an insured or named beneficiary may not be used to justify a rate or rate change.

Section 5. Section 627.428, Florida Statutes, is amended to read:

627.428 ~~Attorney~~ Attorney's fee.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, no such attorney fees ~~attorney's fee~~ shall be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) When so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case.

(4) Attorney fees paid pursuant to this section may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

(5) Attorney fees paid by an insurer to its attorneys for prosecuting or defending an action that could cause attorney

34-01474-17

20171684__

fees to be awarded pursuant to this section may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 6. Section 627.640, Florida Statutes, is amended to read:

627.640 Filing of classifications and rates.—

(1) An insurer shall not deliver or issue for delivery in this state any health insurance policy until it has filed with the office a copy of any applicable classification of risks and premium rates.

(2) Attorney fees, costs, and expenses associated with any adversarial proceeding against an insured or named beneficiary may not be included in the insurer's rate.

Section 7. 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)

413117

Meeting Date

1684

Bill Number (if applicable)

Topic Insurance Rates

Amendment Barcode (if applicable)

Name Sha'Ron James

Job Title Insurance Consumer Advocate

Address 200 E Gaines St
Street

Phone (850) 413-5922

Tallahassee FL
City State Zip

Email Sha'Ron.James@myfloridacounty.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing DFS

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)

April 3, 2017

Meeting Date

1684

Bill Number (if applicable)

Topic Insurance Rates

Amendment Barcode (if applicable)

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 8505977425

Street

Tallahassee

FL 32301

Email michael.carlson@piff.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing PErsonal Insurance Federation of 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

April 3, 2017
Meeting Date

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

SB 1684
Bill Number (if applicable)

Topic Insurance Rates

Amendment Barcode (if applicable)

Name Liz Reynolds

Job Title State Affairs Director - Southeast Region

Address 3933 Victoria Lake Dr. South
Street

Phone (317) 417-5618

Jax FL 32226
City State Zip

Email lreynolds@namic.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Association of Mutual Insurance Companies

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)

4/13/17

Meeting Date

1684

Bill Number (if applicable)

Topic Attorney fees / Rates

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Commissioner

Address

Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Office of Insurance Regulation

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 1766

INTRODUCER: Senator Lee

SUBJECT: Motor Vehicle Insurance

DATE: March 31, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson	BI	Pre-meeting
2. _____	_____	AHS	_____
3. _____	_____	AP	_____

I. Summary:

SB 1766 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain \$10,000 Personal Injury Protection (PIP) coverage. The bill replaces the PIP coverage mandate with a medical payments (MedPay) coverage mandate of \$5,000. Medical payments coverage under the bill provides substantially similar coverage to current PIP medical benefits, except that it provides reimbursement for 100 percent of covered medical losses, whereas PIP reimburses only 80 percent of covered medical losses. The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds which currently require bodily injury that causes death or significant and permanent injury.

The bill enacts financial responsibility requirements for damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle in the amount of:

- Beginning January 1, 2018, through December 31, 2019, \$20,000 for bodily injury (BI) or death of one person in any one crash, and subject to that limit for one person, \$40,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2020, through December 31, 2021, \$25,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$50,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2022, and thereafter \$30,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$60,000 for bodily injury or death of two or more people in any one crash.

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

The repeal of the No-Fault Law and the financial responsibility requirements for bodily injury take effect January 1, 2018.

II. Present Situation:

Florida Motor Vehicle No-Fault Law

Under the Florida Motor Vehicle No-Fault Law (No-Fault law)¹, owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.² Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.³ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.⁴ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

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

PIP Medical Benefits

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

¹ Sections 627.730-627.7405, F.S.

² Section 627.733, F.S.

³ See s. 627.731, F.S.

⁴ Section 627.737, F.S.

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

⁶ Section 627.736(1), F.S.

⁷ Section 627.736(1)(a), F.S.

⁸ Section 627.736(1)(b), F.S.

⁹ Id.

¹⁰ Section 627.736(1)(c), F.S.

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

¹² Section 627.736(1)(a), F.S.

¹³ Section 627.736(1)(a)1., F.S.

¹⁴ Section 627.736(1)(a)2., F.S.

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.¹⁵ An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.¹⁶ If a provider who rendered treatment or services determines that the insured did not have an emergency medical condition, the PIP medical benefit limit is \$2,500.¹⁷ Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.¹⁸

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

Medical Fee Limits for PIP Reimbursement

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

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

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.¹⁹ Also, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts

¹⁵ Section 627.736(1)(a)3., F.S.

¹⁶ Section 627.732(16), F.S.

¹⁷ Section 627.736(1)(a)4., F.S.

¹⁸ Section 627.736(1)(a)5., F.S.

¹⁹ Section 627.736(5)(a)3., F.S.

payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.²⁰

CS/CS/HB 119 revised the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The bill clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The bill also provided that Medicare fee schedule in effect on March 1 is applicable for the remainder of that year.²¹ Insurers are authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable modifiers, when applying the fee schedule if they do not constitute a utilization limit.²² The bill also requires insurers to include notice of the fee schedule in their policies.²³

Attorney Fees

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.²⁴ CS/CS/HB 119 amended provisions related to attorney fee awards in No-Fault disputes. The bill prohibits the application of attorney fee multipliers.²⁵ The bill also requires that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.²⁶ The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.²⁷

Mandatory Rate Filings and Data Call

CS/CS/HB 119 required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.²⁸ The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.²⁹ The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from

²⁰ Section 627.736(5)(a)4., F.S.

²¹ Section 627.736(5)(a)2., F.S.

²² Section 627.736(5)(a)3., F.S.

²³ Section 627.736(5)(a)5., F.S.

²⁴ Section 627.736(8), F.S.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ Section 15, Ch. 2012-197, L.O.F.

²⁹ Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012).

CS/CS/HB 119 against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile PIP insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. The Legislature required a second mandatory rate filing due January 1, 2014, that provided at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explained in detail its reasons for failing to achieve those savings.

The Office of Insurance Regulation performed a comprehensive PIP data call on January 1, 2015, that analyzed the impact of the act's reforms on the PIP insurance market. The top 25 personal lines automobile insurers³⁰ generally failed to achieve a 25 percent rate reduction and instead reduced PIP rates an average of 13.6 percent.³¹ Rates were only reduced an average of 0.1 percent for a full auto insurance premium consisting of PIP, property damage, bodily injury, uninsured motorists, collision and comprehensive coverages.³² The OIR noted that though the post-HB 119 rate filings were on the low end of 2012 Pinnacle report, prior to CS/CS/HB 119 the statewide average approved rate changes were a 46.3 percent increase in PIP rates, and a 12.9 percent rate increase for full auto insurance.³³

Rate filings by top 25 auto insurers from January 1, 2015 to January 18, 2017, have reversed the entirety of the rate reductions achieved post HB 119, resulting in average premiums that are higher than those charged before CS/CS/HB 119 became law.³⁴

Changes in Personal Auto Rates for the Top 25 Insurers³⁵

Filing Effective Date Range	PIP	Liability Coverages	All Coverages
Jan. 1, 2011 – Dec. 31, 2012	46.2%	21.1%	13.2%
Jan. 1, 2013 – Dec. 31, 2014	-14.4%	-1.3%	-0.7%
Jan 1, 2015 – Jan. 18, 2017	25.7%	23.4%	21.4%

Generally, motor vehicle insurance rates increased nationally from year-end 2014 to year-end 2016, with the consumer price index for motor vehicle insurance (U.S. city average for urban consumers) increasing 13.1 percent during that time frame.³⁶ The U.S. Department of Transportation has reported increased driving activity on the nation's roads, which may be a contributing cause to higher automobile insurance rates.³⁷ The number of crashes and crashes involving injuries reported to the Florida Department of Highway Safety has increased in recent

³⁰ On an earned premium basis.

³¹ Office of Insurance Regulation, *Report on Review of the Data Call Pursuant to HB 119 – Motor Vehicle Personal Injury Protection (PIP) Insurance*, Pg. 43 (January 1, 2015).

³² See id.

³³ See id. at pg. 41.

³⁴ See Office of Insurance Regulation, *Florida Personal Auto Market Presented to The Florida Senate Committee on Banking and Insurance*, pg. 3 (January 24, 2017).

³⁵ Top 25 insurers determined using 2013 calendar year Florida direct written premium for the personal automobile lines of business.

³⁶ See fn. 34 at pg. 4.

³⁷ See fn. 34 at pg. 5.

years, going from 317,355 crashes (140,241 being injury crashes) in 2013 to 395,326 crashes (165,926 being injury crashes) in 2017.³⁸

Motor Vehicle Insurance Fraud

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the Division of Insurance Fraud during the 3 fiscal years beginning in 2002 and ending in 2005. That 3-year amount was nearly doubled by the 7,240 PIP fraud referrals received by the division during the 2014/2015 fiscal year.³⁹ Given this fact, the following description from the 2005 report is an accurate description of the current situation regarding motor vehicle insurance fraud:

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

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. CS/CS/HB 119 contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.⁴⁰ All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.⁴¹ The bill also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

Financial Responsibility Law

Florida's financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.⁴² The owner and operator of a motor vehicle need not demonstrate financial

³⁸ See Florida Department of Highway Safety and Motor Vehicles, Florida Integrated Report Exchange System Quick Statistics at <https://firesportal.com/Pages/Public/QuickStats.aspx> (last accessed on March 31, 2017).

³⁹ Florida Department of Financial Services, *Division of Insurance Fraud Annual Report Fiscal Year 2014 – 2015*, pg. 28 http://www.myfloridacfo.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed on March 31, 2017).

⁴⁰ Section 627.736(4)(i), F.S.

⁴¹ Section 627.736(5)(h), F.S.

⁴² See ch. 324, F.S.

responsibility, i.e., obtain BI and PD coverages, until *after the accident*.⁴³ At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.⁴⁴ The driver's license and registration driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.⁴⁵ A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.⁴⁶

Review of Auto Insurance Systems

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in the accident.⁴⁷ Parties seeking redress for their injuries do so from the at-fault driver, and must prove negligence on the part of that individual. Nine of the 38 tort states, known as "add-on" states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.⁴⁸ Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.⁴⁹ All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims and the use of fee schedules or treatment protocols, vary widely among these entities. Each state has either a "verbal" or "monetary" threshold regarding the seriousness of a person's injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as "choice" states and offer consumers a choice between purchasing PIP coverage or traditional tort liability coverage which does not include PIP benefits.

⁴³ Section 324.011, F.S.

⁴⁴ Section 324.022, F.S.

⁴⁵ Section 324.0221(2), F.S.

⁴⁶ Section 324.0221(3), F.S.

⁴⁷ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁴⁸ Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

⁴⁹ Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

Auto Coverage Requirements

Forty-eight states require car owners to buy a minimum amount of bodily injury liability (BI) and property damage liability (PD) insurance coverage before they can legally drive their vehicles.⁵⁰ Further, all states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states. Florida has a requirement for bodily liability coverage for persons subject to the Financial Responsibility Law of \$10,000 per person, \$20,000 per accident, and \$10,000 in the event of damage to property of others, or a \$30,000 combined (BI/PD) single limit. A Florida driver is not required to maintain BI coverage until he or she is involved in a crash or convicted of certain traffic offenses. The following chart shows the required motor vehicle insurance coverages in each state and the minimum coverages for bodily injury liability coverage and property damage coverage.

State Motor Vehicle Insurance Requirements

ST	Ins. Req.	Min. BI/PD	ST	Ins. Req.	Min. BI/PD	ST	Ins. Req.	Min. BI/PD
AL	BI/PD	25/50/25	LA	BI/PD	15/30/25	OH	BI/PD	25/50/25
AK	BI/PD	50/100/25	ME	BI/PD/UM	50/100/25	OK	BI/PD	25/50/25
AZ	BI/PD	15/30/10	MD	BI/PD/PIP/UM	30/60/15	OR	BI/PD/PIP/UM	25/50/25
AR	BI/PD/PIP	25/50/25	MA	BI/PD/PIP/UM	20/40/5	PA	BI/PD/PIP	15/30/5
CA	BI/PD	15/30/5	MI	BI/PD/PIP	20/40/10	RI	BI/PD	25/50/25
CO	BI/PD	25/50/15	MN	BI/PD/PIP/UM	30/60/10	SC	BI/PD/UM	25/50/25
CT	BI/PD/UM	20/40/10	MS	BI/PD	25/50/25	SD	BI/PD/UM	25/50/25
DE	BI/PD/PIP	15/30/10	MO	BI/PD/UM	25/50/10	TN	BI/PD	25/50/15
FL	PIP/PD	10/20/10	MT	BI/PD	25/50/20	TX	BI/PD	30/60/25
GA	BI/PD	25/50/25	NE	BI/PD/UM	25/50/25	UT	BI/PD/PIP	25/65/15
HI	BI/PD/PIP	20/40/10	NV	BI/PD	15/30/10	VT	BI/PD/UM	25/50/10
ID	BI/PD	25/50/15	NH	None	25/50/25	VA	BI/PD/UM	25/50/20
IL	BI/PD/UM	25/50/20	NJ	BI/PD/PIP/UM	15/30/5	WA	BI/PD	25/50/10
IN	BI/PD	25/50/25	NM	BI/PD	25/50/10	WV	BI/PD/UM	25/50/25
IA	BI/PD	20/40/15	NY	BI/PD/PIP/UM	35/50/10	WI	BI/PD/UM	25/50/10
KS	BI/PD/PIP	25/50/25	NC	BI/PD/UM	30/60/25	WY	BI/PD	25/50/20
KY	BI/PD/PIP	25/50/10	ND	BI/PD/PIP/UM	25/50/25	DC	BI/PD/PIP/UM	25/50/10

Tort-Based Motor Vehicle Insurance Jurisdictions

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their

⁵⁰ New Hampshire does not require auto insurance if the driver complies with alternative financial responsibility requirements. Florida only requires BI coverage after a driver is involved in a crash.

negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

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

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

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

III. Effect of Proposed Changes:

Repeal of the Florida Motor Vehicle No-Fault Law

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

Many of the provisions of the No-Fault Law are retained in s. 627.7265, F.S., as detailed below. Two of the most significant provisions not retained are the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

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

Mandatory Medical Payments Coverage⁵¹

Medical Payments Coverage Benefits

Section 3 creates s. 627.7265, F.S., which requires the inclusion of medical payments coverage of at least \$5,000 in each motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S.

Medical payments coverage protects the named insured, resident relatives, and all passengers and operators of the insured vehicle. Medical payments coverage must provide reimbursement of medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and ambulance, hospital, and nursing services.

MedPay provides reimbursement of 100 percent of covered medical care and services, which differs from PIP, which provides reimbursement for 80 percent of such services and care. Massage and acupuncture are not reimbursable under MedPay coverage, nor is treatment provided by a licensed massage therapist or licensed acupuncturist. MedPay benefits are generally primary except that worker's compensation benefits are primary and MedPay must reimburse the state Medicaid program for any benefits it pays.

The bill retains within MedPay the PIP requirements for obtaining medical reimbursement. An individual seeking reimbursement must receive initial services and care within 14 days of the motor vehicle accident from specified medical providers.⁵² Follow-up services and care are available upon the referral of one of the providers of initial services and care and must be consistent with the underlying medical diagnosis initially rendered. The bill specifies the licensed medical providers and entities that may provide MedPay benefits.

Requirements for Billing and Payment of MedPay Claims

The insurer must pay MedPay benefits to the insured within 30 days of receiving written notice of a covered loss. An insurer that denies a claim or makes partial payment must provide specifically itemize the treatments and services denied and provide medical necessity information the insurer wants the claimant to consider. If the claim denies a claim because of an alleged claim error, the insurer must provide an itemized explanation of benefits due to the specific error. The claimant has 15 days from receipt of the explanation to submit a revised claim. The bill provides standards for determining when payment is overdue and the interest that is due, and specifies that a general business practice of failing to timely provide benefits violates the Insurance Code. The bill specifies the procedures for an insurer to investigate potential acts of insurance fraud. Insurers are required to maintain a log of medical benefits paid for each insured and to give an insured that requests it, a copy of the log within 30 days of the request.

⁵¹ Footnotes in the Effect of Proposed Changes section of this analysis refer to the statutory citations contained in SB 1766, and not current law.

⁵² A licensed physician, licensed dentist, licensed chiropractor, by a person or entity licensed under part III of ch. 401, F.S. Initial services and care may also be provided in a licensed hospital, or in a facility that owns or is wholly owned by a licensed hospital.

MedPay generally retains provisions in the PIP statute related to payment of medical claims. These include the grounds for an insurer not paying a claim.⁵³ Billing requirements are retained, including requiring providers of medical services bill insurers for specified services within certain periods,⁵⁴ using specified forms for billing,⁵⁵ and directing insurers to investigate claims of improper billing.⁵⁶ Disclosure requirements are retained, including that insurers must notify insureds of MedPay rights⁵⁷ and medical providers must obtain from an insured a signed disclosure and acknowledgment form.⁵⁸ The law continues to require that specified entities obtain health care clinic licensure as a condition of receiving reimbursement, with exceptions.⁵⁹

Medical Fee Schedule for MedPay Reimbursement

Medical payments coverage reimbursement contains a medical fee schedule that is identical to the fee schedule for PIP. The fee schedule allows insurers to limit reimbursement to the following:

- Emergency services transport and treatment by licensed medical transportation service – 200 percent of Medicare.
- Emergency services and care provided by a licensed hospital – 75 percent of a hospital’s usual and customary charges.
- Emergency services and care and related hospital inpatient services provided by a licensed physician or dentist, if rendered in a facility licensed under ch. 395, F.S., (hospitals, ambulatory surgical centers, and mobile surgical facilities) – usual and customary charges in the community.
- Hospital inpatient services other than emergency services and care – 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.
- Hospital outpatient services other than emergency services and care – 200 percent of the Medicare Part A Ambulatory Payment Classification for that particular hospital.
- All other medical supplies, services, and care – 200 percent of the participating physician’s fee schedule of Medicare Part B, with the following exceptions:
 - Services, supplies, and care provided by ambulatory surgical centers and clinical laboratories – 200 percent of Medicare Part B.
 - Durable medical equipment – 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B.
 - Services, supplies, or care not reimbursable under Medicare Part B – 80 percent of the maximum reimbursement under workers’ compensation.
 - Services, supplies, or care that are not reimbursable under Medicare or workers’ compensation – no reimbursement.

⁵³ See s. 627.7265(6)(b), F.S.

⁵⁴ See s. 627.7265(6)(c), F.S.

⁵⁵ See s. 627.7265(6)(d), F.S.

⁵⁶ See s. 627.7265(6)(f), F.S.

⁵⁷ See s. 627.7265(7), F.S.

⁵⁸ See s. 627.7265(6)(e), F.S.

⁵⁹ See s. 627.7265(6)(h), F.S.

Claimant Compliance with MedPay Claims Investigations

The bill retains requirements that claimants comply with the insurer's claim investigation. These include that the claimant comply with the insurer's discovery of facts about an injured person,⁶⁰ insureds comply with policy terms, including submitting to an examination under oath,⁶¹ and that an insured is prohibited from unreasonably not notifying the insurer of the existence of a claim.⁶² The insured must also submit to a mental or physical examination upon the request of the insurer.⁶³

Prohibitions against Certain Acts by Insurers

Insurers are prohibited from systematically downcoding with intent to deny due reimbursement.⁶⁴ Insurers must notify insureds or assignees that policy limits have been reached within 15 days of that occurring.⁶⁵ Insurers may not limit the number of treatments or impose other utilization limits that apply under Medicare or workers' compensation. Insurers that engage in a general business practice of not paying valid claims until receiving a demand letter are subject to punishment under s. 626.9521, F.S., of the Unfair Insurance Trade Practices Act.

Insurance Fraud Related to MedPay Claims

The bill retains provisions in the PIP law related to insurance fraud. An insurer may bring a civil action against any person convicted of insurance fraud associated with a MedPay claim, and may recover punitive damages, attorney fees and costs.⁶⁶ Claims generated as a result of patient brokering are not reimbursable.⁶⁷ Insurers must send a fraud advisory notice to MedPay claimants informing them of potential monetary rewards for providing information related to insurance fraud and that claimants should report any solicitation of persons injured in a motor vehicle crash for the purpose of filing a MedPay claim or lawsuit to the Department of Financial Services.⁶⁸

Demand Letter and Single Action Requirements

As under PIP, a prospective plaintiff must provide a written demand letter to the insurer as a condition precedent to filing a legal action.⁶⁹ All claims related to the same health care provider for the same injured person, must be brought in one action, unless good cause is shown for bringing multiple claims.⁷⁰

Insurer Subrogation Rights

The bill allows insurers to subrogate losses paid by MedPay coverage when the wrongful act or omission of another causes such losses. The subrogation right is inferior to the rights of the

⁶⁰ See s. 627.7265(8)

⁶¹ See s. 627.7265(8)(g)

⁶² See s. 627.7265(8)(d)

⁶³ See s. 627.7265(9)

⁶⁴ See s. 627.7265(6)(g), F.S.

⁶⁵ See s. 627.7265(8)(e)

⁶⁶ See s. 627.7265(14)

⁶⁷ See s. 627.7265(16)

⁶⁸ See s. 627.7265(15)

⁶⁹ See s. 627.7265(11)

⁷⁰ See s. 627.7265(12)

injured insured, and is available only after all the insured's damages have been recovered and the insured has been made whole. If an insured recovers from a third party the full amount of damages sustained and delivers a release that impairs the insurer's subrogation right, the insured must repay MedPay benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs.

Mandatory Bodily Injury Liability Coverage Requirements

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond in damages for liability because of crashes arising out of the use of a motor vehicle.⁷¹ This requirement is usually met through the purchase of motor vehicle insurance.

Sections 9 and 10 amend s. 324.021, F.S., and s. 324.022, F.S., to require every owner of a motor vehicle registered in this state, and every operator of a motor vehicle licensed in this state to maintain the ability to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle in the amount of:

- Beginning January 1, 2018, through December 31, 2019, \$20,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$40,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2020, through December 31, 2021, \$25,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$50,000 for bodily injury or death of two or more people in any one crash.
- Beginning January 1, 2022, and thereafter \$30,000 for bodily injury or death of one person in any one crash, and subject to that limit for one person, \$60,000 for bodily injury or death of two or more people in any one crash.

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

Financial responsibility may be met through motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. From January 1, 2018, through December 31, 2019, minimum combined single limit will be \$50,000 and will subsequently increase to \$60,000 on January 1, 2020, and \$70,000 on January 1, 2022.

Required Provisions in Motor Vehicle Liability Policies

Section 324.151, F.S., requires motor vehicle liability insurance policies that serve as proof of financial responsibility to contain certain provisions. Current law requires the policy to explicitly describe or reference all motor vehicles covered by the policy and must insure the owner and any other person using an insured motor vehicle with the express or implied permission of the owner.

⁷¹ Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.

Meeting Financial Responsibility through a Certificate of Self-Insurance

Section 11 amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy. Two alternatives are also available under the statute. A person may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth.

The bill increases the amounts that must be deposited under both alternatives. **Sections 11 and 15** provide that under s. 324.161, F.S., a certificate of self-insurance must, beginning January 1, 2018, equal the number of vehicles owned times \$50,000, to a maximum of \$200,000. As of January 1, 2020, the deposit must equal the number of vehicles owned times \$60,000, to a maximum of \$240,000. On January 1, 2022, and thereafter, the deposit must equal the number of vehicles owned times \$70,000, to a maximum of \$280,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. The bill also requires all persons using this method to maintain excess coverage of the amount deposited. Current law does not require this of natural persons, and requires the excess coverage of a \$10,000/\$20,000/\$10,000 BI/PD or a \$30,000 combined single limit. The bill retains current law that the excess coverage must have limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit.

Section 16 provides that a certificate of self-insurance from the DHSMV pursuant to s. 324.171, F.S., may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$80,000 beginning January 1, 2018; at least \$100,000 beginning January 1, 2020; and at least \$120,000 beginning January 1, 2022, and thereafter. Current law requires a net unencumbered worth of at least \$40,000. A person other than a natural person may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$80,000 for the first motor vehicle and \$40,000 for each additional vehicle beginning on January 1, 2018; a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional motor vehicle beginning January 1, 2020; and a net unencumbered worth of at least \$120,000 for the first motor vehicle and \$60,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons. Current law requires a net unencumbered worth of \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle.

Financial Responsibility Requirement for For-Hire Vehicles

Section 12 amends s. 324.032, F.S., to apply the financial responsibility requirements for for-hire passenger vehicles to the operators of such vehicles. The bill also retains current law requiring the owner or lessee to meet the financial responsibility requirement.

Reinstatement Fees

Section 13 amends s. 324.071, F.S., to create uniform fees for the reinstatement of a suspended license. Under the bill, all reinstatement fees are \$150 for the first reinstatement. A second reinstatement within 3 years of the first requires a \$250 reinstatement fee and a third and subsequent reinstatements require a \$500 fee. These are the current reinstatement fees for failure

to maintain required PIP insurance in s. 324.0221, F.S. Currently, s. 324.071, F.S., requires a lower \$25 fee for failure to maintain BI liability coverage in certain circumstances.

Section 14 requires that such policies also insure any resident relative of a named insured. The bill also requires the policy to provide liability coverage for motor vehicles not described or referenced in the policy that are newly acquired vehicles and temporary substitute vehicles. The policy may only exclude a motor vehicle that is not described in the policy if it was owned by an insured or furnished for an insured's regular use for more than 30 consecutive days before the event giving rise to the claim and is not a newly acquired vehicle or temporary substitute vehicle.

The bill requires a motor vehicle liability insurance policy issued to a person who does not own a Florida-registered motor vehicle (and who is not already insured as a named insured, resident relative, or permissive operator of an insured motor vehicle) to insure named insureds against loss from liability. The policy need not provide such coverage if the vehicle was furnished for the named insured's regular use and was used by the named insured for more than 30 consecutive days before giving rise to the claim.

The bill requires motor vehicle liability insurance policies to insure all covered persons against loss from legal liability for litigation costs or attorney fees in any civil action defended by the insurer.

The bill also allows motor vehicle insurance policies to exclude liability coverage for a vehicle being used outside the United States or Canada at the time of the accident. Current law allows the policies to limit coverage to motor vehicles used in the United States and Canada.

Section 28 amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include BI liability coverage and PD liability coverage as required by s. 324.022, F.S., and MedPay coverage as required by s. 627.7265, F.S.

Chapter Title and Purpose Statement

Section 17 retitles ch. 324, F.S., the "Financial Responsibility Law of 2017" and makes it effective at 12:01 a.m., on January 1, 2018.

Section 8 amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that the chapter applies to the owners of motor vehicles.

Uninsured and Underinsured Motor Vehicle Insurance Coverage

Section 27 amends s. 627.727, F.S., which governs uninsured and underinsured motor vehicle insurance coverage. The bill specifies that the liability of an insurer providing UM coverage includes tort damages for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and future. Current law specifies that UM coverage does not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is of sufficient severity under s. 627.737(2), F.S.

Commercial Motor Vehicle Coverage Requirements

Section 30 amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

A commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$50,000 per occurrence beginning January 1, 2018; of no less than \$60,000 per occurrence beginning January 1, 2020; and of no less than \$70,000 per occurrence beginning January 1, 2022, and thereafter. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$100,000 per occurrence beginning January 1, 2018; of no less than \$120,000 per occurrence beginning January 1, 2020; and of no less than \$140,000 per occurrence beginning January 1, 2022, and thereafter. Current law requires \$100,000 of coverage.

Garage Liability Requirement

Section 6 amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill increases the garage liability insurance requirement. The bill requires at least a \$75,000 combined single limit policy that provides BI liability and PD liability coverage, and MedPay coverage. Current law only requires at least \$25,000 in such coverage and also requires PIP.

Section 7 amends s. 320.771, F.S., and applies the same garage liability insurance requirement to recreational vehicle dealers.

Technical and Conforming Changes

Section 4 amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill deletes references to PIP and inserts references to BI liability and PD liability coverages.

Section 18 revises the definition of a “clinic” contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to MedPay or bodily injury coverage.

Section 19 revises the definition of a “third party benefit” in s. 409.901, F.S., for purposes of Medicaid to refer to MedPay rather than PIP coverage.

Section 20 amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance medical coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

Section 21 amends s. 456.072, F.S., which allows the Department of Health to discipline licensees for submitting claims for PIP reimbursement when treatment was not rendered or that is intentionally upcoded, to instead refer to MedPay coverage.

Section 22 amends s. 626.9541(1)(i) and (o), F.S., to reference MedPay coverage rather than PIP in the prohibitions against the unfair insurance trade practice of not timely paying PIP claims, and the unfair practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

Section 23 amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to MedPay coverage rather than the No-Fault Law.

Sections 24 and 25 amend s. 627.0652 and s. 627.0653, F.S., relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to MedPay coverage.

Section 26 amends s. 627.4132, F.S., which prohibits stacking of motor vehicle coverage other than uninsured motorist coverage if the insured’s vehicle is not involved in the accident, to refer to BI and PD liability coverage rather than PIP.

Section 29 amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and insert references to BI liability coverage and MedPay coverage.

Section 31 amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD/MedPay.

Section 32 amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to MedPay coverage.

Section 33 amends s. 318.18(2), F.S., regarding nonmoving traffic violations to delete statutory references repealed by the bill.

Section 34 amends s. 320.0609, F.S., regarding transfer and exchange of registration license plates to eliminate a reference to PIP.

Sections 35 and 36 amend provisions in ch. 322, F.S., governing drivers licenses, to delete references to the No-Fault law repealed by the bill.

Section 37 amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and insert references to MedPay coverage and BI liability coverage.

Sections 38 and 39 amend s. 400.991, F.S., and s. 400.9935, F.S., of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to MedPay coverage.

Section 40 amends s. 456.057, F.S., regarding patient records, to correct a reference.

Section 41 amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to MedPay.

Section 42 amends s. 627.7263, F.S., which generally makes rental and leasing driver's insurance primary, to delete references to PIP and insert references to MedPay.

Section 43 amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of "policy."

Section 44 amends s. 627.915, F.S., which requires private passenger automobile insurers to annually report information to the office, to remove references to PIP.

Section 45 amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

Section 46 amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 47 amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 48 amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

Section 49 amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to automobile liability policy while retaining references to a motor vehicle liability policy.

Section 50 corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Application of Bill and Effective Date

Section 51 applies financial responsibility and medical payments coverage requirements created by the bill as follows:

- Effective January 1, 2018:
 - All Motor vehicle insurance policies issued or renewed may not include PIP.
 - All persons must maintain at least minimum security requirements, which is the ability to respond in damages for liability because of motor vehicle crashes in the amounts required by s. 324.021, F.S. (See Section 9)
 - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
 - New and renewal motor vehicle insurance policies used to prove financial responsibility must also provide medical payments coverage.
 - An existing motor vehicle insurance policy that provide PIP and property damage liability coverage but do not meet the new bodily injury liability requirements is deemed to meet the bodily injury and MedPay requirements until the policy is renewed, nonrenewed or cancelled on or after January 1, 2018.

- Insurers must allow each insured who has a policy providing PIP which is effective before January 1, 2018, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements effective on or after January 1, 2018. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2017, each motor vehicle insurer shall provide notice that:
 - The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2018, and that PIP coverage is no longer required or available for purchase.
 - That effective January 1, 2018, a person subject to the financial security requirements of s. 324.022, F.S., must maintain medical payments coverage and applicable minimum security requirements for bodily injury liability and property damage liability.
 - That a policyholder may obtain underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
 - That a policy effective before January 1, 2018, is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled.
 - That a policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
 - That if the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective January 1, 2018.

Section 52 requires all suspensions for failure to maintain required security as required by law in effect before January 1, 2018, remain in full force and effect after the effective date of this act. A driver may reinstate a suspended drivers license or registration as provided under s. 324.0221, F.S.

Section 53 directs the Division of Law Revision and Information to replace “the effective date of this act” with the date the act becomes a law.

Section 54 provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective January 1, 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:

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in a certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15.

Personal Injury Protection and property damage liability coverage are required under Florida law, and failure to maintain them is grounds for the suspension of a license or registration. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

The bill applies the reinstatement fees for failure to maintain mandatory coverage under s. 324.0221, F.S., to the failure to maintain BI liability coverage because the bill creates a financial responsibility requirement for bodily injury. See the “Government Sector Impact” section below additional information.

B. Private Sector Impact:

The report *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation* provides actuarial estimates of the savings expected from repealing the No-Fault Law.⁷² The charts in this section are taken from data in Appendix 2 and Appendix 3 of the report.

The following chart provides the statewide average premium for each auto insurance coverage under current law and premium estimates if the No-Fault Law is repealed and replaced with mandatory financial responsibility for bodily injury and mandatory medical payments coverage.

⁷² Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016). Available at <http://www.flair.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last accessed March 31, 2017).

**Average Annual Statewide Premium Paid by Coverage and
Estimates of Average Statewide Premium⁷³**

Coverage	Current Law 10/20/10 PIP/PD	Repeal PIP & Mandate 15/30/5 BI/MedPay	Repeal PIP & Mandate 25/50/5 BI/MedPay
Bodily Injury	\$329.22	\$462.32	\$469.37
PIP/MedPay	\$219.10	\$72.30	\$72.30
Uninsured Motorist	\$111.60	\$122.43	\$122.43
Property Damage	\$180.06	\$180.06	\$180.06
Comprehensive	\$102.03	\$102.03	\$102.03
Collision	\$267.50	\$267.50	\$267.50
TOTAL	\$1,209.51	\$1,206.94	\$1213.69

The chart below provides select average countywide estimates of the change in what policyholders will annually pay in premiums for certain coverages if the No-Fault law is repealed and replaced with a mandate to carry \$5,000 in MedPay insurance coverage and a financial responsibility requirement for bodily injury. The 2016 PIP Study indicates that replacing the \$10,000 PIP requirement with a \$5,000 MedPay coverage requirement will lower the premium paid for first-party medical motor vehicle insurance coverage. This reduction is offset by increases in premium for bodily injury liability coverage and uninsured motorist's coverage.

**Average Change in Annual Premiums by Coverage if the No-Fault Law is Repealed
and Financial Responsibility for Bodily Injury Liability and Medical Payments
Coverage is Mandatory**

County	Avg. MedPay 5	Avg. BI 15/30	Avg. BI 25/50	Avg. UM
Alachua	- \$84.83	+ \$101.03	+ \$106.15	+ \$8.88
Brevard	- \$94.07	+ \$113.84	+ \$119.60	+ \$9.66
Desoto	- \$121.87	+ \$107.98	+ \$113.44	+ \$9.30
Duval	- \$117.42	+ \$124.26	+ \$130.55	+ \$9.39
Escambia	- \$96.47	+ \$101.05	+ \$106.17	+ \$8.30
Hillsborough	- \$177.01	+ \$162.66	+ \$170.89	+ \$12.15
Leon	- \$82.88	+ \$102.79	+ \$107.99	+ \$8.36
Miami/Dade	- \$279.50	+ \$138.64	+ \$145.65	+ \$12.77
Orange	- \$161.52	+ \$131.99	+ \$138.67	+ \$9.94

⁷³ The header on the chart details the current minimum mandatory coverage limit for PIP/PD and possible minimum mandatory coverage limits for BI/MedPay. The statewide average premiums are for the coverages at any policy limit, not the minimum required limits under state law.

The 2016 PIP Study estimates that health insurers will cover approximately \$469.7 million of current PIP loss if No-Fault is repealed.⁷⁴ Health care providers will cover approximately \$32.8 million of current PIP losses. Injured claimants will cover approximately \$82.9 million in current PIP losses.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates that the application of the reinstatement fees in s. 324.0221, F.S., and screening new vehicles, including for-hire and heavy trucks, for compliance with financial responsibility will result in the DHSMV receiving revenues from reinstatement fees. The DHSMV provided the following estimate ranges of possible increased revenue to the Highway Safety Operating Trust Fund (HSOTF) and general revenue (GR) for the next 4 fiscal years⁷⁵:

- Fiscal Year 2018/2019
 - HSOTF – \$5,078,383 to \$8,512,621
 - GR – \$406,271 to \$681,010
- Fiscal Year 2019/2020
 - HSOTF – \$9,814,460 to \$16,315,614
 - GR – \$785,157 to \$1,305,249
- Fiscal Year 2020/2021
 - HSOTF – \$3,760,234 to \$10,309,367
 - GR – \$300,819 to \$824,749
- Fiscal Year 2021/2022
 - HSOTF – \$3,787,152 to \$10,383,144
 - GR – \$302,972 to \$830,652

The DHSMV estimates that 7,869 hours will be required for programming and implementation. These hours are estimated to have a fiscal impact to the DHSMV of \$553,935 in FTE and contracted resources. (Development: 604 hours @ \$40/hour + 4,642 hours @ \$100/hour and Testing: 2,623 hours @ \$25/hour).⁷⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.646, 320.02, 320.27, 320.771, 324.011, 324.021, 324.022, 324.031, 324.032, 324.071, 324.151, 324.161,

⁷⁴Office of Insurance Regulation, *Florida Office of Insurance Regulation Review of Personal Injury Protection Legislation*, pg. 6 (September 13, 2016).

⁷⁵ Florida Department of Highway Safety and Motor Vehicles, *2017 Agency Legislative Bill Analysis SB 1766*, at pg. 10 (March 31, 2017).

⁷⁶ See fn. 75 at pg. 10.

324.171, 324.251, 400.9905, 409.901, 409.910, 456.072, 626.9541, 626.989, 627.0652, 627.0653, 627.4132, 627.727, 627.7275, 627.7295, 627.7415, 627.8405, 817.234, 318.18, 320.0609, 322.251, 322.34, 324.0221, 400.991, 400.9935, 456.057, 627.06501, 627.7263, 627.728, 627.915, 628.909, 705.184, 713.78, 324.051, 324.091, 324.023.

This bill creates section 627.7265 of the Florida Statutes.

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

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Between lines 588 and 589
insert:

(i) Upon receiving notice of an accident that is potentially covered by medical payments benefits, the insurer must reserve \$2,500 of medical payments benefits for payment to physicians licensed under chapter 458 or chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital



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11 inpatient care. The amount required to be held in reserve may be
12 used only to pay claims from such physicians or dentists until
13 30 days after the date the insurer receives notice of the
14 accident. After the 30-day period, any amount of the reserve for
15 which the insurer has not received notice of such claims may be
16 used by the insurer to pay other claims. The time periods
17 specified in paragraph (b) for payment of medical payments
18 benefits are tolled for the period of time an insurer must hold
19 payment of a claim that is not from such physician or dentist to
20 the extent that the medical payments benefits not held in
21 reserve are insufficient to pay the claim. This paragraph does
22 not require an insurer to establish a claim reserve for
23 insurance accounting purposes.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 3787 - 3788

and insert:

(5) This section shall take effect upon this act becoming a law.

By Senator Lee

20-01083B-17

20171766__

1 A bill to be entitled
 2 An act relating to motor vehicle insurance; repealing
 3 ss. 627.730, 627.731, 627.7311, 627.732, 627.733,
 4 627.734, 627.736, 627.737, 627.739, 627.7401,
 5 627.7403, and 627.7405, F.S., which compose the
 6 Florida Motor Vehicle No-Fault Law; repealing s.
 7 627.7407, F.S., relating to application of the Florida
 8 Motor Vehicle No-Fault Law; creating s. 627.7265,
 9 F.S.; defining terms; requiring certain motor vehicle
 10 liability insurance policies to include specified
 11 medical payments coverage; prohibiting an insurer from
 12 offering medical payments coverage with a deductible;
 13 providing construction; authorizing an insurer to
 14 exclude medical payment benefits under certain
 15 circumstances; specifying requirements, limitations,
 16 and exclusions for medical payments coverage benefits;
 17 requiring rulemaking by the Financial Services
 18 Commission; providing requirements, procedures,
 19 conditions, exclusions, prohibited acts, and
 20 construction relating to an insurer's payment of
 21 medical payments coverage benefits; specifying
 22 requirements and procedures for, and conditions and
 23 limitations on, the reimbursement of certain
 24 providers' charges for medical care under medical
 25 payments coverage; providing that reimbursements may
 26 be limited according to a specified schedule of
 27 maximum charges; providing construction; providing
 28 that insurers or insureds are not required to pay
 29 certain claims or charges; requiring the Department of

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

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30 Health to adopt certain rules; specifying procedures,
 31 forms, and requirements for providers in furnishing
 32 statements of charges and other statements and bills
 33 to insurers; providing construction; specifying
 34 disclosure and informed consent requirements for
 35 certain entities providing medical services; requiring
 36 the commission to adopt rules; requiring insurers to
 37 investigate certain claims for improper billing and
 38 providing procedures and requirements for such
 39 investigations; prohibiting a certain act by an
 40 insurer with the intent to deny reimbursement;
 41 requiring certain entities to be licensed as clinics
 42 to receive reimbursement under medical payments
 43 coverage; providing exceptions; requiring insurers to
 44 provide named insureds with a specified form notifying
 45 the insureds of their right to receive medical
 46 payments coverage; providing requirements for the
 47 notice and for providing such notice; providing
 48 requirements, procedures, and prohibited acts related
 49 to discovery of facts about an insured person who
 50 makes a medical payments coverage claim; requiring
 51 such person to provide specified information to an
 52 insurer upon request; providing procedures that apply
 53 in the event of a dispute over discovery of facts;
 54 providing requirements, prohibitions, and construction
 55 relating to mental and physical examinations of
 56 injured persons covered by medical payments coverage;
 57 providing applicability of provisions relating to
 58 attorney fees; requiring that a specified

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

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20171766__

59 prelitigation demand letter be provided to an insurer
 60 before an action for benefits may be filed; providing
 61 requirements for delivering a demand letter to the
 62 insurer; requiring an insurer to file certain
 63 information designating an authorized representative
 64 with the Office of Insurance Regulation; prohibiting
 65 an action against an insurer if the insurer, within a
 66 specified time, pays specified amounts or provides a
 67 written statement agreeing to pay specified amounts
 68 for future treatment; requiring certain civil action
 69 claims to be brought in a single action unless good
 70 cause is shown; providing that insurers who
 71 repeatedly, and as a general business practice, fail
 72 to pay certain valid claims are subject to penalties
 73 for unfair or deceptive trade practices; authorizing
 74 the Department of Legal Affairs to investigate and
 75 initiate actions for such violations; providing an
 76 insurer with a civil cause of action against certain
 77 persons convicted of or pleading guilty or nolo
 78 contendere to certain violations; specifying
 79 recoverable damages; requiring an insurer, when a
 80 claim is filed, to provide a specified fraud advisory
 81 notice to an insured or the person who is the subject
 82 of the claim; providing construction relating to
 83 certain nonreimbursable claims; authorizing electronic
 84 transmittal of certain documents; authorizing an
 85 insurer to include in its policies a specified right
 86 of subrogation for medical payments benefits;
 87 providing construction; amending s. 316.646, F.S.;

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88 revising applicability of a requirement to have
 89 immediate possession of proof of maintenance of
 90 certain security; amending s. 320.02, F.S.; revising
 91 the motor vehicle insurance coverages that an
 92 applicant must show to register certain vehicles with
 93 the Department of Highway Safety and Motor Vehicles;
 94 deleting a requirement that specified information be
 95 included on a certain insurance proof-of-purchase
 96 card; revising construction; conforming a provision to
 97 changes made by the act; amending s. 320.27, F.S.;
 98 revising requirements for furnishing certain insurance
 99 coverage information on an application for a motor
 100 vehicle dealer; revising insurance coverage
 101 requirements for certain motor vehicle dealers;
 102 conforming a provision to changes made by the act;
 103 amending s. 320.771, F.S.; revising garage liability
 104 coverage requirements for a recreational vehicle
 105 dealer license applicant; amending s. 324.011, F.S.;
 106 revising legislative intent; amending s. 324.021,
 107 F.S.; revising definitions of the terms "motor
 108 vehicle" and "proof of financial responsibility";
 109 revising, at specified timeframes, minimum coverage
 110 requirements for proof of financial responsibility;
 111 defining the term "for-hire passenger transportation
 112 vehicle"; conforming a cross-reference; amending s.
 113 324.022, F.S.; revising, at specified timeframes,
 114 minimum liability coverage requirements for motor
 115 vehicle owners and operators; revising authorized
 116 methods for meeting such requirements; revising the

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117 vehicles that are excluded from the definition of the
 118 term "motor vehicle" and providing security
 119 requirements for certain excluded vehicles; deleting
 120 the definition of the term "owner"; conforming
 121 provisions to changes made by the act; conforming
 122 cross-references; amending s. 324.031, F.S.; revising
 123 applicability of a provision authorizing certain
 124 methods of proving financial responsibility; revising,
 125 at specified timeframes, the amount of a certificate
 126 of deposit that is required for a specified method of
 127 proof of financial responsibility; revising insurance
 128 coverage requirements for a person electing to use
 129 such method; amending s. 324.032, F.S.; revising
 130 applicability of the minimum requirements of financial
 131 responsibility for for-hire passenger transportation
 132 vehicles; revising such requirements; revising a
 133 requirement for a motor vehicle liability policy that
 134 is obtained to comply with such requirements;
 135 conforming a cross-reference; amending s. 324.071,
 136 F.S.; revising the fee for reinstating an owner's or
 137 operator's license or registration that has been
 138 suspended for specified reasons; amending s. 324.151,
 139 F.S.; revising requirements for a motor vehicle
 140 liability policy that serves as proof of financial
 141 responsibility for certain operators or owners;
 142 authorizing an insurer to exclude liability coverage
 143 in the policy under certain circumstances; defining
 144 terms; amending s. 324.161, F.S.; revising
 145 requirements for a certificate of deposit that is

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146 required if a person elects a certain method of
 147 providing financial responsibility; amending s.
 148 324.171, F.S.; revising, at specified timeframes, the
 149 minimum net worth requirements that qualify certain
 150 persons as self-insurers; conforming provisions to
 151 changes made by the act; amending s. 324.251, F.S.;
 152 revising the short title and an effective date;
 153 amending s. 400.9905, F.S.; revising the definition of
 154 the term "clinic"; amending s. 409.901, F.S.; revising
 155 the definition of the term "third-party benefit";
 156 amending s. 409.910, F.S.; revising the definition of
 157 the term "medical coverage"; amending s. 456.072,
 158 F.S.; revising applicability of certain grounds for
 159 discipline, relating to medical payments coverage
 160 claims rather than personal injury protection claims,
 161 for certain health professions; amending s. 626.9541,
 162 F.S.; revising the types of insurance coverage
 163 applicable to certain prohibited acts; conforming a
 164 cross-reference; amending s. 626.989, F.S.; revising
 165 the definition of the term "fraudulent insurance act";
 166 amending s. 627.0652, F.S.; revising the coverages of
 167 a motor vehicle insurance policy which must provide a
 168 premium charge reduction under certain circumstances;
 169 amending s. 627.0653, F.S.; revising the coverages of
 170 a motor vehicle insurance policy which must or may
 171 provide a premium discount under certain
 172 circumstances; amending s. 627.4132, F.S.; revising
 173 the coverages of a motor vehicle policy which must
 174 provide a specified limitation; amending s. 627.727,

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175 F.S.; revising the legal liability of an uninsured
 176 motorist coverage insurer; conforming a provision to
 177 changes made by the act; amending s. 627.7275, F.S.;
 178 revising applicability and required coverages for a
 179 motor vehicle insurance policy; conforming provisions
 180 to changes made by the act; amending s. 627.7295,
 181 F.S.; revising the definitions of the terms "policy"
 182 and "binder"; revising the coverages of a motor
 183 vehicle insurance policy for which a licensed general
 184 lines agent may charge a specified fee; revising
 185 applicability; conforming a cross-reference; amending
 186 s. 627.7415, F.S.; revising, at specified intervals,
 187 the minimum levels of certain liability insurance for
 188 commercial motor vehicles; amending s. 627.8405, F.S.;
 189 revising the coverages of a policy sold in conjunction
 190 with an accidental death and dismemberment policy and
 191 prohibiting a premium finance company from taking
 192 certain acts relating to such policies; revising
 193 coverages that are the subject of certain disclosure
 194 rules by the commission; amending s. 817.234, F.S.;
 195 revising the applicability of certain criminal acts of
 196 insurance fraud, from personal injury protection
 197 insurance to medical payments coverage; amending ss.
 198 318.18, 320.0609, 322.251, 322.34, 324.0221, 400.991,
 199 400.9935, 456.057, 627.06501, 627.7263, 627.728,
 200 627.915, 628.909, 705.184, and 713.78, F.S.;
 201 conforming provisions to changes made by the act;
 202 amending ss. 324.051 and 324.091, F.S.; making
 203 technical changes; amending s. 324.023, F.S.;

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204 conforming cross-references; defining the term
 205 "minimum security requirements"; providing
 206 applicability and construction; providing requirements
 207 and procedures relating to motor vehicle insurance
 208 policies providing personal injury protection as of
 209 the effective date of the act; requiring an insurer to
 210 provide, by a specified date, a specified notice to
 211 policyholders relating to requirements under the act;
 212 providing for construction relating to suspensions for
 213 failure to maintain required security in effect before
 214 the effective date of the act; providing a directive
 215 to the Division of Law Revision and Information;
 216 providing effective dates.

217
 218 Be It Enacted by the Legislature of the State of Florida:

219
 220 Section 1. Sections 627.730, 627.731, 627.7311, 627.732,
 221 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403,
 222 and 627.7405, Florida Statutes, which compose the Florida Motor
 223 Vehicle No-Fault Law, are repealed.

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

225 Section 3. Section 627.7265, Florida Statutes, is created
 226 to read:

227 627.7265 Motor vehicle insurance; medical payments
 228 coverage.—

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

230 (a) "Broker" means a person who does not possess a license
 231 under chapter 395, chapter 400, chapter 429, chapter 458,
 232 chapter 459, chapter 460, chapter 461, or chapter 641, who

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charges or receives compensation for any use of medical equipment and who is not the 100 percent owner or the 100 percent lessee of such equipment. For purposes of this section, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100-percent-owned affiliates and subsidiaries. As used in this subsection, the term "lessee" means a long-term lessee under a capital or operating lease, but does not include a part-time lessee. The term "broker" does not include a hospital or physician management company whose medical equipment is ancillary to the practices managed; a debt collection agency; an entity that has contracted with the insurer to obtain a discounted rate for such services; a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment; or an entity that is 100-percent-owned by one or more hospitals or physicians. The term "broker" does not include a person or entity that certifies, upon request of an insurer, that:

1. It is a clinic licensed under ss. 400.990-400.995;

2. It is a 100-percent-owner of medical equipment; and

3. The owner's only part-time lease of medical equipment for medical payments coverage patients is on a temporary basis not to exceed 30 days in a 12-month period, and such lease is solely for the purposes of necessary repair or maintenance of the 100-percent-owned medical equipment or pending the arrival and installation of the newly purchased or a replacement for the 100-percent-owned medical equipment, or for patients for whom, because of physical size or claustrophobia, it is determined by

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the medical director or clinical director to be medically necessary that the test be performed in medical equipment that is open-style. The leased medical equipment cannot be used by patients who are not patients of the registered clinic for medical treatment services. Any person or entity making a false certification under this subsection commits insurance fraud as described in s. 817.234. However, the 30-day period provided in this subparagraph may be extended for an additional 60 days as applicable to magnetic resonance imaging equipment, if the owner certifies that the extension otherwise complies with this subparagraph.

(b) "Entity wholly owned" means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity, including, but not limited to, being reflected as the business owners on the title or lease of the physical facility, filing taxes as the business owners, being account holders on the entity's bank account, being listed as the principals on all incorporation documents required by this state, and having ultimate authority over all personnel and compensation decisions relating to the entity. However, this term does not include an entity that is wholly owned, directly or indirectly, by a hospital licensed under chapter 395.

(c) "Hospital" means a facility that, at the time medical care was rendered, was licensed under chapter 395.

(d) "Incident," with respect to services considered as incident to a physician's professional service for a physician

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licensed under chapter 458, chapter 459, chapter 460, or chapter 461, if not furnished in a hospital, means such services must be an integral, even if incidental, part of a covered physician's service.

(e) "Knowingly" means that a person has actual knowledge of information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the information. Proof of specific intent to defraud is not required.

(f) "Lawful" or "lawfully" means in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical care.

(g) "Medical care" means any medical service, medical treatment, medical supply, medical transportation, prescription drug, or emergency services and care as defined in s. 395.002(9).

(h) "Medically necessary" means medical care that a prudent physician or other qualified health care professional would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is:

1. In accordance with generally accepted standards of medical practice;

2. Clinically appropriate in terms of type, frequency, extent, site, and duration; and

3. Not primarily for the convenience of the patient, physician, or other health care provider.

(i) "Motor vehicle" means a self-propelled vehicle with four or more wheels which is designed and required to be

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licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include:

1. A mobile home; or

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

(j) "Named insured" means a person identified in a policy by name as an insured under the policy.

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

(l) "Properly completed" means providing truthful, substantially complete, and substantially accurate responses as to all material elements to each applicable request for information or for a statement, by a means that may lawfully be provided and that complies with this section or as agreed by the parties.

(m) "Resident relative" means a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit as the named insured, regardless of whether the resident relative temporarily lives elsewhere.

(n) "Temporary substitute vehicle" means a motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the

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policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

(o) "Unbundled" means an action that submits a billing code that is properly billed under one billing code, but that has been separated into two or more billing codes, which would result in payment greater in amount than would be paid using one billing code.

(p) "Upcoded" means an action that submits a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than for the components if billed separately; however, payment of such a bill constitutes payment in full for all components of such service.

(2) REQUIRED SECURITY.—

(a) A motor vehicle liability insurance policy that is furnished as proof of financial responsibility pursuant to s. 324.031 must include medical payments coverage as provided in this section. The medical payments coverage must protect the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and other persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle, to a limit of at least \$5,000 per person for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle.

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(b) An insurer may not offer medical payments coverage with a deductible to an applicant or policyholder.

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

(3) AUTHORIZED EXCLUSIONS.—Notwithstanding any other requirement herein, an insurer may exclude medical payment benefits:

(a) For injury sustained by the named insured or a resident relative while occupying another motor vehicle owned by the named insured and not insured under the policy, unless such vehicle qualifies as a newly acquired vehicle or temporary substitute vehicle.

(b) For injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(c) For any person who intentionally causes injury to himself or herself.

(d) For any person injured while committing a felony.

(4) REQUIRED BENEFITS.—

(a) Medical payments coverage must provide reimbursement of medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and ambulance, hospital, and nursing services, if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident. Medical payments coverage provides reimbursement only for:

1. Initial services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter

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466, or a chiropractic physician licensed under chapter 460; or that are provided in a hospital or in a facility that owns, or is wholly owned by, a hospital. Initial services and care may also be provided by a person or entity licensed under part III of chapter 401 which provides emergency transportation and treatment.

2. Upon referral by a provider described in subparagraph 1., followup services and care consistent with the underlying medical diagnosis rendered pursuant to subparagraph 1. which may be provided, supervised, ordered, or prescribed only by a physician licensed under chapter 458 or chapter 459; a chiropractic physician licensed under chapter 460; a dentist licensed under chapter 466; or, to the extent permitted by applicable law and under the supervision of such physician, osteopathic physician, chiropractic physician, or dentist, by a physician assistant licensed under chapter 458 or chapter 459 or an advanced registered nurse practitioner licensed under chapter 464. Followup services and care may also be provided by the following persons or entities:

a. A hospital or ambulatory surgical center licensed under chapter 395.

b. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466, or by such practitioners and the spouse, parent, child, or sibling of such practitioners.

c. An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.

d. A physical therapist licensed under chapter 486, based

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upon a referral by a provider described in this subparagraph.

e. A health care clinic licensed under part X of chapter 400 which is accredited by an accrediting organization whose standards incorporate comparable regulations required by this state, or which:

(I) Has a medical director licensed under chapter 458, chapter 459, or chapter 460;

(II) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and

(III) Provides at least four of the following medical specialties:

(A) General medicine.

(B) Radiography.

(C) Orthopedic medicine.

(D) Physical medicine.

(E) Physical therapy.

(F) Physical rehabilitation.

(G) Prescribing or dispensing outpatient prescription medication.

(H) Laboratory services.

(b) Medical benefits do not include massage as defined in s. 480.033 or acupuncture as defined in s. 457.102, regardless of the person, entity, or licensee providing massage or acupuncture, and a licensed massage therapist or licensed acupuncturist may not be reimbursed for medical benefits under this section.

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(c) The commission shall adopt by rule the form specified in sub-subparagraph (a)2.b., sub-subparagraph (a)2.c., or sub-subparagraph (a)2.e. which must be used by an insurer and a health care provider to document that the health care provider meets the criteria of this paragraph. Such rule must include a requirement for a sworn statement or affidavit.

(5) PAYMENT OF BENEFITS.—

(a) Benefits due from an insurer under medical payments coverage are primary to any health insurance benefit of a person injured in a motor vehicle accident and apply to any coinsurance or deductible amount required by the injured person's health insurance policy, except that:

1. Benefits received under any workers' compensation law must be credited against medical payments coverage benefits and must be due and payable as loss accrues.

2. When the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, medical payments benefits are subject to the provisions of the Medicaid Program, and, within 30 days after receiving notice that the Medicaid program paid such benefits, the insurer must repay the full amount of the benefits to the Medicaid program.

(b) Medical payments coverage benefits payable under this section are overdue if they are not paid within 30 days after the insurer is furnished with written notice of the fact and the amount of a covered loss. However:

1. If written notice of the entire claim is not furnished

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to the insurer, any partial amount supported by written notice is overdue if it is not paid within 30 days after the notice is furnished to the insurer. The remainder of the claim, or any part thereof, which is subsequently supported by written notice is overdue if not paid within 30 days after the notice is furnished to the insurer.

2. If an insurer pays only a portion of a claim or rejects a claim, the insurer must provide at the time of the partial payment or rejection an itemized specification of each item that the insurer had reduced, omitted, or declined to pay and any information that the insurer desires the claimant to consider related to the medical necessity of the denied treatment or any information that explains the reasonableness of the reduced charge if this does not limit the introduction of evidence at trial. The insurer shall also include the name and address of the person to whom the claimant should respond and a claim number to be referenced in future correspondence.

3. If an insurer pays only a portion of a claim or rejects a claim due to an alleged error in the claim, the insurer, at the time of the partial payment or rejection, must provide an itemized specification or explanation of benefits due to the specified error. Upon receiving the specification or explanation, the person making the claim, at his or her option and without waiving any other legal remedy for payment, has 15 days to submit a revised claim. The submission of a revised claim is considered a timely submission of written notice of a claim.

4. Notwithstanding the fact that written notice has been furnished to the insurer, payment is not overdue if the insurer

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523 has reasonable proof that the insurer is not responsible for the
524 payment.

525 5. For the purpose of calculating the extent to which
526 benefits are overdue, payment is treated as being made on the
527 date that a draft, or other valid instrument that is equivalent
528 to payment, was placed in the United States mail in a properly
529 addressed, postpaid envelope or, if not so posted, on the date
530 of delivery.

531 6. This paragraph does not preclude or limit the ability of
532 the insurer to assert that the claim was unrelated, was not
533 medically necessary, or was unreasonable or that the amount of
534 the charge was in excess of that permitted under, or is in
535 violation of, subsection (6). Such assertion may be made at any
536 time, including after payment of the claim or after the 30-day
537 period for payment specified in this paragraph.

538 (c) All overdue payments bear simple interest at the rate
539 established under s. 55.03 or the rate established in the
540 insurance contract, whichever is greater, for the quarter in
541 which the payment became overdue, calculated from the date the
542 insurer was furnished with written notice of the amount of
543 covered loss. Interest is due at the time payment of the overdue
544 claim is made.

545 (d) It is a violation of the Florida Insurance Code for an
546 insurer to fail to timely provide benefits as required by this
547 section with such frequency as to constitute a general business
548 practice.

549 (e) If two or more insurers are liable for paying medical
550 payments coverage benefits for the same injury to any one
551 person, the maximum payable benefits are as specified in

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552 subsection (2), and the insurer paying the benefits is entitled
553 to recover from each of the other insurers an equitable pro rata
554 share of the benefits paid and expenses incurred in processing
555 the claim.

556 (f) Benefits are not due or payable to or on behalf of an
557 insured person if that person has committed, by a material act
558 or omission, insurance fraud relating to medical payments
559 coverage under his or her policy if the fraud is admitted to in
560 a sworn statement by the insured or established in a court of
561 competent jurisdiction. Any insurance fraud voids all coverage
562 arising from the claim related to such fraud under the medical
563 payments coverage of the insured person who committed the fraud,
564 regardless of whether a portion of the insured person's claim
565 may be legitimate, and any benefits paid before the discovery of
566 the fraud is recoverable by the insurer in its entirety from the
567 person who committed insurance fraud. The prevailing party is
568 entitled to its costs and attorney fees in any action in which
569 it prevails in an insurer's action to enforce its right of
570 recovery under this paragraph.

571 (g) If an insurer has a reasonable belief that a fraudulent
572 insurance act, for the purposes of s. 626.989 or s. 817.234, has
573 been committed, the insurer must notify the claimant in writing
574 and within 30 days after submission of the claim that the claim
575 is being investigated for suspected fraud. Beginning at the end
576 of the initial 30-day period, the insurer has an additional 60
577 days to conduct its fraud investigation. No later than 90 days
578 after the submission of the claim, the insurer shall deny the
579 claim or pay the claim with simple interest as provided in
580 paragraph (c). Interest is assessed from the day the claim is

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581 submitted until the day the claim is paid. All claims denied for
 582 suspected fraudulent insurance acts shall be reported to the
 583 Division of Investigative and Forensic Services.

584 (h) An insurer shall create and maintain for each insured a
 585 log of medical payments benefits paid by the insurer on behalf
 586 of the insured. The insurer shall provide to the insured a copy
 587 of the log within 30 days after receiving a request for the log
 588 from the insured.

589 (6) CHARGES FOR CARE OF INJURED PERSONS.—

590 (a) A physician, hospital, clinic, or other person or
 591 institution lawfully providing medical care to an injured person
 592 for a bodily injury covered by medical payments coverage may
 593 charge the insurer and injured party only a reasonable amount
 594 pursuant to this section for the medical care provided, and the
 595 insurer providing such coverage may pay such charges directly to
 596 such person or institution lawfully providing such medical care
 597 if the insured receiving such care, or his or her guardian, has
 598 countersigned the properly completed invoice, bill, or claim
 599 form approved by the office upon which such charges are to be
 600 paid for as having actually been provided, to the best knowledge
 601 of the insured or his or her guardian. However, such charges may
 602 not exceed the amount the person or institution customarily
 603 charges for like medical care. In determining whether a charge
 604 for a particular service, treatment, supply, or prescription is
 605 reasonable, consideration may be given to evidence of usual and
 606 customary charges and payments accepted by the provider involved
 607 in the dispute; reimbursement levels in the community and
 608 various federal and state medical fee schedules applicable to
 609 motor vehicle and other insurance coverages; and other

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610 information relevant to the reasonableness of the reimbursement
 611 for the service, treatment, supply, or prescription.

612 1. The insurer may limit reimbursement to the following
 613 schedule of maximum charges:

614 a. For emergency transport and treatment by providers
 615 licensed under chapter 401, 200 percent of Medicare.

616 b. For emergency services and care provided by a hospital
 617 licensed under chapter 395, 75 percent of the hospital's usual
 618 and customary charges.

619 c. For emergency services and care, as defined in s.
 620 395.002, provided in a facility licensed under chapter 395 and
 621 rendered by a physician or dentist, and related hospital
 622 inpatient services rendered by a physician or dentist, the usual
 623 and customary charges in the community.

624 d. For hospital inpatient services other than emergency
 625 services and care, 200 percent of the Medicare Part A
 626 prospective payment applicable to the specific hospital
 627 providing the inpatient services.

628 e. For hospital outpatient services other than emergency
 629 services and care, 200 percent of the Medicare Part A Ambulatory
 630 Payment Classification for the specific hospital providing the
 631 outpatient services.

632 f. For all other medical services, supplies, and care, 200
 633 percent of the allowable amount under:

634 (I) The participating physician's fee schedule of Medicare
 635 Part B, except as provided in sub-sub-subparagraphs (II) and
 636 (III).

637 (II) Medicare Part B, in the case of services, supplies,
 638 and care provided by ambulatory surgical centers and clinical

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laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered. The applicable fee schedule or payment limitation applies to services, supplies, or care rendered during that service year notwithstanding any subsequent change made to the fee schedule or payment limitation; however, it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

3. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under workers' compensation is determined under s. 440.13 and rules adopted thereunder which

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are in effect at the time such services, supplies, or care is provided.

4. Subparagraph 1. does not authorize the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided medical care under the scope of his or her license, regardless of whether the provider is entitled to reimbursement under Medicare or workers' compensation due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care, if the coding policy or payment methodology does not constitute a utilization limit.

5. If an insurer limits payment as authorized by subparagraph 1., the person providing such medical care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's medical payments coverage due to the maximum policy limits.

6. An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph.

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697 A policy form approved by the office satisfies this requirement.
 698 If a provider submits a charge for an amount less than the
 699 amount allowed under subparagraph 1., the insurer may pay the
 700 amount of the charge submitted.

701 (b)1. An insurer or insured is not required to pay a claim
 702 or charges:

703 a. Made by a broker or by a person making a claim on behalf
 704 of a broker;

705 b. For any service or treatment that was not lawful at the
 706 time rendered;

707 c. To any person who knowingly submits a false or
 708 misleading statement relating to the claim or charges;

709 d. With respect to a bill or statement that does not
 710 substantially meet the applicable requirements of paragraph (d);

711 e. For medical care billed by a physician and not provided
 712 in a hospital unless such care is rendered by the physician or
 713 is incident to his or her professional services and is included
 714 on the physician's bill, including documentation verifying that
 715 the physician is responsible for the medical care that was
 716 rendered and billed; or

717 f. For any treatment or service that is upcoded or that is
 718 unbundled when such treatment or services should be bundled. To
 719 facilitate prompt payment of lawful services, an insurer may
 720 change codes that it determines have been improperly or
 721 incorrectly upcoded or unbundled and may make payment based on
 722 the changed codes, without affecting the right of the provider
 723 to dispute the change by the insurer, if, before doing so, the
 724 insurer contacts the health care provider and discusses the
 725 reasons for the insurer's change and the health care provider's

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726 reason for the coding, or makes a reasonable good faith effort
 727 to do so, as documented in the insurer's file.

728 2. The Department of Health, in consultation with the
 729 appropriate professional licensing boards, shall adopt by rule a
 730 list of diagnostic tests deemed not to be medically necessary
 731 for use in the treatment of persons sustaining bodily injury
 732 covered by medical payments benefits under this section. The
 733 list must be revised from time to time as determined by the
 734 Department of Health in consultation with the respective
 735 professional licensing boards. Inclusion of a test on the list
 736 must be based on a lack of demonstrated medical value and a
 737 level of general acceptance by the relevant provider community
 738 and may not be dependent on results entirely upon subjective
 739 patient response. Notwithstanding its inclusion on a fee
 740 schedule in this subsection, an insurer or insured is not
 741 required to pay any charges or reimburse claims for an invalid
 742 diagnostic test as determined by the Department of Health.

743 (c) With respect to any medical care other than medical
 744 services billed by a hospital or other provider for emergency
 745 services and care, as defined in s. 395.002, or inpatient
 746 services rendered at a hospital-owned facility, the statement of
 747 charges must be furnished to the insurer by the provider. The
 748 statement may not include, and the insurer is not required to
 749 pay, charges for treatment or services rendered more than 35
 750 days before the postmark date or electronic transmission date of
 751 the statement, except for past due amounts previously billed on
 752 a timely basis under this paragraph and except that, if the
 753 provider submits to the insurer a notice of initiation of
 754 treatment within 21 days after its first examination or

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treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement. The injured party is not liable for, and the provider may not bill the injured party for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable.

1. If the insured fails to furnish the provider with the correct name and address of the insured's medical payments coverage insurer, the provider has 35 days from the date the provider obtains the correct information to furnish the insurer with a statement of the charges. The insurer is not required to pay for such charges unless the provider includes with the statement documentary evidence that was provided by the insured during the 35-day period demonstrating that the provider reasonably relied on erroneous information from the insured, and either:

a. A denial letter from the incorrect insurer; or

b. Proof of mailing, which may include an affidavit under penalty of perjury, reflecting timely mailing to the incorrect address or insurer.

2. For emergency services and care rendered in a hospital emergency department or for transport and treatment rendered by an ambulance provider licensed pursuant to part III of chapter 401, the provider is not required to furnish the statement of charges within the time periods established by this paragraph, and the insurer is not deemed to have been furnished with notice of the amount of covered loss for purposes of paragraph (5)(b)

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until it receives a statement, or a copy thereof, complying with paragraph (d) which specifically identifies the place of service to be a hospital emergency department or an ambulance in accordance with billing standards recognized by the federal Centers for Medicare and Medicaid Services.

(d) All statements and bills for medical services rendered by a physician, hospital, clinic, or other person or institution must be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services Form CMS-1500, a UB-92 form, or any other standard form approved by the office and adopted by the commission for purposes of this paragraph. All billings for such services rendered by providers must, to the extent applicable, comply with the Form CMS-1500 instructions, the codes established by the American Medical Association (AMA) Current Procedural Terminology Editorial Panel, and the Healthcare Common Procedure Coding System (HCPCS) and must follow the Physicians' Current Procedural Terminology (CPT), the HCPCS in effect for the year in which services are rendered, and the International Classification of Diseases (ICD) adopted by the United States Department of Health and Human Services in effect for the year in which services are rendered. All providers, other than hospitals, must include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, Including Degrees or Credentials." The guidance for determining compliance with applicable CPT and HCPCS coding must be provided by the CPT or the HCPCS in effect for the year in which services were rendered, the Office of the Inspector General, Physicians Compliance Guidelines, and other

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 813 authoritative treatises designated by rule by the Agency for
 814 Health Care Administration. A statement of medical services may
 815 not include charges for medical services of a person or entity
 816 that performed such services without possessing the valid
 817 licenses required to perform such services. For purposes of
 818 paragraph (5)(b), an insurer is not considered to have been
 819 furnished with notice of the amount of covered loss or medical
 820 bills due unless the statements or bills comply with this
 821 paragraph and are properly completed in their entirety as to all
 822 material provisions, with all relevant information being
 823 provided therein.

824 (e)1. At the initial treatment or service provided, each
 825 physician, other licensed professional, clinic, or other medical
 826 institution providing medical services upon which a claim for
 827 medical payments coverage benefits is based shall require the
 828 insured person or his or her guardian to execute a disclosure
 829 and acknowledgment form that reflects at a minimum that:

830 a. The insured, or his or her guardian, must countersign
 831 the form attesting to the fact that the services set forth
 832 therein were actually rendered;

833 b. The insured, or his or her guardian, has both the right
 834 and affirmative duty to confirm that the services were actually
 835 rendered;

836 c. The insured, or his or her guardian, was not solicited
 837 by any person to seek any services from the medical provider;

838 d. The physician, other licensed professional, clinic, or
 839 other medical institution rendering services for which payment
 840 is being claimed explained the services to the insured or his or
 841 her guardian; and

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 842 e. If the insured notifies the insurer in writing of a
 843 billing error, the insured may be entitled to a certain
 844 percentage of a reduction in the amounts paid by the insured's
 845 motor vehicle insurer.

846 2. The physician, other licensed professional, clinic, or
 847 other medical institution rendering services for which payment
 848 is being claimed has the affirmative duty to explain to the
 849 insured or to his or her guardian the services rendered, so that
 850 the insured or his or her guardian countersigns the form with
 851 informed consent.

852 3. A countersignature by the insured or his or her guardian
 853 is not required for the reading of diagnostic tests or other
 854 services that are of such a nature that they are not required to
 855 be performed in the presence of the insured.

856 4. The licensed medical professional rendering treatment
 857 for which payment is being claimed shall sign, by his or her own
 858 hand, the form complying with this paragraph.

859 5. The original completed disclosure and acknowledgment
 860 form must be furnished to the insurer pursuant to paragraph
 861 (5)(b) and may not be electronically furnished.

862 6. The disclosure and acknowledgment form is not required
 863 for emergency services and care as defined in s. 395.002 which
 864 are billed by a provider and which are rendered in a hospital
 865 emergency department, or for transport and treatment rendered by
 866 an ambulance provider licensed pursuant to part III of chapter
 867 401.

868 7. The commission shall adopt by rule a standard disclosure
 869 and acknowledgment form to be used to fulfill the requirements
 870 of this paragraph.

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871 8. As used in this paragraph, the terms "countersign" and
 872 "countersignature" mean a second or verifying signature, as on a
 873 previously signed document. The statement "signature on file" or
 874 any similar statement does not constitute a countersignature.

875 9. The requirements of this paragraph apply only with
 876 respect to the initial treatment of or service rendered to the
 877 insured by a provider. For subsequent treatments or service, the
 878 provider must maintain a patient log signed by the patient, in
 879 chronological order by date of service, which is consistent with
 880 the services being rendered to the patient as claimed. The
 881 requirement to maintain a patient log signed by the patient may
 882 be met by a hospital that maintains medical records as required
 883 by s. 395.3025 and applicable rules and that makes such records
 884 available to the insurer upon request.

885 (f) Upon written notification by any person, an insurer
 886 shall investigate any claim of improper billing by a physician
 887 or other medical provider. The insurer shall determine if the
 888 insured was properly billed for only the medical care that the
 889 insured actually received. If the insurer determines that the
 890 insured has been improperly billed, the insurer must notify the
 891 insured, the person making the written notification, and the
 892 provider of its findings and reduce the amount of payment to the
 893 provider by the amount determined to be improperly billed. If a
 894 reduction is made due to a written notification by any person,
 895 the insurer must pay to the person 20 percent of the amount of
 896 the reduction, up to \$500. If the provider is arrested due to
 897 the improper billing, the insurer must pay to the person 40
 898 percent of the amount of the reduction, up to \$500.

899 (g) An insurer may not systematically downcode with the

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900 intent to deny reimbursement otherwise due. Such action
 901 constitutes a material misrepresentation under s. 626.9541(1)(i)
 902 2.

903 (h) An entity excluded from the definition of the term
 904 "clinic" in s. 400.9905 must be deemed a clinic and must be
 905 licensed under part X of chapter 400 in order to receive
 906 reimbursement under medical payments coverage. However, this
 907 licensing requirement does not apply to:

908 1. An entity wholly owned by a physician licensed under
 909 chapter 458 or chapter 459, or by the physician and the spouse,
 910 parent, child, or sibling of the physician;

911 2. An entity wholly owned by a dentist licensed under
 912 chapter 466, or by the dentist and the spouse, parent, child, or
 913 sibling of the dentist;

914 3. An entity wholly owned by a chiropractic physician
 915 licensed under chapter 460, or by the chiropractic physician and
 916 the spouse, parent, child, or sibling of the chiropractic
 917 physician;

918 4. A hospital or ambulatory surgical center licensed under
 919 chapter 395;

920 5. An entity that wholly owns or that is wholly owned,
 921 directly or indirectly, by a hospital or hospitals licensed
 922 under chapter 395;

923 6. An entity that is a clinical facility affiliated with an
 924 accredited medical school at which training is provided for
 925 medical students, residents, or fellows;

926 7. An entity that is certified under 42 C.F.R. part 485,
 927 subpart H; or

928 8. An entity that is owned by a publicly traded

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corporation, either directly or indirectly through its subsidiaries, which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for the operations of the entity are health care practitioners who are licensed in this state and who are responsible for supervising the business activities of the entity and the entity's compliance with state law for purposes of this section.

(7) NOTIFICATION TO INSURED OF RIGHTS.-

(a) The commission shall adopt by rule a form for notification to an insured of his or her right to receive medical payments coverage. Such notice must include:

1. A description of the benefits provided by medical payments coverage, when payments are due, how benefits are coordinated with other insurance benefits that the insured may have, penalties and interest that may be imposed on insurers for failure to make timely payments of benefits, and rights of parties regarding disputes as to benefits.

2. The following statement in at least 12-point type:

BILLING REQUIREMENTS.-Florida law provides that with respect to any treatment or services, other than certain hospital and emergency services, the statement of charges furnished to the insurer by the provider may not include, and the insurer and the injured party are not required to pay, charges for treatment or services rendered more than 35 days before the postmark date of the statement, except for past due amounts previously billed on a timely basis and except

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that, if the provider submits to the insurer a notice of initiation of treatment within 21 days after its first examination or treatment of the claimant, the statement may include charges for treatment or services rendered up to, but not more than, 75 days before the postmark date of the statement.

3. An advisory informing the insured that, pursuant to s. 626.9892, the department may pay rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Investigative and Forensic Services arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

4. An advisory informing the insured that, pursuant to subparagraph (6)(e)1.e., if the insured notifies the insurer of a billing error, the insured may be entitled to a certain percentage of a reduction in the amount paid by the insured's motor vehicle insurer.

5. A notice that solicitation of a person injured in a motor vehicle crash for purposes of filing medical payments coverage or tort claims could be a violation of s. 817.234, s. 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Investigative and Forensic Services if such conduct has taken place.

(b) An insurer issuing a policy in this state providing medical payments coverage benefits must mail or deliver the notice as specified in paragraph (a) to the named insured within 21 days after receiving from the insured notice of an automobile

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987 accident or claim involving personal injury to an insured who is
 988 covered under the policy. The office may allow an insurer
 989 additional time to provide the notice specified in paragraph
 990 (a), not to exceed 30 days, upon a showing by the insurer that
 991 an emergency justifies an extension of time.

992 (c) The notice required by this subsection does not alter
 993 or modify the terms of the insurance contract or other
 994 requirements of this section.

995 (8) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

996 (a) A person making a claim under medical payments coverage
 997 must, if requested by the insurer against whom the claim has
 998 been made, furnish a written report of the history, condition,
 999 treatment, dates, and costs of such treatment of the injured
 1000 person and why the items identified by the insurer were
 1001 reasonable in amount and medically necessary, together with a
 1002 sworn statement that the medical care rendered was reasonable
 1003 and necessary with respect to the bodily injury sustained and
 1004 identifying which portion of the expenses for such medical care
 1005 was incurred as a result of such bodily injury. If requested by
 1006 the insurer, the person making the claim under medical payments
 1007 coverage must also produce, and allow the inspection and copying
 1008 of, his, her, or its records regarding the history, condition,
 1009 treatment, dates, and costs of such treatment of the injured
 1010 person. Such sworn statement must read as follows: "Under
 1011 penalty of perjury, I declare that I have read the foregoing,
 1012 and the facts alleged are true, to the best of my knowledge and
 1013 belief." A cause of action for violation of the physician-
 1014 patient privilege or invasion of the right of privacy may not be
 1015 brought against any physician, hospital, clinic, or other

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1016 medical institution complying with this section. The person
 1017 requesting such records and such sworn statement shall pay all
 1018 reasonable costs connected therewith. If an insurer makes a
 1019 written request for documentation or information under this
 1020 paragraph within 30 days after having received notice of the
 1021 amount of a covered loss under paragraph (5) (b), the amount or
 1022 the partial amount that is the subject of the insurer's inquiry
 1023 is overdue if the insurer does not pay in accordance with
 1024 paragraph (5) (b) or within 10 days after the insurer's receipt
 1025 of the requested documentation or information, whichever occurs
 1026 later. As used in this paragraph, the term "receipt" includes,
 1027 but is not limited to, inspection and copying pursuant to this
 1028 paragraph. An insurer that requests documentation or information
 1029 pertaining to reasonableness of charges or medical necessity
 1030 under this paragraph without a reasonable basis for such
 1031 requests as a general business practice is engaging in an unfair
 1032 trade practice under the Florida Insurance Code.

1033 (b) In the event of a dispute regarding an insurer's right
 1034 to discovery of facts under this section, the insurer may
 1035 petition a court of competent jurisdiction to enter an order
 1036 permitting such discovery. The order may be made only on motion
 1037 for good cause shown and upon notice to all persons having an
 1038 interest and must specify the time, place, manner, conditions,
 1039 and scope of the discovery. In order to protect against
 1040 annoyance, embarrassment, or oppression, as justice requires,
 1041 the court may enter an order refusing discovery or specifying
 1042 conditions of discovery and may order payment of costs and
 1043 expenses of the proceeding, including reasonable fees for the
 1044 appearance of attorneys at the proceedings, as justice requires.

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1045 (c) Upon request, the injured person must be furnished a
 1046 copy of all information obtained by the insurer under this
 1047 section, and pay a reasonable charge, if required by the
 1048 insurer.

1049 (d) An insured may not unreasonably withhold notice to an
 1050 insurer of the existence of a claim.

1051 (e) In a dispute between the insured and the insurer, or
 1052 between an assignee of the insured's rights and the insurer,
 1053 upon request, the insurer must notify the insured or the
 1054 assignee that the policy limits under this section have been
 1055 reached within 15 days after the limits have been reached.

1056 (f) In any civil action to recover medical payments
 1057 benefits brought against an insurer by a claimant pursuant to
 1058 this section, all claims related to the same health care
 1059 provider for the same injured person must be brought in one
 1060 action, unless good cause is shown why such claims should be
 1061 brought separately.

1062 (g) An insured seeking medical payments coverage benefits,
 1063 including an omnibus insured, must comply with the terms of the
 1064 policy, which include, but are not limited to, submitting to an
 1065 examination under oath. The scope of questioning during the
 1066 examination under oath is limited to relevant information or
 1067 information that could reasonably be expected to lead to
 1068 relevant information. Compliance with this paragraph is a
 1069 condition precedent to receiving benefits. An insurer that, as a
 1070 general business practice as determined by the office, requests
 1071 an examination under oath of an insured or an omnibus insured
 1072 without a reasonable basis is subject to s. 626.9541.

1073 (9) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;

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1074 REPORTS.—

1075 (a) Whenever the mental or physical condition of an injured
 1076 person covered by medical payments coverage is material to any
 1077 claim that has been or may be made for past or future medical
 1078 payments coverage benefits, such person must, upon the request
 1079 of an insurer, submit to a mental or physical examination by a
 1080 physician or physicians. The costs of any examination requested
 1081 by an insurer must be borne entirely by the insurer. Such
 1082 examination must be conducted within the municipality where the
 1083 insured is receiving treatment; in a location reasonably
 1084 accessible to the insured, which, for purposes of this
 1085 paragraph, means any location within the municipality in which
 1086 the insured resides; or any location within 10 miles by road of
 1087 the insured's residence, if such location is within the county
 1088 in which the insured resides. If the examination is to be
 1089 conducted in a location reasonably accessible to the insured and
 1090 if there is no qualified physician to conduct the examination in
 1091 a location reasonably accessible to the insured, such
 1092 examination must be conducted in an area of the closest
 1093 proximity to the insured's residence. Insurers may include
 1094 reasonable provisions in medical payments coverage insurance
 1095 policies for mental and physical examination of those claiming
 1096 medical payments coverage insurance benefits. An insurer may not
 1097 withdraw payment of a treating physician without the consent of
 1098 the injured person covered by medical payments coverage unless
 1099 the insurer first obtains a valid report by a Florida physician
 1100 licensed under the same chapter as the treating physician whose
 1101 treatment authorization is sought to be withdrawn, stating that
 1102 treatment was not reasonable, related, or necessary. For

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1103 purposes of this paragraph, a valid report is one that is
 1104 prepared and signed by the physician examining the injured
 1105 person or reviewing the treatment records of the injured person;
 1106 that is factually supported by the examination and treatment
 1107 records, if reviewed; and that has not been modified by anyone
 1108 other than the physician. The physician preparing the report
 1109 must be in active practice unless the physician is physically
 1110 disabled. As used in this paragraph, the term "active practice"
 1111 means that during the 3 years immediately preceding the date of
 1112 the physical examination or review of the treatment records, the
 1113 physician must have devoted professional time to the active
 1114 clinical practice of evaluation, diagnosis, or treatment of
 1115 medical conditions, or to the instruction of students in an
 1116 accredited health professional school or accredited residency
 1117 program, or a clinical research program that is affiliated with
 1118 an accredited health professional school, a teaching hospital,
 1119 or an accredited residency program. The physician preparing a
 1120 report at the request of an insurer and the physicians rendering
 1121 expert opinions on behalf of persons claiming medical payments
 1122 coverage benefits, or on behalf of an insured through an
 1123 attorney or another entity, shall maintain, for at least 3
 1124 years, copies of all examination reports as medical records and
 1125 shall maintain, for at least 3 years, records of all payments
 1126 for the examinations and reports. An insurer or any person
 1127 acting at the direction of or on behalf of an insurer may not
 1128 materially change an opinion in a report prepared under this
 1129 paragraph or direct the physician preparing the report to change
 1130 such opinion. The denial of a payment as the result of such a
 1131 changed opinion constitutes a material misrepresentation under

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1132 s. 626.9541(1)(i)2.; however, this provision does not preclude
 1133 the insurer from calling to the attention of the physician
 1134 errors of fact in the report based upon information in the claim
 1135 file.

1136 (b) If requested by the person examined, a party causing an
 1137 examination to be made shall deliver to him or her a copy of
 1138 every written report concerning the examination rendered by an
 1139 examining physician, at least one of which reports must set out
 1140 the examining physician's findings and conclusions in detail.
 1141 After such request and delivery, the party causing the
 1142 examination to be made is entitled, upon request, to receive
 1143 from the person examined every written report available to him
 1144 or her or his or her representative concerning any examination,
 1145 previously or thereafter made, of the same mental or physical
 1146 condition. By requesting and obtaining a report of the
 1147 examination so ordered, or by taking the deposition of the
 1148 examiner, the person examined waives any privilege he or she may
 1149 have, in relation to the claim for benefits, regarding the
 1150 testimony of every other person who has examined, or may
 1151 thereafter examine, him or her in respect to the same mental or
 1152 physical condition. If a person unreasonably refuses to submit
 1153 to, or fails to appear at, an examination, the personal injury
 1154 protection carrier is no longer liable for subsequent personal
 1155 injury protection benefits. An insured's refusal to submit to or
 1156 failure to appear at two examinations raises a rebuttable
 1157 presumption that the insured's refusal or failure was
 1158 unreasonable.

1159 (10) APPLICABILITY OF PROVISION REGULATING ATTORNEY FEES.—
 1160 With respect to any dispute under this section between the

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insured and the insurer or between an assignee of an insured's rights and the insurer, ss. 627.428 and 768.79 apply except as provided in subsections (11) and (12) and except that any attorney fees recovered must:

- (a) Comply with prevailing professional standards;
- (b) Not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity; and
- (c) Represent legal services that are reasonable and necessary to achieve the result obtained.

Upon request by either party, a judge must make written findings, substantiated by evidence presented at trial or any hearings associated therewith, that any award of attorney fees complies with this subsection. Notwithstanding s. 627.428, attorney fees recovered under this section must be calculated without regard to a contingency risk multiplier.

(11) DEMAND LETTER.—

(a) As a condition precedent to filing any action for benefits under this section, written notice of an intent to initiate litigation must be provided to the insurer. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (5)(b).

(b) The notice must state with specificity:

1. "This is a demand letter under s. 627.7265, Florida Statutes."
2. The name of the insured for whom such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

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3. The claim number or policy number upon which the claim was originally submitted to the insurer.

4. To the extent applicable, the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. To the extent that the demand involves an insurer's withdrawal of payment for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

(c) Each notice required by this subsection must be delivered to the insurer by certified or registered mail, return receipt requested. Such postal costs must be reimbursed by the insurer, if requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office the name and address of the designated person to whom notices must be sent, which the office shall make available on its website. The person whose name and address is on file with the office pursuant to s. 624.422 is deemed the authorized representative to accept notice pursuant to this subsection if no other designation has been made.

(d) If, within 30 days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by

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1219 the insurer together with applicable interest and a penalty of
 1220 10 percent of the overdue amount paid by the insurer, subject to
 1221 a maximum penalty of \$250, an action may not be brought against
 1222 the insurer. If the demand involves an insurer's withdrawal of
 1223 payment for future treatment not yet rendered, an action may not
 1224 be brought against the insurer if, within 30 days after its
 1225 receipt of the notice, the insurer mails to the person filing
 1226 the notice a written statement of the insurer's agreement to pay
 1227 for such treatment in accordance with the notice and to pay a
 1228 penalty of 10 percent, subject to a maximum penalty of \$250,
 1229 when it pays for such future treatment in accordance with the
 1230 requirements of this section. To the extent the insurer
 1231 determines not to pay any amount demanded, the penalty is not
 1232 payable in any subsequent action. For purposes of this
 1233 subsection, payment or the insurer's agreement must be treated
 1234 as being made on the date a draft or other valid instrument that
 1235 is equivalent to payment, or the insurer's written statement of
 1236 agreement, is placed in the United States mail in a properly
 1237 addressed, postpaid envelope or, if not so posted, on the date
 1238 of delivery. The insurer is not obligated to pay any attorney
 1239 fees if the insurer pays the claim or mails its agreement to pay
 1240 for future treatment within the time prescribed by this
 1241 subsection.

1242 (e) The applicable statute of limitation for an action
 1243 under this section is tolled for 30 business days by the mailing
 1244 of the notice required by this subsection.

1245 (12) ALL CLAIMS BROUGHT IN A SINGLE ACTION.—In any civil
 1246 action to recover medical payments coverage benefits brought by
 1247 a claimant pursuant to this section against an insurer, all

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1248 claims related to the same health care provider for the same
 1249 injured person must be brought in one action unless good cause
 1250 is shown why such claims should be brought separately. If the
 1251 court determines that a civil action is filed for a claim that
 1252 should have been brought in a prior civil action, the court may
 1253 not award attorney fees to the claimant.
 1254 (13) FAILURE TO PAY VALID CLAIMS; UNFAIR OR DECEPTIVE
 1255 PRACTICE.—
 1256 (a) An insurer is engaging in a prohibited unfair or
 1257 deceptive practice that is subject to the penalties provided in
 1258 s. 626.9521, and the office has the powers and duties specified
 1259 in ss. 626.9561-626.9601, if the insurer, with such frequency so
 1260 as to indicate a general business practice, fails to pay valid
 1261 claims for medical payments coverage or fails to pay valid
 1262 claims until receipt of the notice required under subsection
 1263 (11).
 1264 (b) Notwithstanding s. 501.212, the Department of Legal
 1265 Affairs may investigate and initiate actions for a violation of
 1266 this subsection, including, but not limited to, the powers and
 1267 duties specified in part II of chapter 501.
 1268 (14) CIVIL ACTION FOR INSURANCE FRAUD.—An insurer has a
 1269 cause of action against any person convicted of, or who,
 1270 regardless of adjudication of guilt, pleads guilty or nolo
 1271 contendere to, insurance fraud under s. 817.234, patient
 1272 brokering under s. 817.505, or kickbacks under s. 456.054,
 1273 associated with a claim for medical payments coverage benefits
 1274 in accordance with this section. An insurer prevailing in an
 1275 action brought under this subsection may recover compensatory,
 1276 consequential, and punitive damages subject to the requirements

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1277 and limitations of part II of chapter 768 and attorney fees and
 1278 costs incurred in litigating a cause of action against any
 1279 person convicted of, or who, regardless of adjudication of
 1280 guilt, pleads guilty or nolo contendere to, insurance fraud
 1281 under s. 817.234, patient brokering under s. 817.505, or
 1282 kickbacks under s. 456.054, associated with a claim for medical
 1283 payments coverage benefits in accordance with this section.

1284 (15) FRAUD ADVISORY NOTICE.—Upon receiving notice of a
 1285 claim under this section, an insurer shall provide a notice to
 1286 the insured or to a person for whom a claim for reimbursement
 1287 for diagnosis or treatment of injuries has been filed, advising
 1288 that:

1289 (a) Pursuant to s. 626.9892, the department may pay rewards
 1290 of up to \$25,000 to persons who provide information leading to
 1291 the arrest and conviction of persons committing crimes
 1292 investigated by the Division of Investigative and Forensic
 1293 Services arising from violations of s. 440.105, s. 624.15, s.
 1294 626.9541, s. 626.989, or s. 817.234.

1295 (b) Solicitation of a person injured in a motor vehicle
 1296 crash for purposes of filing medical payments coverage or tort
 1297 claims could be a violation of s. 817.234, s. 817.505, or the
 1298 rules regulating The Florida Bar and should be immediately
 1299 reported to the Division of Investigative and Forensic Services
 1300 if such conduct has taken place.

1301 (16) NONREIMBURSABLE CLAIMS.—Claims generated as a result
 1302 of activities that are unlawful pursuant to s. 817.505 are not
 1303 reimbursable.

1304 (17) SECURE ELECTRONIC DATA TRANSFER.—Except as otherwise
 1305 provided in subparagraph (6)(e)5., a notice, documentation,

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1306 transmission, or communication of any kind required or
 1307 authorized under this section may be transmitted electronically
 1308 if it is transmitted by secure electronic data transfer that is
 1309 consistent with state and federal privacy and security laws.

1310 (18) INSURER'S RIGHT OF SUBROGATION.—

1311 (a) A medical payments insurer may include a provision in
 1312 its policy which permits subrogation for medical payments
 1313 benefits it paid if the expenses giving rise to the payments
 1314 were caused by the wrongful act or omission of another. However,
 1315 this subrogation right is inferior to the rights of the injured
 1316 insured, and is available only after all the insured's damages
 1317 have been recovered and the insured has been made whole. An
 1318 insured who obtains a recovery from a third party of the full
 1319 amount of the damages sustained and delivers a release or
 1320 satisfaction that impairs a medical payments insurer's
 1321 subrogation right is liable to the insurer for repayment of
 1322 medical payments benefits, less any expenses of acquiring the
 1323 recovery, including a prorated share of attorney fees and costs,
 1324 and shall hold that net recovery in trust to be delivered to the
 1325 medical payments insurer.

1326 (b) The insurer does not have a right of subrogation for
 1327 medical payments coverage benefits paid for the insured if the
 1328 tortfeasor who caused the motor vehicle accident is also an
 1329 insured under the policy that paid the medical payments
 1330 benefits.

1331 Section 4. Subsection (1) of section 316.646, Florida
 1332 Statutes, is amended to read:

1333 316.646 Security required; proof of security and display
 1334 thereof.—

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1335 (1) An owner of a motor vehicle required to be registered
 1336 in this state and an operator of a motor vehicle licensed in
 1337 this state Any person required by s. 324.022 to maintain
 1338 property damage liability security, required by s. 324.023 to
 1339 maintain liability security for bodily injury or death, or
 1340 required by s. 627.733 to maintain personal injury protection
 1341 security on a motor vehicle shall have in his or her immediate
 1342 possession at all times while operating such motor vehicle
 1343 proper proof of maintenance of the required security required
 1344 under s. 324.021(7).

1345 (a) Such proof must ~~shall~~ be in a uniform paper or
 1346 electronic format, as prescribed by the department, a valid
 1347 insurance policy, an insurance policy binder, a certificate of
 1348 insurance, or such other proof as may be prescribed by the
 1349 department.

1350 (b)1. The act of presenting to a law enforcement officer an
 1351 electronic device displaying proof of insurance in an electronic
 1352 format does not constitute consent for the officer to access any
 1353 information on the device other than the displayed proof of
 1354 insurance.

1355 2. The person who presents the device to the officer
 1356 assumes the liability for any resulting damage to the device.

1357 Section 5. Paragraphs (a) and (d) of subsection (5) of
 1358 section 320.02, Florida Statutes, are amended to read:

1359 320.02 Registration required; application for registration;
 1360 forms.-

1361 (5) (a) Proof that bodily injury liability coverage and
 1362 property damage liability coverage ~~personal injury protection~~
 1363 ~~benefits~~ have been purchased if required under s. 324.022, s.

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1364 324.032, or s. 627.742, that medical payments coverage has been
 1365 purchased if required under s. 627.7265 s. 627.733, that
 1366 property damage liability coverage has been purchased as
 1367 required under s. 324.022, that bodily injury liability or death
 1368 coverage has been purchased if required under s. 324.023, and
 1369 that combined bodily liability insurance and property damage
 1370 liability insurance have been purchased if required under s.
 1371 627.7415 must ~~shall~~ be provided in the manner prescribed by law
 1372 by the applicant at the time of application for registration of
 1373 any motor vehicle that is subject to such requirements. The
 1374 issuing agent may not ~~shall refuse to~~ issue registration if such
 1375 proof of purchase is not provided. Insurers shall furnish
 1376 uniform proof-of-purchase cards in a paper or electronic format
 1377 in a form prescribed by the department and include the name of
 1378 the insured's insurance company, the coverage identification
 1379 number, and the make, year, and vehicle identification number of
 1380 the vehicle insured. The card must contain a statement notifying
 1381 the applicant of the penalty specified under s. 316.646(4). The
 1382 card or insurance policy, insurance policy binder, or
 1383 certificate of insurance or a photocopy of any of these; an
 1384 affidavit containing the name of the insured's insurance
 1385 company, the insured's policy number, and the make and year of
 1386 the vehicle insured; or such other proof as may be prescribed by
 1387 the department constitutes ~~shall constitute~~ sufficient proof of
 1388 purchase. If an affidavit is provided as proof, it must be in
 1389 substantially the following form:

1390
 1391 Under penalty of perjury, I ... (Name of insured)... do hereby
 1392 certify that I have ... (bodily injury liability and Personal

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1393 ~~Injury Protection~~, property damage liability coverage, and
 1394 ~~medical payments coverage~~, and, if required, ~~Bodily Injury~~
 1395 ~~Liability~~)... Insurance currently in effect with ...(Name of
 1396 insurance company)... under ...(policy number)... covering
 1397 ...(make, year, and vehicle identification number of
 1398 vehicle).... ...(Signature of Insured)...

1399

1400 Such affidavit must include the following warning:

1401

1402 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
 1403 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
 1404 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
 1405 SUBJECT TO PROSECUTION.

1406

1407 If an application is made through a licensed motor vehicle
 1408 dealer as required under s. 319.23, the original or a
 1409 photostatic copy of such card, insurance policy, insurance
 1410 policy binder, or certificate of insurance or the original
 1411 affidavit from the insured must ~~shall~~ be forwarded by the dealer
 1412 to the tax collector of the county or the Department of Highway
 1413 Safety and Motor Vehicles for processing. By executing the
 1414 ~~aforesaid~~ affidavit, ~~a~~ ~~no~~ licensed motor vehicle dealer is not
 1415 ~~will be~~ liable in damages for any inadequacy, insufficiency, or
 1416 falsification of any statement contained therein. ~~A card must~~
 1417 ~~also indicate the existence of any bodily injury liability~~
 1418 ~~insurance voluntarily purchased.~~

1419 (d) The verifying of ~~proof of personal injury protection~~
 1420 ~~insurance, proof of property damage liability insurance, proof~~
 1421 ~~of combined bodily liability insurance and property damage~~

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1422 ~~liability insurance~~, or proof of financial responsibility
 1423 ~~insurance~~ and the issuance or failure to issue the motor vehicle
 1424 registration under ~~the provisions of~~ this chapter may not be
 1425 construed in any court as a warranty of the reliability or
 1426 accuracy of the evidence of such proof, or that the provisions
 1427 of any insurance policy furnished as proof of financial
 1428 responsibility comply with state law. ~~Neither~~ The department or
 1429 ~~nor~~ any tax collector is not liable in damages for any
 1430 inadequacy, insufficiency, falsification, or unauthorized
 1431 modification of any item of ~~the proof of personal injury~~
 1432 ~~protection insurance, proof of property damage liability~~
 1433 ~~insurance, proof of combined bodily liability insurance and~~
 1434 ~~property damage liability insurance~~, or proof of financial
 1435 responsibility before insurance prior to, during, or subsequent
 1436 to the verification of the proof. The issuance of a motor
 1437 vehicle registration does not constitute prima facie evidence or
 1438 a presumption of insurance coverage.

1439 Section 6. Subsection (3) of section 320.27, Florida
 1440 Statutes, is amended to read:

1441 320.27 Motor vehicle dealers.—

1442 (3) APPLICATION AND FEE.—~~The application for the license~~
 1443 application must shall be in such form as may be prescribed by
 1444 the department and is shall be subject to such rules ~~with~~
 1445 ~~respect thereto~~ as may be so prescribed by the department it.
 1446 Such application must shall be verified by oath or affirmation
 1447 and must shall contain a full statement of the name and birth
 1448 date of the person or persons applying for the license therefor;
 1449 the name of the firm or copartnership, with the names and places
 1450 of residence of all members ~~thereof~~, if such applicant is a firm

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1451 or copartnership; the names and places of residence of the
 1452 principal officers, if the applicant is a body corporate or
 1453 other artificial body; the name of the state under whose laws
 1454 the corporation is organized; the present and former place or
 1455 places of residence of the applicant; and the prior business in
 1456 which the applicant has been engaged and its the location
 1457 thereof. The ~~Such~~ application must ~~shall~~ describe the exact
 1458 location of the place of business and must ~~shall~~ state whether
 1459 the place of business is owned by the applicant and when
 1460 acquired, or, if leased, a true copy of the lease must ~~shall~~ be
 1461 attached to the application. The applicant shall certify that
 1462 the location provides an adequately equipped office and is not a
 1463 residence; that the location affords sufficient unoccupied space
 1464 upon and within which adequately to store all motor vehicles
 1465 offered and displayed for sale; and that the location is a
 1466 suitable place where the applicant can in good faith carry on
 1467 such business and keep and maintain books, records, and files
 1468 necessary to conduct such business, which must ~~shall~~ be
 1469 available at all reasonable hours to inspection by the
 1470 department or any of its inspectors or other employees. The
 1471 applicant shall certify that the business of a motor vehicle
 1472 dealer is the principal business that will ~~which shall~~ be
 1473 conducted at that location. The application must ~~shall~~ contain a
 1474 statement that the applicant is either franchised by a
 1475 manufacturer of motor vehicles, in which case the name of each
 1476 motor vehicle that the applicant is franchised to sell must
 1477 ~~shall~~ be included, or an independent (nonfranchised) motor
 1478 vehicle dealer. The application must ~~shall~~ contain other
 1479 relevant information as may be required by the department. The

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1480 applicant must furnish, including evidence, in a form approved
 1481 by the department, that the applicant is insured under a garage
 1482 liability insurance policy or a general liability insurance
 1483 policy coupled with a business automobile policy with the
 1484 liability coverage required by this subsection, which shall
 1485 include, at a minimum, \$25,000 combined single-limit liability
 1486 coverage including bodily injury and property damage protection
 1487 and \$10,000 personal injury protection. However, a salvage motor
 1488 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 1489 from the requirements for garage liability insurance and medical
 1490 payments coverage insurance and personal injury protection
 1491 insurance on those vehicles that cannot be legally operated on
 1492 roads, highways, or streets in this state. Franchise dealers
 1493 must submit a garage liability insurance policy, and all other
 1494 dealers must submit a garage liability insurance policy or a
 1495 general liability insurance policy coupled with a business
 1496 automobile policy. Such policy must ~~shall~~ be for the license
 1497 period and must include, at a minimum, \$70,000 combined single-
 1498 limit bodily injury and property damage liability coverage that
 1499 conforms to the requirements of s. 324.151., and Evidence of a
 1500 new or continued policy must ~~shall~~ be delivered to the
 1501 department at the beginning of each license period. Upon making
 1502 an initial application, the applicant shall pay to the
 1503 department a fee of \$300 in addition to any other fees required
 1504 by law. Applicants may choose to extend the licensure period for
 1505 1 additional year for a total of 2 years. An initial applicant
 1506 shall pay to the department a fee of \$300 for the first year and
 1507 \$75 for the second year, in addition to any other fees required
 1508 by law. An applicant for renewal shall pay to the department \$75

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for a 1-year renewal or \$150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the applicant ~~person~~ shall pay a fee of \$50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, shall ~~must~~ file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing must ~~shall~~ be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 7. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

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

(j) A statement that the applicant is insured under a

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garage liability insurance policy, which must ~~shall~~ include, at a minimum, \$70,000 ~~\$25,000~~ combined single-limit bodily injury and property liability coverage, ~~including bodily injury and property damage protection, and \$10,000 personal injury protection,~~ if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles.

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

Section 8. Section 324.011, Florida Statutes, is amended to read:

324.011 Legislative intent and purpose of chapter.—It is the intent of this chapter to ensure that the privilege of owning or operating a motor vehicle in this state be exercised ~~recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used~~ with due consideration for others' safety ~~others~~ and their property, ~~and~~ to promote safety, and to provide financial security requirements for ~~such~~ owners and ~~or~~ operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, this chapter requires that owners and operators of motor vehicles establish, maintain, and it is required herein ~~that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and~~

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show proof of financial ability to respond for damages arising
out of the ownership, maintenance, or use of a motor vehicle ~~in~~
future accidents as a requisite to owning or operating a motor
vehicle in this state his or her future exercise of such
privileges.

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

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

(1) MOTOR VEHICLE.—Every self-propelled vehicle that which
is designed and required to be licensed for use upon a highway,
including trailers and semitrailers designed for use with such
vehicles, except traction engines, road rollers, farm tractors,
power shovels, and well drillers, and every vehicle that which
is propelled by electric power obtained from overhead wires but
not operated upon rails, but not including any bicycle or moped.
~~However, the term "motor vehicle" shall not include any motor~~
~~vehicle as defined in s. 627.732(3) when the owner of such~~
~~vehicle has complied with the requirements of ss. 627.730-~~
~~627.7405, inclusive, unless the provisions of s. 324.051 apply;~~
~~and, in such case, the applicable proof of insurance provisions~~
~~of s. 320.02 apply.~~

(7) PROOF OF FINANCIAL RESPONSIBILITY.—~~That~~ Proof of
ability to respond in damages for liability on account of
crashes arising out of the ownership, maintenance, or use of a

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motor vehicle:

(a) With respect to a motor vehicle that is not a
commercial motor vehicle, nonpublic sector bus, or for-hire
passenger transportation vehicle:

1. Beginning on the effective date of this act, and
continuing through December 31, 2019, in the amount of:

a. Twenty thousand dollars for \$10,000 because of bodily
injury to, or the death of, one person in any one crash and,
~~(b)~~ subject to such limits for one person, in the amount of
\$40,000 for \$20,000 because of bodily injury to, or the death
of, two or more persons in any one crash; and

b. Ten thousand dollars for damage to, or destruction of,
property of others in any one crash.

2. Beginning January 1, 2020, and continuing through
December 31, 2021, in the amount of:

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

b. Ten thousand dollars for damage to, or destruction of,
property of others in any one crash.

3. Beginning January 1, 2022, and continuing thereafter, in
the amount of:

a. Thirty thousand dollars for bodily injury to, or the
death of, one person in any one crash and, subject to such
limits for one person, in the amount of \$60,000 for bodily
injury to, or the death of, two or more persons in any one
crash; and

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

~~(b)(d) With respect to commercial motor vehicles and nonpublic sector buses, in the amounts specified in s. 627.7415 ss. 627.7415 and 627.742, respectively.~~

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

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

(9) OWNER; OWNER/LESSOR.—

(c) *Application.*—

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

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

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity

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interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

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

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

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

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

Section 10. Section 324.022, Florida Statutes, is amended to read:

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1683 324.022 Financial responsibility ~~requirements for property~~
 1684 ~~damage.~~

1685 (1) (a) Every owner ~~or operator~~ of a motor vehicle required
 1686 to be registered in this state and every operator of a motor
 1687 vehicle who is licensed in this state shall establish and
 1688 continuously maintain the ability to respond in damages for
 1689 liability on account of accidents arising out of the ownership,
 1690 maintenance, or use of the motor vehicle in the amount of:

1691 1. Beginning on the effective date of this act, and
 1692 continuing through December 31, 2019:

1693 a. Twenty thousand dollars for bodily injury to, or the
 1694 death of, one person in any one crash and, subject to such
 1695 limits for one person, in the amount of \$40,000 for bodily
 1696 injury to, or the death of, two or more persons in any one
 1697 crash; and

1698 b. Ten thousand dollars for damage to, or destruction of,
 1699 property of others in any one crash.

1700 2. Beginning January 1, 2020, and continuing through
 1701 December 31, 2021:

1702 a. Twenty-five thousand dollars for bodily injury to, or
 1703 the death of, one person in any one crash and, subject to such
 1704 limits for one person, in the amount of \$50,000 for bodily
 1705 injury to, or the death of, two or more persons in any one
 1706 crash; and

1707 b. Ten thousand dollars for damage to, or destruction of,
 1708 property of others in any one crash.

1709 3. Beginning January 1, 2022, and continuing thereafter:

1710 a. Thirty thousand dollars for bodily injury to, or the
 1711 death of, one person in any one crash and, subject to such

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1712 limits for one person, in the amount of \$60,000 for bodily
 1713 injury to, or the death of, two or more persons in any one
 1714 crash; and

1715 b. Ten thousand dollars for ~~\$10,000~~ because of damage to,
 1716 or destruction of, property of others in any one crash.

1717 (b) The requirements of paragraph (a) ~~this section~~ may be
 1718 met by one of the methods established in s. 324.031; by self-
 1719 insuring as authorized by s. 768.28(16); or by maintaining
 1720 medical payments coverage under s. 627.7265 and a motor vehicle
 1721 liability insurance policy that an insurance policy providing
 1722 coverage for property damage liability in the amount of at least
 1723 \$10,000 because of damage to, or destruction of, property of
 1724 others in any one accident arising out of the use of the motor
 1725 vehicle. The requirements of this section may also be met by
 1726 having a policy which provides combined property damage
 1727 liability and bodily injury liability coverage for any one crash
 1728 arising out of the ownership, maintenance, or use of a motor
 1729 vehicle which conforms to the requirements of s. 324.151 in the
 1730 amount of:

1731 1. At least \$50,000 for every owner and operator subject to
 1732 the financial responsibility required in subparagraph (1)(a)1.

1733 2. At least \$60,000 for every owner and operator subject to
 1734 the financial responsibility required in subparagraph (1)(a)2.

1735 3. At least \$70,000 for every owner and operator subject to
 1736 the financial responsibility required in subparagraph (1)(a)3.
 1737 \$30,000 for combined property damage liability and bodily injury
 1738 liability for any one crash arising out of the use of the motor
 1739 vehicle. The policy, with respect to coverage for property
 1740 damage liability, must meet the applicable requirements of s.

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

(2) As used in this section, the term ~~+~~

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

(a)1- A mobile home as defined in s. 320.01.

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

(c)3- A school bus as defined in s. 1006.25, which shall maintain security as required under s. 316.615.

(d) A commercial motor vehicle as defined in s. 207.002 or s. 320.01, which shall maintain security as required under ss. 324.031 and 627.7415.

(e) A nonpublic sector bus, which shall maintain security as required under ss. 324.031 and 627.742.

(f)4- A ~~vehicle providing~~ for-hire passenger transportation vehicle, which that is subject to the provisions of s. 324.031- ~~A taxicab~~ shall maintain security as required under s. 324.032 ~~s. 324.032(1).~~

~~(b) "Owner" means the person who holds legal title to a motor vehicle or the debtor or lessee who has the right to~~

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~~possession of a motor vehicle that is the subject of a security agreement or lease with an option to purchase.~~

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

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

Section 11. Section 324.031, Florida Statutes, is amended

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1799 to read:

1800 324.031 Manner of proving financial responsibility.-

1801 ~~(1) The owner or operator of a taxicab, limousine, jitney,~~
 1802 ~~or any other for-hire passenger transportation vehicle may prove~~
 1803 ~~financial responsibility by providing satisfactory evidence of~~
 1804 ~~holding a motor vehicle liability policy as defined in s.~~
 1805 ~~324.021(8) or s. 324.151, which policy is issued by an insurance~~
 1806 ~~carrier which is a member of the Florida Insurance Guaranty~~
 1807 ~~Association. The operator or owner of a motor vehicle other than~~
 1808 ~~a for-hire passenger transportation vehicle any other vehicle~~
 1809 ~~may prove his or her financial responsibility by:~~

1810 (a)(1) Furnishing satisfactory evidence of holding a motor
 1811 vehicle liability policy as defined in ss. 324.021(8) and
 1812 324.151;

1813 (b)(2) Furnishing a certificate of self-insurance showing a
 1814 deposit of cash in accordance with s. 324.161; or

1815 (c)(3) Furnishing a certificate of self-insurance issued by
 1816 the department in accordance with s. 324.171.

1817 ~~(2) (a) Any person, including any firm, partnership,~~
 1818 ~~association, corporation, or other person, other than a natural~~
 1819 ~~person, electing to use the method of proof specified in~~
 1820 ~~paragraph (1) (b) subsection (2) shall furnish a certificate of~~
 1821 ~~deposit equal to the number of vehicles owned times:~~

1822 1. Fifty thousand dollars, to a maximum of \$200,000, from
 1823 January 1, 2018, through December 31, 2019.

1824 2. Sixty thousand dollars, to a maximum of \$240,000, from
 1825 January 1, 2020, through December 31, 2021.

1826 3. Seventy thousand dollars, ~~\$30,000,~~ to a maximum of
 1827 \$280,000, from January 1, 2022, and thereafter. ~~\$120,000;~~

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1828 (b) In addition, any such person, ~~other than a natural~~
 1829 ~~person,~~ shall maintain insurance providing coverage conforming
 1830 to the requirements of s. 324.151 in excess of the amount of the
 1831 certificate of deposit, with limits of at least:

1832 1. One hundred twenty-five thousand dollars for bodily
 1833 injury to, or the death of, one person in any one crash and,
 1834 subject to such limits for one person, in the amount of \$250,000
 1835 for bodily injury to, or the death of, two or more persons in
 1836 any one crash, and \$50,000 for damage to, or destruction of,
 1837 property of others in any one crash; or \$10,000/20,000/10,000 or
 1838 \$30,000 combined single limits, and such excess insurance shall
 1839 provide minimum limits of \$125,000/250,000/50,000 or \$300,000
 1840 combined single limits. These increased limits shall not affect
 1841 the requirements for proving financial responsibility under s.
 1842 324.032(1).

1843 2. Three hundred thousand dollars for combined bodily
 1844 injury liability and property damage liability for any one
 1845 crash.

1846 Section 12. Section 324.032, Florida Statutes, is amended
 1847 to read:

1848 324.032 Manner of proving Financial responsibility ~~for~~
 1849 ~~for-hire passenger transportation vehicles. Notwithstanding the~~
 1850 ~~provisions of s. 324.031.~~

1851 (1) An owner, lessee, or operator of a for-hire passenger
 1852 transportation vehicle that is required to be registered in this
 1853 state shall establish and continuously maintain the ability to
 1854 respond in damages for liability on account of accidents arising
 1855 out of the ownership, maintenance, or use of the for-hire
 1856 passenger transportation vehicle, in the amount of:

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1857 (a) One hundred twenty-five thousand dollars for bodily
 1858 injury to, or the death of, one person in any one crash and,
 1859 subject to such limits for one person, in the amount of \$250,000
 1860 for bodily injury to, or the death of, two or more persons in
 1861 any one crash; and A person who is either the owner or a lessee
 1862 required to maintain insurance under s. 627.733(1)(b) and who
 1863 operates one or more taxicabs, limousines, jitneys, or any other
 1864 for-hire passenger transportation vehicles may prove financial
 1865 responsibility by furnishing satisfactory evidence of holding a
 1866 motor vehicle liability policy, but with minimum limits of
 1867 \$125,000/250,000/50,000.

1868 (b) Fifty thousand dollars for damage to, or destruction
 1869 of, property of others in any one crash A person who is either
 1870 the owner or a lessee required to maintain insurance under s.
 1871 324.021(9)(b) and who operates limousines, jitneys, or any other
 1872 for-hire passenger vehicles, other than taxicabs, may prove
 1873 financial responsibility by furnishing satisfactory evidence of
 1874 holding a motor vehicle liability policy as defined in s.
 1875 324.031.

1876 (2) Except as provided in subsection (3), the requirements
 1877 of this section must be met by providing satisfactory evidence
 1878 of holding a motor vehicle liability policy conforming to the
 1879 requirements of s. 324.151 which is issued by an insurance
 1880 carrier that is a member of the Florida Insurance Guaranty
 1881 Association.

1882 (3)(2) An owner or a lessee who is required to maintain
 1883 insurance under s. 324.021(9)(b) and who operates at least 300
 1884 taxicabs, limousines, jitneys, or any other for-hire passenger
 1885 transportation vehicles may provide financial responsibility by

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1886 complying with the provisions of s. 324.171, such compliance to
 1887 be demonstrated by maintaining at its principal place of
 1888 business an audited financial statement, prepared in accordance
 1889 with generally accepted accounting principles, and providing to
 1890 the department a certification issued by a certified public
 1891 accountant that the applicant's net worth is at least equal to
 1892 the requirements of s. 324.171 as determined by the Office of
 1893 Insurance Regulation of the Financial Services Commission,
 1894 including claims liabilities in an amount certified as adequate
 1895 by a Fellow of the Casualty Actuarial Society.

1896
 1897 Upon request by the department, the applicant shall ~~must~~ provide
 1898 the department at the applicant's principal place of business in
 1899 this state access to the applicant's underlying financial
 1900 information and financial statements that provide the basis of
 1901 the certified public accountant's certification. The applicant
 1902 shall reimburse the requesting department for all reasonable
 1903 costs incurred by it in reviewing the supporting information.
 1904 The maximum amount of self-insurance permissible under this
 1905 subsection is \$300,000 and must be stated on a per-occurrence
 1906 basis, and the applicant shall maintain adequate excess
 1907 insurance issued by an authorized or eligible insurer licensed
 1908 or approved by the Office of Insurance Regulation. All risks
 1909 self-insured shall remain with the owner or lessee providing it,
 1910 and the risks are not transferable to any other person, unless a
 1911 policy complying with subsections (1) and (2) ~~subsection (1)~~ is
 1912 obtained.

1913 Section 13. Section 324.071, Florida Statutes, is amended
 1914 to read:

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1915 324.071 Reinstatement; renewal of license; reinstatement
 1916 fee. ~~An Any~~ operator or owner whose license or registration has
 1917 been suspended pursuant to s. 324.051(2), s. 324.072, s.
 1918 324.081, or s. 324.121 may effect its reinstatement upon
 1919 compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or
 1920 s. 324.081(2) and (3), as the case may be, and with one of the
 1921 provisions of s. 324.031 and upon payment to the department of a
 1922 nonrefundable reinstatement fee as specified in s. 324.0221 of
 1923 \$15. Only one such fee may shall be paid by any one person
 1924 regardless irrespective of the number of licenses and
 1925 registrations to be then reinstated or issued to such person.
 1926 All Such fees must shall be deposited to a department trust
 1927 fund. If when the reinstatement of any license or registration
 1928 is effected by compliance with s. 324.051(2)(a)3. or 4., the
 1929 department may shall not renew the license or registration
 1930 within a period of 3 years after from such reinstatement, nor
 1931 may shall any other license or registration be issued in the
 1932 name of such person, unless the operator continues is continuing
 1933 to comply with one of the provisions of s. 324.031.

1934 Section 14. Section 324.151, Florida Statutes, is amended
 1935 to read:

1936 324.151 Motor vehicle liability policies; required
 1937 provisions.-

1938 (1) A motor vehicle liability policy that serves as to be
 1939 proof of financial responsibility under s. 324.031(1) must,
 1940 shall be issued to owners and or operators of motor vehicles
 1941 under the following provisions:

1942 (a) A motor vehicle An owner's liability insurance policy
 1943 issued to an owner of a motor vehicle registered in this state

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1944 must shall designate by explicit description or by appropriate
 1945 reference all motor vehicles with respect to which coverage is
 1946 thereby granted. The policy must and shall insure the person or
 1947 persons owner named therein and any resident relative of a named
 1948 insured other person as operator using such motor vehicle or
 1949 motor vehicles with the express or implied permission of such
 1950 owner against loss from the liability imposed by law for damage
 1951 arising out of the ownership, maintenance, or use of any such
 1952 motor vehicle except as otherwise provided in this section. The
 1953 policy must also insure any person operating an insured motor
 1954 vehicle with the express or implied permission of a named
 1955 insured against loss from the liability imposed by law for
 1956 damage arising out of the use of such vehicle. However, the
 1957 insurer may include provisions in its policy excluding liability
 1958 coverage for a motor vehicle not designated as an insured
 1959 vehicle on the policy, if such motor vehicle does not qualify as
 1960 a newly acquired vehicle, does not qualify as a temporary
 1961 substitute vehicle, and was owned by an insured or was furnished
 1962 for an insured's regular use for more than 30 consecutive days
 1963 before the event giving rise to the claim or motor vehicles
 1964 within the United States or the Dominion of Canada, subject to
 1965 limits, exclusive of interest and costs with respect to each
 1966 such motor vehicle as is provided for under s. 324.021(7).
 1967 Insurers may make available, with respect to property damage
 1968 liability coverage, a deductible amount not to exceed \$500. In
 1969 the event of a property damage loss covered by a policy
 1970 containing a property damage deductible provision, the insurer
 1971 shall pay to the third-party claimant the amount of any property
 1972 damage liability settlement or judgment, subject to policy

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limits, as if no deductible existed.

(b) A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle registered in this state and who is not already insured under a policy described in paragraph (a) must ~~An operator's motor vehicle liability policy of insurance shall~~ insure the person or persons named therein against loss from the liability imposed upon him or her by law for damages arising out of the use by the person of any motor vehicle not owned by him or her, unless the vehicle was furnished for the named insured's regular use and was used by the named insured for more than 30 consecutive days before the event giving rise to the claim with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance.

(c) All such motor vehicle liability policies must ~~shall~~ state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, the limits of liability, and must ~~shall~~ contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage or both and is subject to all provisions of this chapter. The policies must insure all persons covered under the liability coverage against loss from the liability imposed by law for any litigation costs or attorney fees in any civil action defended by the insurer which arises out of the ownership, maintenance, or use of a motor vehicle for which there is liability coverage under the policy. The said policies must ~~shall~~ also contain a provision that the satisfaction by an insured of a judgment for such

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injury or damage may ~~shall~~ not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and must ~~shall~~ also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate may ~~shall~~ not relieve the insurance carrier of any of its obligations under the said policy. However, the policies may contain provisions excluding liability coverage for a vehicle being used outside of the United States or Canada at the time of the accident.

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

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

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

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

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

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2031 Section 15. Section 324.161, Florida Statutes, is amended
 2032 to read:

2033 324.161 Proof of financial responsibility; deposit.—If a
 2034 person elects to prove his or her financial responsibility under
 2035 the method of proof specified in s. 324.031(1)(b), such person
 2036 must obtain proof of a certificate of deposit annually, in the
 2037 amount required under s. 324.031(2), from a financial
 2038 institution insured by the Federal Deposit Insurance Corporation
 2039 or the National Credit Union Administration. Proof of such
 2040 certificate of deposit Annually, before any certificate of
 2041 insurance may be issued to a person, including any firm,
 2042 partnership, association, corporation, or other person, other
 2043 than a natural person, proof of a certificate of deposit of
 2044 \$30,000 issued and held by a financial institution must be
 2045 submitted to the department annually. A power of attorney will
 2046 be issued to and held by the department and may be executed upon
 2047 a judgment issued against such person making the deposit, for
 2048 damages for because of bodily injury to or death of any person
 2049 or for damages for because of injury to or destruction of
 2050 property resulting from the use or operation of any motor
 2051 vehicle occurring after such deposit was made. Money so
 2052 deposited is shall not be subject to attachment or execution
 2053 unless such attachment or execution arises shall arise out of a
 2054 lawsuit suit for such damages as aforesaid.

2055 Section 16. Subsections (1) and (2) of section 324.171,
 2056 Florida Statutes, are amended to read:

2057 324.171 Self-insurer.—

2058 (1) A Any person may qualify as a self-insurer by obtaining
 2059 a certificate of self-insurance from the department, which may,

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2060 ~~in its discretion and~~ Upon application of such a person, the
 2061 department may issue a said certificate of self-insurance if the
 2062 applicant when such person has satisfied the requirements of
 2063 this section ~~to qualify as a self-insurer under this section:~~

2064 (a) A private individual with private passenger vehicles
 2065 must shall possess a net unencumbered worth: ~~of~~
 2066 1. Beginning January 1, 2018, through December 31, 2019, of
 2067 at least \$80,000.

2068 2. Beginning January 1, 2020, through December 31, 2021, of
 2069 at least \$100,000.

2070 3. Beginning January 1, 2022, and thereafter, of at least
 2071 \$120,000 \$40,000.

2072 (b) A person, including any firm, partnership, association,
 2073 corporation, or other person, other than a natural person, must
 2074 ~~shall:~~

2075 1. Possess a net unencumbered worth: of
 2076 a. Beginning January 1, 2018, through December 31, 2019, of
 2077 at least \$80,000 for the first motor vehicle and \$40,000 for
 2078 each additional motor vehicle.

2079 b. Beginning January 1, 2020, through December 31, 2021, of
 2080 at least \$100,000 for the first motor vehicle and \$50,000 for
 2081 each additional motor vehicle.

2082 c. Beginning January 1, 2022, and thereafter, of at least
 2083 \$120,000 \$40,000 for the first motor vehicle and \$60,000 \$20,000
 2084 for each additional motor vehicle; or

2085 2. Maintain sufficient net worth, in an amount determined
 2086 by the department, to be financially responsible for potential
 2087 losses. The department shall annually determine the minimum net
 2088 worth sufficient to satisfy this subparagraph as determined

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2089 ~~annually by the department,~~ pursuant to rules adopted
 2090 ~~promulgated~~ by the department, with the assistance of the Office
 2091 of Insurance Regulation of the Financial Services Commission, ~~to~~
 2092 ~~be financially responsible for potential losses.~~ The rules must
 2093 ~~consider any shall take into consideration~~ excess insurance
 2094 carried by the applicant. The department's determination must
 2095 ~~shall~~ be based upon reasonable actuarial principles considering
 2096 the frequency, severity, and loss development of claims incurred
 2097 by casualty insurers writing coverage on the type of motor
 2098 vehicles for which a certificate of self-insurance is desired.

2099 (c) The owner of a commercial motor vehicle, as defined in
 2100 s. 207.002 or s. 320.01, may qualify as a self-insurer subject
 2101 to the standards provided ~~for~~ in subparagraph (b)2.

2102 (2) The self-insurance certificate must ~~shall~~ provide
 2103 limits of liability insurance in the amounts specified under s.
 2104 324.021(7) ~~or s. 627.7415 and shall provide personal injury~~
 2105 ~~protection coverage under s. 627.733(3)(b).~~

2106 Section 17. Section 324.251, Florida Statutes, is amended
 2107 to read:

2108 324.251 Short title.—This chapter may be cited as the
 2109 "Financial Responsibility Law of ~~2017 1955~~" and ~~is shall become~~
 2110 effective at 12:01 a.m., January 1, 2018 ~~October 1, 1955~~.

2111 Section 18. Subsection (4) of section 400.9905, Florida
 2112 Statutes, is amended to read:

2113 400.9905 Definitions.—

2114 (4) "Clinic" means an entity where health care services are
 2115 provided to individuals and which tenders charges for
 2116 reimbursement for such services, including a mobile clinic and a
 2117 portable equipment provider. As used in this part, the term does

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2118 not include and the licensure requirements of this part do not
 2119 apply to:

2120 (a) Entities licensed or registered by the state under
 2121 chapter 395; entities licensed or registered by the state and
 2122 providing only health care services within the scope of services
 2123 authorized under their respective licenses under ss. 383.30-
 2124 383.335, chapter 390, chapter 394, chapter 397, this chapter
 2125 except part X, chapter 429, chapter 463, chapter 465, chapter
 2126 466, chapter 478, part I of chapter 483, chapter 484, or chapter
 2127 651; end-stage renal disease providers authorized under 42
 2128 C.F.R. part 405, subpart U; providers certified under 42 C.F.R.
 2129 part 485, subpart B or subpart H; or any entity that provides
 2130 neonatal or pediatric hospital-based health care services or
 2131 other health care services by licensed practitioners solely
 2132 within a hospital licensed under chapter 395.

2133 (b) Entities that own, directly or indirectly, entities
 2134 licensed or registered by the state pursuant to chapter 395;
 2135 entities that own, directly or indirectly, entities licensed or
 2136 registered by the state and providing only health care services
 2137 within the scope of services authorized pursuant to their
 2138 respective licenses under ss. 383.30-383.335, chapter 390,
 2139 chapter 394, chapter 397, this chapter except part X, chapter
 2140 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
 2141 of chapter 483, chapter 484, or chapter 651; end-stage renal
 2142 disease providers authorized under 42 C.F.R. part 405, subpart
 2143 U; providers certified under 42 C.F.R. part 485, subpart B or
 2144 subpart H; or any entity that provides neonatal or pediatric
 2145 hospital-based health care services by licensed practitioners
 2146 solely within a hospital licensed under chapter 395.

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2147 (c) Entities that are owned, directly or indirectly, by an
 2148 entity licensed or registered by the state pursuant to chapter
 2149 395; entities that are owned, directly or indirectly, by an
 2150 entity licensed or registered by the state and providing only
 2151 health care services within the scope of services authorized
 2152 pursuant to their respective licenses under ss. 383.30-383.335,
 2153 chapter 390, chapter 394, chapter 397, this chapter except part
 2154 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 2155 478, part I of chapter 483, chapter 484, or chapter 651; end-
 2156 stage renal disease providers authorized under 42 C.F.R. part
 2157 405, subpart U; providers certified under 42 C.F.R. part 485,
 2158 subpart B or subpart H; or any entity that provides neonatal or
 2159 pediatric hospital-based health care services by licensed
 2160 practitioners solely within a hospital under chapter 395.

2161 (d) Entities that are under common ownership, directly or
 2162 indirectly, with an entity licensed or registered by the state
 2163 pursuant to chapter 395; entities that are under common
 2164 ownership, directly or indirectly, with an entity licensed or
 2165 registered by the state and providing only health care services
 2166 within the scope of services authorized pursuant to their
 2167 respective licenses under ss. 383.30-383.335, chapter 390,
 2168 chapter 394, chapter 397, this chapter except part X, chapter
 2169 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
 2170 of chapter 483, chapter 484, or chapter 651; end-stage renal
 2171 disease providers authorized under 42 C.F.R. part 405, subpart
 2172 U; providers certified under 42 C.F.R. part 485, subpart B or
 2173 subpart H; or any entity that provides neonatal or pediatric
 2174 hospital-based health care services by licensed practitioners
 2175 solely within a hospital licensed under chapter 395.

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2176 (e) An entity that is exempt from federal taxation under 26
 2177 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
 2178 under 26 U.S.C. s. 409 that has a board of trustees at least
 2179 two-thirds of which are Florida-licensed health care
 2180 practitioners and provides only physical therapy services under
 2181 physician orders, any community college or university clinic,
 2182 and any entity owned or operated by the federal or state
 2183 government, including agencies, subdivisions, or municipalities
 2184 thereof.

2185 (f) A sole proprietorship, group practice, partnership, or
 2186 corporation that provides health care services by physicians
 2187 covered by s. 627.419, that is directly supervised by one or
 2188 more of such physicians, and that is wholly owned by one or more
 2189 of those physicians or by a physician and the spouse, parent,
 2190 child, or sibling of that physician.

2191 (g) A sole proprietorship, group practice, partnership, or
 2192 corporation that provides health care services by licensed
 2193 health care practitioners under chapter 457, chapter 458,
 2194 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 2195 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 2196 chapter 490, chapter 491, or part I, part III, part X, part
 2197 XIII, or part XIV of chapter 468, or s. 464.012, and that is
 2198 wholly owned by one or more licensed health care practitioners,
 2199 or the licensed health care practitioners set forth in this
 2200 paragraph and the spouse, parent, child, or sibling of a
 2201 licensed health care practitioner if one of the owners who is a
 2202 licensed health care practitioner is supervising the business
 2203 activities and is legally responsible for the entity's
 2204 compliance with all federal and state laws. However, a health

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care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

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

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

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

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

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are

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wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

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

(n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must include ~~shall contain information that includes:~~ the name, residence, and business address and telephone ~~phone~~ number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity; and a certified statement prepared by an independent certified public accountant which states that the entity and the

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health care clinics owned or operated by the entity have not received payment for health care services under medical payments ~~personal injury protection~~ insurance coverage for the preceding year. If the agency determines that an entity ~~that which~~ is exempt under this subsection has received payments for medical services under medical payments ~~personal injury protection~~ insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive medical payments coverage reimbursement under s. 627.7265 ~~the Florida Motor Vehicle No Fault Law, ss. 627.730-627.7405~~, unless exempted under s. 627.7265(6)(h) ~~s. 627.736(5)(h)~~.

Section 19. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

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

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

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

Section 20. Paragraph (f) of subsection (11) of section 409.910, Florida Statutes, is amended to read:

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

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

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

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

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2321 2. The remaining amount of the recovery shall be paid to
2322 the recipient.

2323 3. For purposes of calculating the agency's recovery of
2324 medical assistance benefits paid, the fee for services of an
2325 attorney retained by the recipient or his or her legal
2326 representative shall be calculated at 25 percent of the
2327 judgment, award, or settlement.

2328 4. Notwithstanding any other provision of this section to
2329 the contrary, the agency shall be entitled to all medical
2330 coverage benefits up to the total amount of medical assistance
2331 provided by Medicaid. For purposes of this paragraph, the term
2332 "medical coverage" means any benefits under health insurance, a
2333 health maintenance organization, a preferred provider
2334 arrangement, or a prepaid health clinic, and the portion of
2335 benefits designated for medical payments under ~~coverage for~~
2336 workers' compensation coverage, motor vehicle insurance
2337 coverage, personal injury protection, and casualty coverage.

2338 Section 21. Paragraphs (ee) and (ff) of subsection (1) of
2339 section 456.072, Florida Statutes, are amended to read:

2340 456.072 Grounds for discipline; penalties; enforcement.—

2341 (1) The following acts shall constitute grounds for which
2342 the disciplinary actions specified in subsection (2) may be
2343 taken:

2344 (ee) With respect to making a medical payments coverage
2345 ~~personal injury protection~~ claim under s. 627.7265 as required
2346 ~~by s. 627.736~~, intentionally submitting a claim, statement, or
2347 bill that has been "upcoded" as defined in that section ~~or~~
2348 ~~627.732~~.

2349 (ff) With respect to making a medical payments coverage

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2350 ~~personal injury protection~~ claim as required under s. 627.7265
2351 ~~by s. 627.736~~, intentionally submitting a claim, statement, or
2352 bill for payment of services that were not rendered.

2353 Section 22. Paragraphs (i) and (o) of subsection (1) of
2354 section 626.9541, Florida Statutes, are amended to read:

2355 626.9541 Unfair methods of competition and unfair or
2356 deceptive acts or practices defined.—

2357 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
2358 ACTS.—The following are defined as unfair methods of competition
2359 and unfair or deceptive acts or practices:

2360 (i) *Unfair claim settlement practices.*—

2361 1. Attempting to settle claims on the basis of an
2362 application, when serving as a binder or intended to become a
2363 part of the policy, or any other material document which was
2364 altered without notice to, or knowledge or consent of, the
2365 insured;

2366 2. A material misrepresentation made to an insured or any
2367 other person having an interest in the proceeds payable under
2368 such contract or policy, for the purpose and with the intent of
2369 effecting settlement of such claims, loss, or damage under such
2370 contract or policy on less favorable terms than those provided
2371 in, and contemplated by, such contract or policy; ~~or~~

2372 3. Committing or performing with such frequency as to
2373 indicate a general business practice any of the following:

2374 a. Failing to adopt and implement standards for the proper
2375 investigation of claims;

2376 b. Misrepresenting pertinent facts or insurance policy
2377 provisions relating to coverages at issue;

2378 c. Failing to acknowledge and act promptly upon

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2379 communications with respect to claims;
 2380 d. Denying claims without conducting reasonable
 2381 investigations based upon available information;
 2382 e. Failing to affirm or deny full or partial coverage of
 2383 claims, and, as to partial coverage, the dollar amount or extent
 2384 of coverage, or failing to provide a written statement that the
 2385 claim is being investigated, upon the written request of the
 2386 insured within 30 days after proof-of-loss statements have been
 2387 completed;
 2388 f. Failing to promptly provide a reasonable explanation in
 2389 writing to the insured of the basis in the insurance policy, in
 2390 relation to the facts or applicable law, for denial of a claim
 2391 or for the offer of a compromise settlement;
 2392 g. Failing to promptly notify the insured of any additional
 2393 information necessary for the processing of a claim; ~~or~~
 2394 h. Failing to clearly explain the nature of the requested
 2395 information and the reasons why such information is necessary;
 2396 or-
 2397 i. Failing to pay ~~personal injury protection insurance~~
 2398 claims for benefits under medical payments coverage within the
 2399 time periods required by s. 627.7265(5)(b) ~~s. 627.736(4)(b)~~. The
 2400 office may order the insurer to pay restitution to a
 2401 policyholder, medical provider, or other claimant, including
 2402 interest at a rate consistent with the amount set forth in s.
 2403 55.03(1), for the time period within which an insurer fails to
 2404 pay claims as required by law. Restitution is in addition to any
 2405 other penalties allowed by law, including, but not limited to,
 2406 the suspension of the insurer's certificate of authority.
 2407 4. Failing to pay undisputed amounts of partial or full

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2408 benefits owed under first-party property insurance policies
 2409 within 90 days after an insurer receives notice of a residential
 2410 property insurance claim, determines the amounts of partial or
 2411 full benefits, and agrees to coverage, unless payment of the
 2412 undisputed benefits is prevented by an act of God, prevented by
 2413 the impossibility of performance, or due to actions by the
 2414 insured or claimant that constitute fraud, lack of cooperation,
 2415 or intentional misrepresentation regarding the claim for which
 2416 benefits are owed.
 2417 (o) *Illegal dealings in premiums; excess or reduced charges*
 2418 *for insurance.-*
 2419 1. Knowingly collecting any sum as a premium or charge for
 2420 insurance, which is not then provided, or is not in due course
 2421 to be provided, subject to acceptance of the risk by the
 2422 insurer, by an insurance policy issued by an insurer as
 2423 permitted by this code.
 2424 2. Knowingly collecting as a premium or charge for
 2425 insurance any sum in excess of or less than the premium or
 2426 charge applicable to such insurance, in accordance with the
 2427 applicable classifications and rates as filed with and approved
 2428 by the office, and as specified in the policy; or, in cases when
 2429 classifications, premiums, or rates are not required by this
 2430 code to be so filed and approved, premiums and charges collected
 2431 from a Florida resident in excess of or less than those
 2432 specified in the policy and as fixed by the insurer.
 2433 Notwithstanding any other provision of law, this provision shall
 2434 not be deemed to prohibit the charging and collection, by
 2435 surplus lines agents licensed under part VIII of this chapter,
 2436 of the amount of applicable state and federal taxes, or fees as

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authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

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

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

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible

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for the accident or has a judgment against such person;

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

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

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

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

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

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

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

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

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

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

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

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

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

8. No insurer may issue a nonrenewal notice on any

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insurance contract or coverage, or require execution of a consent to rate endorsement, for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.

9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

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

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

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

Section 23. Paragraph (a) of subsection (1) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity;

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confidential information; reports to division; division investigator's power of arrest.-

(1) For the purposes of this section:

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

1. Knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-insurer, self-insurance fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person knows to contain materially false information concerning any fact material thereto or if the person conceals, for the purpose of misleading another, information concerning any fact material thereto.

2. Knowingly submits:

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

b. A claim for payment or other benefit under medical payments coverage ~~pursuant to a personal injury protection~~

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~~insurance policy under the Florida Motor Vehicle No-Fault Law~~ if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

Section 24. Subsection (1) of section 627.0652, Florida Statutes, is amended to read:

627.0652 Insurance discounts for certain persons completing safety course.-

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

Section 25. Subsections (1), (3), and (6) of section 627.0653, Florida Statutes, are amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.-

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

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antilock brakes.

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

(6) The Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection,~~ and collision coverages of a motor vehicle insurance policy filed with the office if the insured vehicle is equipped with autonomous driving technology or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards.

Section 26. Section 627.4132, Florida Statutes, is amended to read:

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

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that coverage. This section does not apply:

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

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

Section 27. Subsections (1) and (7) of section 627.727, Florida Statutes, are amended to read:

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

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state, unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when~~, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. ~~If~~ ~~When~~ a motor vehicle is leased for ~~a period~~ of 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of such vehicle has ~~shall have~~ the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to

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2669 s. 324.171. Unless an insured, or lessee having the privilege of
 2670 rejecting uninsured motorist coverage, requests such coverage or
 2671 requests higher uninsured motorist limits in writing, the
 2672 coverage or such higher uninsured motorist limits need not be
 2673 provided in or supplemental to any other policy which renews,
 2674 extends, changes, supersedes, or replaces an existing policy
 2675 with the same bodily injury liability limits when an insured or
 2676 lessee had rejected the coverage. When an insured or lessee has
 2677 initially selected limits of uninsured motorist coverage lower
 2678 than her or his bodily injury liability limits, higher limits of
 2679 uninsured motorist coverage need not be provided in or
 2680 supplemental to any other policy that which renews, extends,
 2681 changes, supersedes, or replaces an existing policy with the
 2682 same bodily injury liability limits unless an insured requests
 2683 higher uninsured motorist coverage in writing. The rejection or
 2684 selection of lower limits must shall be made on a form approved
 2685 by the office. The form must shall fully advise the applicant of
 2686 the nature of the coverage and must shall state that the
 2687 coverage is equal to bodily injury liability limits unless lower
 2688 limits are requested or the coverage is rejected. The heading of
 2689 the form must shall be in 12-point bold type and must shall
 2690 state: "You are electing not to purchase certain valuable
 2691 coverage that which protects you and your family or you are
 2692 purchasing uninsured motorist limits less than your bodily
 2693 injury liability limits when you sign this form. Please read
 2694 carefully." If this form is signed by a named insured, it will
 2695 be conclusively presumed that there was an informed, knowing
 2696 rejection of coverage or election of lower limits on behalf of
 2697 all insureds. The insurer shall notify the named insured at

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2698 least annually of her or his options as to the coverage required
 2699 by this section. Such notice must shall be part of, and attached
 2700 to, the notice of premium, must shall provide for a means to
 2701 allow the insured to request such coverage, and must shall be
 2702 given in a manner approved by the office. Receipt of this notice
 2703 does not constitute an affirmative waiver of the insured's right
 2704 to uninsured motorist coverage if where the insured has not
 2705 signed a selection or rejection form. The coverage described
 2706 under this section must shall be over and above, but may shall
 2707 not duplicate, the benefits available to an insured under any
 2708 workers' compensation law, ~~personal injury protection benefits,~~
 2709 disability benefits law, or similar law; under any automobile
 2710 medical payments expense coverage; under any motor vehicle
 2711 liability insurance coverage; or from the owner or operator of
 2712 the uninsured motor vehicle or any other person or organization
 2713 jointly or severally liable together with such owner or operator
 2714 for the accident; and such coverage must shall cover the
 2715 difference, if any, between the sum of such benefits and the
 2716 damages sustained, up to the maximum amount of such coverage
 2717 provided under this section. The amount of coverage available
 2718 under this section may shall not be reduced by a setoff against
 2719 any coverage, including liability insurance. Such coverage does
 2720 ~~shall~~ not inure directly or indirectly to the benefit of any
 2721 workers' compensation or disability benefits carrier or any
 2722 person or organization qualifying as a self-insurer under any
 2723 workers' compensation or disability benefits law or similar law.
 2724 (7) The legal liability of an uninsured motorist coverage
 2725 insurer includes does not include damages in tort for pain,
 2726 suffering, disability or physical impairment, disfigurement,

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2727 mental anguish, ~~and inconvenience, and the loss of capacity for~~
 2728 ~~the enjoyment of life experienced in the past and to be~~
 2729 ~~experienced in the future unless the injury or disease is~~
 2730 ~~described in one or more of paragraphs (a) - (d) of s. 627.737(2).~~

2731 Section 28. Subsection (1) and paragraphs (a) and (b) of
 2732 subsection (2) of section 627.7275, Florida Statutes, are
 2733 amended to read:

2734 627.7275 Motor vehicle liability.—

2735 (1) A motor vehicle insurance policy ~~providing personal~~
 2736 ~~injury protection as set forth in s. 627.736~~ may not be
 2737 delivered or issued for delivery in this state for a with
 2738 ~~respect to any~~ specifically insured or identified motor vehicle
 2739 registered or principally garaged in this state must provide
 2740 bodily injury liability coverage and unless the policy also
 2741 ~~provides coverage for~~ property damage liability coverage as
 2742 required under ~~by~~ s. 324.022, and medical payments coverage as
 2743 required under s. 627.7265.

2744 (2) (a) Insurers writing motor vehicle insurance in this
 2745 state shall make available, subject to the insurers' usual
 2746 underwriting restrictions:

2747 1. Coverage under policies as described in subsection (1)
 2748 to an applicant for private passenger motor vehicle insurance
 2749 coverage who is seeking the coverage in order to reinstate the
 2750 applicant's driving privileges in this state if the driving
 2751 privileges were revoked or suspended pursuant to s. 316.646 or
 2752 s. 324.0221 due to the failure of the applicant to maintain
 2753 required security.

2754 2. Coverage under policies as described in subsection (1),
 2755 which includes bodily injury ~~also provides~~ liability coverage

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2756 ~~and property damage liability coverage for bodily injury, death,~~
 2757 ~~and property damage arising out of the ownership, maintenance,~~
 2758 ~~or use of the motor vehicle~~ in an amount not less than the
 2759 minimum limits required under ~~described in~~ s. 324.021(7) or s.
 2760 324.023 and which conforms to the requirements of s. 324.151, to
 2761 an applicant for private passenger motor vehicle insurance
 2762 coverage who is seeking the coverage in order to reinstate the
 2763 applicant's driving privileges in this state after such
 2764 privileges were revoked or suspended under s. 316.193 or s.
 2765 322.26(2) for driving under the influence.

2766 (b) The policies described in paragraph (a) must ~~shall~~ be
 2767 issued for at least 6 months and, as to the minimum coverages
 2768 required under this section, may not be canceled by the insured
 2769 for any reason or by the insurer after 60 days, during which
 2770 period the insurer is completing the underwriting of the policy.
 2771 After the insurer has completed underwriting the policy, the
 2772 insurer shall notify the Department of Highway Safety and Motor
 2773 Vehicles that the policy is in full force and effect and is not
 2774 cancelable for the remainder of the policy period. A premium
 2775 must ~~shall~~ be collected and the coverage is in effect for the
 2776 60-day period during which the insurer is completing the
 2777 underwriting of the policy, whether or not the person's driver
 2778 license, motor vehicle tag, and motor vehicle registration are
 2779 in effect. Once the noncancelable provisions of the policy
 2780 become effective, the bodily injury liability and property
 2781 damage liability ~~coverages for bodily injury, property damage,~~
 2782 ~~and personal injury protection~~ may not be reduced below the
 2783 minimum limits required under s. 324.021 or s. 324.023 during
 2784 the policy period, and the medical payments coverage may not be

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reduced below the minimum limit required under s. 627.7265.

Section 29. Subsection (1), paragraph (a) of subsection (5), and subsections (6) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

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

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

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

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

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

(7) A policy of private passenger motor vehicle insurance

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or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected ~~from the insured an amount equal to~~ 2 months' premium ~~from the insured~~. An insurer, agent, or premium finance company may not, directly or indirectly, take any action that results ~~resulting~~ in the insured paying ~~having paid~~ from the insured's own funds an amount less than the 2 months' premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent.

(a) This subsection does not apply:

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

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

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

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

1. All policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, bodily injury

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2843 ~~liability coverage, personal injury protection pursuant to ss.~~
 2844 ~~627.730-627.7405, motor vehicle property damage liability~~
 2845 ~~coverage, and medical payments coverage pursuant to s. 627.7275;~~
 2846 ~~or and bodily injury liability in at least the amount of \$10,000~~
 2847 ~~because of bodily injury to, or death of, one person in any one~~
 2848 ~~accident and in the amount of \$20,000 because of bodily injury~~
 2849 ~~to, or death of, two or more persons in any one accident. This~~
 2850 ~~subsection and subsection (4) do not apply if~~

2851 2. An insured has had a policy in effect for at least 6
 2852 months, the insured's agent is terminated by the insurer that
 2853 issued the policy, and the insured obtains coverage on the
 2854 policy's renewal date with a new company through the terminated
 2855 agent.

2856 Section 30. Subsections (1) and (2) of section 627.7415,
 2857 Florida Statutes, are amended to read:

2858 627.7415 Commercial motor vehicles; additional liability
 2859 insurance coverage.—Commercial motor vehicles, as defined in s.
 2860 207.002 or s. 320.01, operated upon the roads and highways of
 2861 this state shall be insured with the ~~following~~ minimum levels of
 2862 combined bodily liability insurance and property damage
 2863 liability insurance under subsections (1) and (2) in addition to
 2864 any other insurance requirements.†

2865 (1) ~~Fifty thousand dollars per occurrence~~ For a commercial
 2866 motor vehicle with a gross vehicle weight of 26,000 pounds or
 2867 more, but less than 35,000 pounds:

2868 (a) Beginning January 1, 2018, through December 31, 2019,
 2869 no less than \$50,000 per occurrence.

2870 (b) Beginning January 1, 2020, through December 31, 2021,
 2871 no less than \$60,000 per occurrence.

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2872 (c) Beginning January 1, 2022, and thereafter, no less than
 2873 \$70,000 per occurrence.

2874 ~~(2) One hundred thousand dollars per occurrence~~ For a
 2875 commercial motor vehicle with a gross vehicle weight of 35,000
 2876 pounds or more, but less than 44,000 pounds:

2877 (a) Beginning January 1, 2018, through December 31, 2019,
 2878 no less than \$100,000 per occurrence.

2879 (b) Beginning January 1, 2020, through December 31, 2021,
 2880 no less than \$120,000 per occurrence.

2881 (c) Beginning January 1, 2022, and thereafter, no less than
 2882 \$140,000 per occurrence.

2883
 2884 A violation of this section is a noncriminal traffic infraction,
 2885 punishable as a nonmoving violation as provided in chapter 318.

2886 Section 31. Section 627.8405, Florida Statutes, is amended
 2887 to read:

2888 627.8405 Prohibited acts; financing companies.—~~A~~ No premium
 2889 finance company ~~shall~~, in a premium finance agreement or other
 2890 agreement, may not finance the cost of or otherwise provide for
 2891 the collection or remittance of dues, assessments, fees, or
 2892 other periodic payments of money for the cost of:

2893 (1) A membership in an automobile club. The term
 2894 "automobile club" means a legal entity ~~that which~~, in
 2895 consideration of dues, assessments, or periodic payments of
 2896 money, promises its members or subscribers to assist them in
 2897 matters relating to the ownership, operation, use, or
 2898 maintenance of a motor vehicle; however, ~~the term this~~
 2899 ~~definition of "automobile club"~~ does not include persons,
 2900 associations, or corporations which are organized and operated

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solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The ~~term words~~ "motor vehicle" used herein ~~has have~~ the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a policy providing only medical payments coverage, bodily injury liability coverage, personal injury protection and property damage liability coverage only policy.

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

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

Section 32. Paragraph (a) of subsection (1), paragraph (c) of subsection (7), paragraphs (a), (b), and (c) of subsection (8), and subsections (9) and (10) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

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

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health

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maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

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

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to an ~~any~~ insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, ~~any~~ false, incomplete, or misleading information or a written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

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

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under medical payments coverage in a motor vehicle ~~a personal injury protection~~ insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a

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2959 health care clinic, seeking an exemption from licensure as a
 2960 health care clinic, or demonstrating compliance with part X of
 2961 chapter 400.

2962 (7)

2963 (c) An insurer, or any person acting at the direction of or
 2964 on behalf of an insurer, may not change an opinion in a mental
 2965 or physical report prepared under s. 627.7265(9) ~~s. 627.736(7)~~
 2966 or direct the physician preparing the report to change such
 2967 opinion; however, this provision does not preclude the insurer
 2968 from calling to the attention of the physician errors of fact in
 2969 the report based upon information in the claim file. Any person
 2970 who violates this paragraph commits a felony of the third
 2971 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2972 775.084.

2973 (8) (a) It is unlawful for any person intending to defraud
 2974 any other person to solicit or cause to be solicited any
 2975 business from a person involved in a motor vehicle accident for
 2976 the purpose of making, adjusting, or settling motor vehicle tort
 2977 claims or claims for benefits under medical payments coverage in
 2978 a motor vehicle insurance policy ~~personal injury protection~~
 2979 ~~benefits required by s. 627.736~~. Any person who violates the
 2980 provisions of this paragraph commits a felony of the second
 2981 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2982 775.084. A person who is convicted of a violation of this
 2983 subsection shall be sentenced to a minimum term of imprisonment
 2984 of 2 years.

2985 (b) A person may not solicit or cause to be solicited any
 2986 business from a person involved in a motor vehicle accident by
 2987 any means of communication other than advertising directed to

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2988 the public for the purpose of making motor vehicle tort claims
 2989 or claims for benefits under medical payments coverage in a
 2990 motor vehicle insurance policy ~~personal injury protection~~
 2991 ~~benefits required by s. 627.736~~, within 60 days after the
 2992 occurrence of the motor vehicle accident. Any person who
 2993 violates this paragraph commits a felony of the third degree,
 2994 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2995 (c) A lawyer, health care practitioner as defined in s.
 2996 456.001, or owner or medical director of a clinic required to be
 2997 licensed pursuant to s. 400.9905 may not, at any time after 60
 2998 days have elapsed from the occurrence of a motor vehicle
 2999 accident, solicit or cause to be solicited any business from a
 3000 person involved in a motor vehicle accident by means of in
 3001 person or telephone contact at the person's residence, for the
 3002 purpose of making motor vehicle tort claims or claims for
 3003 benefits under medical payments coverage in a motor vehicle
 3004 insurance policy ~~personal injury protection benefits required by~~
 3005 ~~s. 627.736~~. Any person who violates this paragraph commits a
 3006 felony of the third degree, punishable as provided in s.
 3007 775.082, s. 775.083, or s. 775.084.

3008 (9) A person may not organize, plan, or knowingly
 3009 participate in an intentional motor vehicle crash or a scheme to
 3010 create documentation of a motor vehicle crash that did not occur
 3011 for the purpose of making motor vehicle tort claims or claims
 3012 for benefits under medical payments coverage in a motor vehicle
 3013 insurance policy ~~personal injury protection benefits as required~~
 3014 ~~by s. 627.736~~. Any person who violates this subsection commits a
 3015 felony of the second degree, punishable as provided in s.
 3016 775.082, s. 775.083, or s. 775.084. A person who is convicted of

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a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

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

Section 33. Paragraph (b) of subsection (2) of section 318.18, Florida Statutes, is amended to read:

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

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

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

1. If a person who is cited for a violation of s. 320.0605 or s. 320.07 can show proof of having a valid registration at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10. A person who finds it impossible or impractical to obtain a valid registration certificate must submit an affidavit detailing the reasons for the impossibility or impracticality. The reasons may include, but are not limited to, the fact that the vehicle was sold, stolen, or destroyed; that the state in which the vehicle is

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registered does not issue a certificate of registration; or that the vehicle is owned by another person.

2. If a person who is cited for a violation of s. 322.03, s. 322.065, or s. 322.15 can show a driver license issued to him or her and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10.

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

Section 34. Paragraph (b) of subsection (1) of section 320.0609, Florida Statutes, is amended to read:

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

(1)

(b) The transfer of a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration. The application for transfer shall be accepted without requiring proof of ~~personal injury protection or~~ liability insurance.

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3075 Section 35. Subsections (1) and (2) of section 322.251,
 3076 Florida Statutes, are amended to read:
 3077 322.251 Notice of cancellation, suspension, revocation, or
 3078 disqualification of license.—
 3079 (1) All orders of cancellation, suspension, revocation, or
 3080 disqualification issued under ~~the provisions of~~ this chapter,
 3081 chapter 318, or chapter 324 ~~must, or ss. 627.732-627.734 shall~~
 3082 be given either by personal delivery thereof to the licensee
 3083 whose license is being canceled, suspended, revoked, or
 3084 disqualified or by deposit in the United States mail in an
 3085 envelope, first class, postage prepaid, addressed to the
 3086 licensee at his or her last known mailing address furnished to
 3087 the department. Such mailing by the department constitutes
 3088 notification, and any failure by the person to receive the
 3089 mailed order will not affect or stay the effective date or term
 3090 of the cancellation, suspension, revocation, or disqualification
 3091 of the licensee's driving privilege.
 3092 (2) The giving of notice and an order of cancellation,
 3093 suspension, revocation, or disqualification by mail is complete
 3094 upon expiration of 20 days after deposit in the United States
 3095 mail for all notices except those issued under chapter 324 ~~or~~
 3096 ~~ss. 627.732-627.734~~, which are complete 15 days after deposit in
 3097 the United States mail. Proof of the giving of notice and an
 3098 order of cancellation, suspension, revocation, or
 3099 disqualification in either manner must ~~shall~~ be made by entry in
 3100 the records of the department that such notice was given. The
 3101 entry is admissible in the courts of this state and constitutes
 3102 sufficient proof that such notice was given.
 3103 Section 36. Paragraph (a) of subsection (8) of section

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3104 322.34, Florida Statutes, is amended to read:
 3105 322.34 Driving while license suspended, revoked, canceled,
 3106 or disqualified.—
 3107 (8) (a) Upon the arrest of a person for the offense of
 3108 driving while the person's driver license or driving privilege
 3109 is suspended or revoked, the arresting officer shall determine:
 3110 1. Whether the person's driver license is suspended or
 3111 revoked.
 3112 2. Whether the person's driver license has remained
 3113 suspended or revoked since a conviction for the offense of
 3114 driving with a suspended or revoked license.
 3115 3. Whether the suspension or revocation was made under s.
 3116 316.646 ~~or s. 627.733~~, relating to failure to maintain required
 3117 security, or under s. 322.264, relating to habitual traffic
 3118 offenders.
 3119 4. Whether the driver is the registered owner or coowner of
 3120 the vehicle.
 3121 Section 37. Subsections (1) and (2) of section 324.0221,
 3122 Florida Statutes, are amended to read:
 3123 324.0221 Reports by insurers to the department; suspension
 3124 of driver license and vehicle registrations; reinstatement.—
 3125 (1) (a) Each insurer that has issued a policy providing
 3126 ~~personal injury protection coverage or property damage~~ liability
 3127 coverage shall report the cancellation or nonrenewal thereof to
 3128 the department within 10 days after the processing date or
 3129 effective date of each cancellation or nonrenewal. Upon the
 3130 issuance of a policy providing ~~personal injury protection~~
 3131 ~~coverage or property damage~~ liability coverage to a named
 3132 insured not previously insured by the insurer during that

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calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report ~~must shall~~ be in the form ~~and format~~ and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. Failure by an insurer to file proper reports with the department as required by this subsection constitutes a violation of the Florida Insurance Code. These records ~~may shall~~ be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing medical payments coverage or ~~personal injury protection coverage or property damage liability coverage~~, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain medical payments coverage, bodily injury liability ~~personal injury protection coverage,~~ and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver license of

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any owner or operator ~~registrant~~ of a motor vehicle with respect to which security is required under s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

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

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

Section 38. Subsection (6) of section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

(6) All agency forms for licensure application or exemption from licensure under this part must contain the following statement:

INSURANCE FRAUD NOTICE.—A person commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes, if such person who knowingly submits a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400, Florida Statutes, with the intent to use the license, exemption from licensure, or demonstration of compliance to provide services or

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3191 seek reimbursement under a motor vehicle liability
 3192 insurance policy's medical payments coverage ~~the~~
 3193 ~~Florida Motor Vehicle No-Fault Law, commits a~~
 3194 ~~fraudulent insurance act, as defined in s. 626.989,~~
 3195 ~~Florida Statutes.~~ A person who presents a claim for
 3196 benefits under medical payments coverage ~~personal~~
 3197 ~~injury protection benefits~~ knowing that the payee
 3198 knowingly submitted such health care clinic
 3199 application or document, commits insurance fraud, as
 3200 defined in s. 817.234, Florida Statutes.
 3201 Section 39. Paragraph (g) of subsection (1) of section
 3202 400.9935, Florida Statutes, is amended to read:
 3203 400.9935 Clinic responsibilities.—
 3204 (1) Each clinic shall appoint a medical director or clinic
 3205 director who shall agree in writing to accept legal
 3206 responsibility for the following activities on behalf of the
 3207 clinic. The medical director or the clinic director shall:
 3208 (g) Conduct systematic reviews of clinic billings to ensure
 3209 that the billings are not fraudulent or unlawful. Upon discovery
 3210 of an unlawful charge, the medical director or clinic director
 3211 shall take immediate corrective action. If the clinic performs
 3212 only the technical component of magnetic resonance imaging,
 3213 static radiographs, computed tomography, or positron emission
 3214 tomography, and provides the professional interpretation of such
 3215 services, in a fixed facility that is accredited by a national
 3216 accrediting organization that is approved by the Centers for
 3217 Medicare and Medicaid Services for magnetic resonance imaging
 3218 and advanced diagnostic imaging services and if, in the
 3219 preceding quarter, the percentage of scans performed by that

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3220 clinic which was billed to automobile ~~all personal injury~~
 3221 ~~protection~~ insurance carriers under medical payments coverage
 3222 was less than 15 percent, the chief financial officer of the
 3223 clinic may, in a written acknowledgment provided to the agency,
 3224 assume the responsibility for the conduct of the systematic
 3225 reviews of clinic billings to ensure that the billings are not
 3226 fraudulent or unlawful.
 3227 Section 40. Paragraph (k) of subsection (2) of section
 3228 456.057, Florida Statutes, is amended to read:
 3229 456.057 Ownership and control of patient records; report or
 3230 copies of records to be furnished; disclosure of information.—
 3231 (2) As used in this section, the terms "records owner,"
 3232 "health care practitioner," and "health care practitioner's
 3233 employer" do not include any of the following persons or
 3234 entities; furthermore, the following persons or entities are not
 3235 authorized to acquire or own medical records, but are authorized
 3236 under the confidentiality and disclosure requirements of this
 3237 section to maintain those documents required by the part or
 3238 chapter under which they are licensed or regulated:
 3239 (k) Persons or entities practicing under s. 627.7265(9) ~~or~~
 3240 ~~627.736(7)~~.
 3241 Section 41. Subsection (1) of section 627.06501, Florida
 3242 Statutes, is amended to read:
 3243 627.06501 Insurance discounts for certain persons
 3244 completing driver improvement course.—
 3245 (1) Any rate, rating schedule, or rating manual for the
 3246 liability, medical payments ~~personal injury protection~~, and
 3247 collision coverages of a motor vehicle insurance policy filed
 3248 with the office may provide for an appropriate reduction in

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premium charges as to such coverages if when the principal operator on the covered vehicle has successfully completed a driver improvement course approved and certified by the Department of Highway Safety and Motor Vehicles which is effective in reducing crash or violation rates, or both, as determined pursuant to s. 318.1451(5). Any discount, not to exceed 10 percent, used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 42. Section 627.7263, Florida Statutes, is amended to read:

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

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

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

"The valid and collectible liability insurance and medical payments coverage ~~personal injury protection insurance~~ of an any authorized rental or leasing driver is primary for the limits of liability and

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~~personal injury protection~~ coverage and medical payments coverage required under ss. 324.021(7) and 627.7265 ~~by ss. 324.021(7) and 627.736~~, Florida Statutes."

Section 43. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

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

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

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

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile insurance assigned risk plan or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

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

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3307 days.

3308 Section 44. Subsection (1) of section 627.915, Florida
3309 Statutes, is amended to read:

3310 627.915 Insurer experience reporting.—

3311 (1) Each insurer transacting private passenger automobile
3312 insurance in this state shall report certain information
3313 annually to the office. The information will be due on or before
3314 July 1 of each year. The information must ~~shall~~ be divided into
3315 the following categories: bodily injury liability; property
3316 damage liability; uninsured motorist; ~~personal injury protection~~
3317 ~~benefits~~; medical payments; and comprehensive and collision. The
3318 information given must ~~shall~~ be on direct insurance writings in
3319 the state alone and ~~shall~~ represent total limits data. The
3320 information set forth in paragraphs (a)-(f) is applicable to
3321 voluntary private passenger and Joint Underwriting Association
3322 private passenger writings and must ~~shall~~ be reported for each
3323 of the latest 3 calendar-accident years, with an evaluation date
3324 of March 31 of the current year. The information set forth in
3325 paragraphs (g)-(j) is applicable to voluntary private passenger
3326 writings and must ~~shall~~ be reported on a calendar-accident year
3327 basis ultimately seven times at seven different stages of
3328 development.

3329 (a) Premiums earned for the latest 3 calendar-accident
3330 years.

3331 (b) Loss development factors and the historic development
3332 of those factors.

3333 (c) Policyholder dividends incurred.

3334 (d) Expenses for other acquisition and general expense.

3335 (e) Expenses for agents' commissions and taxes, licenses,

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3336 and fees.

3337 (f) Profit and contingency factors as utilized in the
3338 insurer's automobile rate filings for the applicable years.

3339 (g) Losses paid.

3340 (h) Losses unpaid.

3341 (i) Loss adjustment expenses paid.

3342 (j) Loss adjustment expenses unpaid.

3343 Section 45. Subsections (2) and (3) of section 628.909,
3344 Florida Statutes, are amended to read:

3345 628.909 Applicability of other laws.—

3346 (2) The following provisions of the Florida Insurance Code
3347 apply to captive insurance companies who are not industrial
3348 insured captive insurance companies to the extent that such
3349 provisions are not inconsistent with this part:

3350 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
3351 624.40851, 624.4095, 624.411, 624.425, and 624.426.

3352 (b) Chapter 625, part II.

3353 (c) Chapter 626, part IX.

3354 (d) ~~Sections 627.730-627.7405, when no fault coverage is~~
3355 ~~provided.~~

3356 ~~(e)~~ Chapter 628.

3357 (3) The following provisions of the Florida Insurance Code
3358 ~~shall~~ apply to industrial insured captive insurance companies to
3359 the extent that such provisions are not inconsistent with this
3360 part:

3361 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
3362 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

3363 (b) Chapter 625, part II, if the industrial insured captive
3364 insurance company is incorporated in this state.

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3365 (c) Chapter 626, part IX.

3366 (d) ~~Sections 627.730-627.7405 when no-fault coverage is~~
 3367 ~~provided.~~

3368 ~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and
 3369 628.6018.

3370 Section 46. Subsections (2), (6), and (7) of section
 3371 705.184, Florida Statutes, are amended to read:

3372 705.184 Derelict or abandoned motor vehicles on the
 3373 premises of public-use airports.—

3374 (2) The airport director or the director's designee shall
 3375 contact the Department of Highway Safety and Motor Vehicles to
 3376 notify that department that the airport has possession of the
 3377 abandoned or derelict motor vehicle and to determine the name
 3378 and address of the owner of the motor vehicle, the insurance
 3379 company insuring the motor vehicle, ~~notwithstanding the~~
 3380 ~~provisions of s. 627.736,~~ and any person who has filed a lien on
 3381 the motor vehicle. Within 7 business days after receipt of the
 3382 information, the director or the director's designee shall send
 3383 notice by certified mail, return receipt requested, to the owner
 3384 of the motor vehicle, the insurance company insuring the motor
 3385 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all
 3386 persons of record claiming a lien against the motor vehicle. The
 3387 notice must ~~shall~~ state the fact of possession of the motor
 3388 vehicle, that charges for reasonable towing, storage, and
 3389 parking fees, if any, have accrued and the amount thereof, that
 3390 a lien as provided in subsection (6) will be claimed, that the
 3391 lien is subject to enforcement pursuant to law, that the owner
 3392 or lienholder, if any, has the right to a hearing as set forth
 3393 in subsection (4), and that any motor vehicle which, at the end

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3394 of 30 calendar days after receipt of the notice, has not been
 3395 removed from the airport upon payment in full of all accrued
 3396 charges for reasonable towing, storage, and parking fees, if
 3397 any, may be disposed of as provided in s. 705.182(2)(a), (b),
 3398 (d), or (e), including, but not limited to, the motor vehicle
 3399 being sold free of all prior liens after 35 calendar days after
 3400 the time the motor vehicle is stored if any prior liens on the
 3401 motor vehicle are more than 5 years of age or after 50 calendar
 3402 days after the time the motor vehicle is stored if any prior
 3403 liens on the motor vehicle are 5 years of age or less.

3404 (6) The airport pursuant to this section or, if used, a
 3405 licensed independent wrecker company pursuant to s. 713.78 shall
 3406 have a lien on an abandoned or derelict motor vehicle for all
 3407 reasonable towing, storage, and accrued parking fees, if any,
 3408 except that no storage fee may ~~shall~~ be charged if the motor
 3409 vehicle is stored less than 6 hours. As a prerequisite to
 3410 perfecting a lien under this section, the airport director or
 3411 the director's designee must serve a notice in accordance with
 3412 subsection (2) on the owner of the motor vehicle, the insurance
 3413 company insuring the motor vehicle, ~~notwithstanding the~~
 3414 ~~provisions of s. 627.736,~~ and all persons of record claiming a
 3415 lien against the motor vehicle. If attempts to notify the owner,
 3416 the insurance company insuring the motor vehicle,
 3417 ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are
 3418 not successful, the requirement of notice by mail shall be
 3419 considered met. Serving of the notice does not dispense with
 3420 recording the claim of lien.

3421 (7)(a) For the purpose of perfecting its lien under this
 3422 section, the airport shall record a claim of lien which states

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3423 ~~shall state:~~

3424 1. The name and address of the airport.
 3425 2. The name of the owner of the motor vehicle, the
 3426 insurance company insuring the motor vehicle, ~~notwithstanding~~
 3427 ~~the provisions of s. 627.736,~~ and all persons of record claiming
 3428 a lien against the motor vehicle.

3429 3. The costs incurred from reasonable towing, storage, and
 3430 parking fees, if any.

3431 4. A description of the motor vehicle sufficient for
 3432 identification.

3433 (b) The claim of lien must ~~shall~~ be signed and sworn to or
 3434 affirmed by the airport director or the director's designee.

3435 (c) The claim of lien is ~~shall be~~ sufficient if it is in
 3436 substantially the following form:

CLAIM OF LIEN

3439 State of

3440 County of

3441 Before me, the undersigned notary public, personally appeared
 3442, who was duly sworn and says that he/she is the
 3443 of, whose address is.....; and that the
 3444 following described motor vehicle:

3445 ...(Description of motor vehicle)...

3446 owned by, whose address is, has accrued
 3447 \$..... in fees for a reasonable tow, for storage, and for
 3448 parking, if applicable; that the lienor served its notice to the
 3449 owner, the insurance company insuring the motor vehicle
 3450 ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~
 3451 and all persons of record claiming a lien against the motor

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3452 vehicle on, ...(year)..., by.....

3453 ...(Signature)...

3454 Sworn to (or affirmed) and subscribed before me this day of

3455, ...(year)..., by ...(name of person making statement)....

3456 ...(Signature of Notary Public)... ...(Print, Type, or Stamp

3457 Commissioned name of Notary Public)...

3458 Personally Known....OR Produced....as identification.

3459

3460 However, the negligent inclusion or omission of any information
 3461 in this claim of lien which does not prejudice the owner does
 3462 not constitute a default that operates to defeat an otherwise
 3463 valid lien.

3464 (d) The claim of lien must ~~shall~~ be served on the owner of
 3465 the motor vehicle, the insurance company insuring the motor
 3466 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all
 3467 persons of record claiming a lien against the motor vehicle. If
 3468 attempts to notify the owner, the insurance company insuring the
 3469 motor vehicle ~~notwithstanding the provisions of s. 627.736,~~ or
 3470 lienholders are not successful, the requirement of notice by
 3471 mail shall be considered met. The claim of lien must ~~shall~~ be so
 3472 served before recordation.

3473 (e) The claim of lien must ~~shall~~ be recorded with the clerk
 3474 of court in the county where the airport is located. The
 3475 recording of the claim of lien shall be constructive notice to
 3476 all persons of the contents and effect of such claim. The lien
 3477 attaches ~~shall attach~~ at the time of recordation and takes ~~shall~~
 3478 ~~take~~ priority as of that time.

3479 Section 47. Subsection (4) of section 713.78, Florida
 3480 Statutes, is amended to read:

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3481 713.78 Liens for recovering, towing, or storing vehicles
3482 and vessels.—

3483 (4) (a) Any person regularly engaged in the business of
3484 recovering, towing, or storing vehicles or vessels who comes
3485 into possession of a vehicle or vessel pursuant to subsection
3486 (2), and who claims a lien for recovery, towing, or storage
3487 services, shall give notice to the registered owner, the
3488 insurance company insuring the vehicle ~~notwithstanding the~~
3489 ~~provisions of s. 627.736~~, and to all persons claiming a lien
3490 thereon, as disclosed by the records in the Department of
3491 Highway Safety and Motor Vehicles or as disclosed by the records
3492 of any corresponding agency in any other state in which the
3493 vehicle is identified through a records check of the National
3494 Motor Vehicle Title Information System or an equivalent
3495 commercially available system as being titled or registered.

3496 (b) ~~If a~~ Whenever any law enforcement agency authorizes the
3497 removal of a vehicle or vessel or if a ~~whenever any~~ towing
3498 service, garage, repair shop, or automotive service, storage, or
3499 parking place notifies the law enforcement agency of possession
3500 of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
3501 enforcement agency of the jurisdiction where the vehicle or
3502 vessel is stored shall contact the Department of Highway Safety
3503 and Motor Vehicles, or the appropriate agency of the state of
3504 registration, if known, within 24 hours through the medium of
3505 electronic communications, giving the full description of the
3506 vehicle or vessel. Upon receipt of the full description of the
3507 vehicle or vessel, the department shall search its files to
3508 determine the owner's name, the insurance company insuring the
3509 vehicle or vessel, and whether any person has filed a lien upon

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3510 the vehicle or vessel as provided in s. 319.27(2) and (3) and
3511 notify the applicable law enforcement agency within 72 hours.
3512 The person in charge of the towing service, garage, repair shop,
3513 or automotive service, storage, or parking place shall obtain
3514 such information from the applicable law enforcement agency
3515 within 5 days after the date of storage and shall give notice
3516 pursuant to paragraph (a). The department may release the
3517 insurance company information to the requestor ~~notwithstanding~~
3518 ~~the provisions of s. 627.736~~.

3519 (c) Notice by certified mail must ~~shall~~ be sent within 7
3520 business days after the date of storage of the vehicle or vessel
3521 to the registered owner, the insurance company insuring the
3522 vehicle ~~notwithstanding the provisions of s. 627.736~~, and all
3523 persons of record claiming a lien against the vehicle or vessel.
3524 The notice must ~~It shall~~ state the fact of possession of the
3525 vehicle or vessel, that a lien as provided in subsection (2) is
3526 claimed, that charges have accrued and the amount thereof, that
3527 the lien is subject to enforcement pursuant to law, ~~and~~ that the
3528 owner or lienholder, if any, has the right to a hearing as set
3529 forth in subsection (5), and that any vehicle or vessel which
3530 remains unclaimed, or for which the charges for recovery,
3531 towing, or storage services remain unpaid, may be sold free of
3532 all prior liens after 35 days if the vehicle or vessel is more
3533 than 3 years of age or after 50 days if the vehicle or vessel is
3534 3 years of age or less.

3535 (d) If attempts to locate the name and address of the owner
3536 or lienholder prove unsuccessful, the towing-storage operator
3537 must ~~shall~~, after 7 working days, excluding Saturday and Sunday,
3538 of the initial tow or storage, notify the public agency of

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jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. As used in ~~For purposes of~~ this paragraph and subsection (9), the term "good faith effort" means that the following checks have been performed by the company to establish prior state of registration and for title:

1. Check of the Department of Highway Safety and Motor Vehicles database for the owner and any lienholder.

2. Check of the electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle on file with the Department of Highway Safety and Motor Vehicles.

3. Check of vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. Check of law enforcement report for tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle or vessel at beginning of tow, if private tow.

6. If there is no address of the owner on the impound report, check of law enforcement report to see if an out-of-

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state address is indicated from driver license information.

7. Check of vehicle or vessel for inspection sticker or other stickers and decals that may indicate a state of possible registration.

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

9. Check of vehicle for vehicle identification number.

10. Check of vessel for vessel registration number.

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

Section 48. Paragraph (b) of subsection (2) of section 324.051, Florida Statutes, is amended to read:

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

(2)

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

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

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

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vehicles not owned by him or her.

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

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

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

Section 49. Subsection (1) of section 324.091, Florida Statutes, is amended to read:

324.091 Notice to department; notice to insurer.—

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

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

Section 50. Section 324.023, Florida Statutes, is amended to read:

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

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section.

Section 51. Applicability and construction; notice to policyholders.—

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

(2) Effective January 1, 2018:

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

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

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

(d) Any new or renewal motor vehicle insurance policy furnished to an owner or operator of a motor vehicle as proof of financial responsibility pursuant to s. 324.022 or s. 324.031, Florida Statutes, must provide medical payments coverage that complies with s. 627.7265, Florida Statutes.

(e) An existing motor vehicle insurance policy issued before that date which provides personal injury protection and property damage liability coverage that meets the requirements of s. 324.022, Florida Statutes, on December 31, 2017, but which does not meet minimum security requirements on or after January 1, 2018, is deemed to meet the security requirements of s. 324.022, Florida Statutes, and the medical payments coverage

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requirements of s. 627.7265, Florida Statutes, until such policy is renewed, nonrenewed, or canceled on or after January 1, 2018.

(3) Each insurer shall allow each insured who has a new or renewal policy providing personal injury protection, which becomes effective before January 1, 2018, and whose policy does not meet minimum security requirements on or after January 1, 2018, to change coverages so as to eliminate personal injury protection and obtain coverage providing minimum security requirements, which shall be effective on or after January 1, 2018. The insurer is not required to provide coverage complying with minimum security requirements in such policies if the insured does not pay the required premium, if any, by January 1, 2018, or such later date as the insurer may allow. Any reduction in the premium must be refunded by the insurer. The insurer may not impose on the insured an additional fee or charge that applies solely to a change in coverage; however, the insurer may charge an additional required premium that is actuarially indicated.

(4) By September 1, 2017, each motor vehicle insurer shall provide notice of this section to each motor vehicle policyholder who is subject to this section. The notice is subject to approval by the Office of Insurance Regulation and must clearly inform the policyholder that:

(a) The Florida Motor Vehicle No-Fault Law is repealed, effective January 1, 2018, and that on or after that date, the insured is no longer required to maintain personal injury protection insurance coverage, that personal injury protection coverage is no longer available for purchase in this state, and that all new or renewal policies issued on or after that date do

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not contain such coverage.

(b) Effective January 1, 2018, a person subject to the financial responsibility requirements of s. 324.022, Florida Statutes, must maintain minimum security requirements that enable the person to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle in the following amounts:

1. Beginning on the effective date of this act, and continuing through December 31, 2019:

a. Twenty thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$40,000 for bodily injury to, or the death of, two or more persons in any one crash; and

b. Ten thousand dollars for damage to, or destruction of, property of others in any one crash.

2. Beginning January 1, 2020, and continuing through December 31, 2021:

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

b. Ten thousand dollars for damage to, or destruction of, property of others in any one crash.

3. Beginning January 1, 2022, and continuing thereafter:

a. Thirty thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of \$60,000 for bodily

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injury to, or the death of, two or more persons in any one crash; and

b. Ten thousand dollars for damage to, or destruction of, property of others in any one crash.

(c) Personal injury protection insurance paid covered medical expenses for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household.

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

(e) Effective January 1, 2018, a person who purchases a motor vehicle liability insurance policy as proof of financial responsibility must maintain medical payments coverage that complies with s. 627.7265, Florida Statutes. Medical payments coverage pays covered medical expenses, up to the limits of such coverage, for injuries sustained in a motor vehicle crash by the policyholder, passengers, and relatives residing in the policyholder's household, as provided in s. 627.7265, Florida Statutes.

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

(g) If the policyholder's new or renewal motor vehicle insurance policy is effective before January 1, 2018, and

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3771 contains personal injury protection and property damage
 3772 liability coverage as required by state law before January 1,
 3773 2018, but does not meet minimum security requirements on or
 3774 after January 1, 2018, the policy is deemed to meet minimum
 3775 security requirements until it is renewed, nonrenewed, or
 3776 canceled on or after January 1, 2018.

3777 (h) A policyholder whose new or renewal policy becomes
 3778 effective before January 1, 2018, but does not meet minimum
 3779 security requirements on or after January 1, 2018, may change
 3780 coverages under the policy so as to eliminate personal injury
 3781 protection and to obtain coverage providing minimum security
 3782 requirements, including bodily injury liability coverage, which
 3783 are effective on or after January 1, 2018.

3784 (i) If the policyholder has any questions, he or she should
 3785 contact the person named at the telephone number provided in the
 3786 notice.

3787 (5) This section takes effect on the effective date of this
 3788 act.

3789 Section 52. Application of suspensions for failure to
 3790 maintain security; reinstatement.—All suspensions for failure to
 3791 maintain required security as required by law in effect before
 3792 January 1, 2018, remain in full force and effect after the
 3793 effective date of this act. A driver may reinstate a suspended
 3794 driver license or registration as provided under s. 324.0221,
 3795 Florida Statutes.

3796 Section 53. The Division of Law Revision and Information is
 3797 directed to replace the phrase "the effective date of this act"
 3798 wherever it occurs in this act with the date this act becomes a
 3799 law.

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3800 Section 54. Except as otherwise expressly provided in this
 3801 act and except for this section, which shall take effect upon
 3802 this act becoming a law, this act shall take effect January 1,
 3803 2018.

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 1768

INTRODUCER: Senator Lee

SUBJECT: Public Records/Medical Payments Coverage and Liability Motor Vehicle Insurance
Policies/Department of Highway Safety and Motor Vehicles

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Pre-meeting
2.			GO	
3.			AP	

I. Summary:

SB 1768 amends s. 324.242, F.S., to revise the public records exemption for information in personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles (DHSMV). The bill applies the public records exemption to medical payments coverage and motor vehicle liability insurance policies, instead of personal injury protection and property damage. The bill does not change what information the exemption holds confidential and exempt. The change is necessary because SB 1766 repeals the Florida Motor Vehicle No-Fault Law, which requires personal injury coverage, and will create bodily injury liability financial responsibility requirements.

The public records exemption will be subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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.

Section 324.242, F.S., Exemption

Every Florida registrant of a motor vehicle must obtain and provide proof of holding a motor vehicle insurance policy that includes \$10,000 in personal injury protection (PIP).¹⁷ Additionally, s. 324.022, F.S., requires owners and operators of Florida-registered motor vehicles to maintain the ability to pay at least \$10,000 in property damage, which may be met by maintaining \$10,000 in property damage liability coverage.¹⁸ A higher financial requirement is placed on commercial motor vehicles, taxicab owners and operators, for-hire passenger transportation vehicles, and registered vehicle owners or operators found guilty or that have plead nolo contendere to driving under the influence.¹⁹

The Department of Highway Safety and Motor Vehicles (DHSMV) is notified by insurers that supply policies with personal injury protection or property damage liability coverage of renewals, cancellations, and non-renewals of these policies within 45 days of their effective dates, as required by s. 324.0221, F.S. The insurer must also notify the named insured in writing of the cancellation or non-renewal of a policy and give notice of the consequences from the failure of maintaining PIP and property damage coverage, including the loss of registration, loss of driving privileges, and imposition of reinstatement fees. The records held by the DHSMV contain the insurance company code, the policy number, driver’s license number, personal identifying information (name and address), and information identifying the vehicle, including the vehicle identification number and the make, model, and year of the vehicle.

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 Section 627.733, F.S.

¹⁸ Section 324.022, F.S.

¹⁹ See ss. 324.023, F.S., and 324.032, F.S.

Section 324.242, F.S., exempts from public records requirements personal identifying information, including the name, address, and driver's license number of insureds and former insureds and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies.²⁰ The exemption serves to protect sensitive personal information concerning individuals whose reputation or safety from identity theft would be jeopardized if the information were released. The exemption also protects confidential information used for business advantage against competitors. The disclosure of this information could injure insurance companies in the market since competitors would be able to solicit the business of their policyholders. The information exempted by s. 324.242, F.S., is neither obtainable by alternate means nor protected under other exemptions. However under s. 324.242, F.S., the DHSMV must release the policy number for a vehicle involved in an accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident upon receipt of a written request and copy of the crash report.

III. Effect of Proposed Changes:

Section 1 amends s. 324.242, F.S., to revise the public records exemption for information in personal injury protection and property damage liability policies held by the DHSMV. The bill applies the public records exemption to medical payments coverage and motor vehicle liability insurance policies, instead of personal injury protection and property damage. The bill does not change what information the exemption holds confidential and exempt. The change is necessary because SB 1766 will repeal the Florida Motor Vehicle No-Fault Law which requires personal injury coverage, and will create bodily injury liability financial responsibility requirements.

The public records exemption will be subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 justifies the exemption through legislative findings that it is a public necessity to make certain information regarding bodily injury liability insurance and medical payments coverage policy held by the DHSMV confidential and exempt. The section states that it is imperative that automobile drivers be properly insured to ensure public safety on the roads and highways. Consequently, insurers must report to the DHSMV and verify the issuance, renewal, nonrenewal, or cancellation of motor vehicle insurance policies. The information includes the personal identifying information of insureds and former insureds as well as insurance policy numbers. This information, if compiled, could create customer lists for each insurer in the state, which are traditionally considered proprietary business information. Further, public access to such information could be used to perpetuate fraud against an insured, put him or her at risk, or make the insured the target of uninvited solicitations from other insurers and others seeking to profit from motor vehicle accidents.

²⁰ The statutory predecessor to s. 324.242, F.S., was s. 627.736(9)(a), F.S., which was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007.

Section 3 makes the act effective on the same date that SB 1766 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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.

The bill contains the public necessity statement required by Article I, s. 24(c) of the Florida Constitution for a newly-created or expanded public records or public meetings 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:

Line 97 should be amended to link the bill to SB 1766.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 324.242 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.



685848

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment

Delete line 97
and insert:
SB 1766 or similar legislation takes effect, if such
legislation

By Senator Lee

20-02001-17

20171768__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 324.242, F.S.; revising an exemption from public
 4 records requirements to exempt certain information
 5 held by the Department of Highway Safety and Motor
 6 Vehicles relating to medical payments coverage and
 7 liability motor vehicle insurance policies, rather
 8 than relating to personal injury protection and
 9 property damage liability insurance policies;
 10 requiring the department to provide certain policy
 11 numbers to specified parties; providing for future
 12 legislative review and repeal of the exemption;
 13 providing a statement of public necessity; providing a
 14 contingent effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Section 324.242, Florida Statutes, is amended to
 19 read:
 20 324.242 Medical payments coverage and motor vehicle
 21 ~~Personal injury protection and property damage~~ liability
 22 insurance policies; public records exemption.—
 23 (1) The following information regarding medical payments
 24 coverage and motor vehicle ~~personal injury protection and~~
 25 ~~property damage~~ liability insurance policies held by the
 26 department is confidential and exempt from s. 119.07(1) and s.
 27 24(a), Art. I of the State Constitution:
 28 (a) Personal identifying information of an insured or
 29 former insured; and

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

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30 (b) An insurance policy number.
 31 (2) Upon receipt of a request and proof of a crash report
 32 as required under s. 316.065, s. 316.066, or s. 316.068, or a
 33 crash report created pursuant to the laws of another state, the
 34 department shall release the policy number for a policy covering
 35 a vehicle involved in a motor vehicle accident to:
 36 (a) Any person involved in such accident;
 37 (b) The attorney of any person involved in such accident;
 38 or
 39 (c) A representative of the insurer of any person involved
 40 in such accident.
 41 (3) The department shall provide motor vehicle ~~personal~~
 42 ~~injury protection and property damage~~ liability insurance and and
 43 medical payments coverage policy numbers to department-approved
 44 third parties that provide data collection services to an
 45 insurer of any person involved in such accident.
 46 (4) Before the department's release of a policy number in
 47 accordance with subsection (2) or subsection (3), an insurer's
 48 representative, a contracted third party, or an attorney for a
 49 person involved in an accident must provide the department with
 50 documentation confirming proof of representation.
 51 (5) Information made confidential and exempt by this
 52 section may be disclosed to another governmental entity without
 53 a written request or copy of the crash report if disclosure is
 54 necessary for the receiving governmental entity to perform its
 55 duties and responsibilities. For purposes of this subsection,
 56 the term "governmental entity" means any federal, state, county,
 57 district, authority, or municipal officer, department, division,
 58 board, bureau, or commission created or established by law.

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(6) This exemption applies to personal identifying information of an insured or former insured and insurance policy numbers held by the department before, on, or after October 11, 2007.

(7) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds and declares that it is a public necessity to make certain information regarding bodily injury liability insurance and medical payments coverage policies held by the Department of Highway Safety and Motor Vehicles confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In order to ensure public safety on the roads and highways of this state, it is imperative that automobile drivers be properly insured for liability for bodily injury and damage to real property and be properly insured for personal medical expenses. As such, insurers are required to report to the department and verify the issuance to a driver of a new policy as well as the renewal, nonrenewal, or cancellation of that policy. Such information includes the personal identifying information of an insured or former insured as well as the insurance policy number of the insured. If this information is compiled, it could result in a customer list of every insurer in the state. Customer lists contain detailed client and policy information that is traditionally considered proprietary business information because such lists could be used by competitors to solicit customers. Consequently, the

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release of that information could injure the insurer in the marketplace by diminishing the advantage that the insurer maintains over those who do not possess such information. Further, public access to such information could be used to perpetuate fraud against an insured and put him or her at risk or to make the insured the target of uninvited solicitations from other insurers or from others seeking to profit from motor vehicle accidents.

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.

Page 4 of 4

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7012

INTRODUCER: Health Policy Committee

SUBJECT: Ratification of Department of Health Rules

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stovall	Stovall		HP Submitted as Committee Bill
1.	Billmeier	Knudson	BI	Favorable
2.			RC	

I. Summary:

SB 7012 ratifies Rule 64B8-9.009, F.A.C., adopted by the Department of Health (department) and the Board of Medicine (board) for the Standard of Care for Office Surgery. This adopted rule requires two additional drugs be maintained in the office when performing Level I office surgery. Level I office surgery includes minor procedures with minimal sedation or topical or local anesthesia where the chances of complication requiring hospitalization are remote.

The Statement of Estimated Regulatory Costs (SERC) developed by the board determined that the proposed rule will likely increase regulatory costs in excess of \$1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect.

This act takes effect upon becoming a law.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.¹ Rulemaking authority is delegated by the Legislature to an agency in law, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ See ss. 120.52(8) and 120.536(1), F.S.

authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register (F.A.R.).⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.⁶

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 in the aggregate within 1 year after implementation of the rule.⁷

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁸

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,⁹ productivity, or innovation; or
- Regulatory costs, including any transactional costs.^{10,11}

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁵ Section 120.54(3)(a)2., F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ Sections 120.54(3)(b) and 120.541(1)(b), F.S.

⁸ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less. See ss. 120.52(18), (19), and 288.703(6), respectively.

⁹ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹⁰ Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

¹¹ Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹²

Level I Office Surgery Rule

The Board of Medicine is created within the department to ensure that every physician practicing in the state meets minimum requirements for safe practice.¹³ The practice of medicine is regulated under ch. 458, F.S., and the board has authority to adopt rules to implement the provisions of that chapter.¹⁴

More specifically, the board may establish by rule standards of practice and standards of care for particular practice settings, including but not limited to:

- Education and training;
- Equipment and supplies;
- Medications including anesthetics;
- Assistance of and delegation to other personnel;
- Transfer agreements;
- Sterilization;
- Records;
- Performance of complex or multiple procedures;
- Informed consent; and
- Policy and procedure manuals.¹⁵

The rule relating to the standard of care for office surgery was initially adopted in February 1994, and has been amended numerous times.¹⁶ Under this rule there are general standards relating to all office surgery¹⁷ as well as specific standards for each of three levels of office surgery.¹⁸ The levels of office surgery are differentiated primarily according to the level of sedation and anesthesia required for the procedure and patient risk.

¹² Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

¹³ Sections 458.307(1) and 458.301, F.S.

¹⁴ Section 458.309(1), F.S.

¹⁵ Section 458.331(1)(v), F.S.

¹⁶ *See* the Florida Administrative Code history note for Rule 64B8-9.009, *available at*: <https://www.flrules.org/gateway/ruleNo.asp?id=64B8-9.009> (last visited Feb. 14, 2017).

¹⁷ Office surgery is defined in the rule as surgery which is performed outside of any facility licensed under ch. 390, F.S., (an abortion clinic) or ch. 395, F.S., (a hospital or ambulatory surgical center). *See* Rule 64B8-9.009(1)(d), F.A.C.

¹⁸ Level I includes minor procedures with minimal sedation or topical or local anesthesia where the chances of complication requiring hospitalization are remote. Level II involves moderate sedation and analgesia or conscious sedation. The physician, or the facility where the procedure is being performed, must have a transfer agreement with a nearby hospital unless the physician has staff privileges at a nearby hospital to perform the same procedure on an out-patient basis. Level III involves surgery in which the patient's level of sedation is that of deep sedation and analgesia or general anesthesia and requires a more rigorous evaluation of the patient as a suitable candidate for Level III office surgery. The surgeon must have staff privileges at a hospital to perform the same procedure or meet other comparable background, training, and experience criteria in order to perform these procedures in an office setting.

The general standards require the surgeon to examine the patient prior to the surgery to evaluate the patient for any risks from anesthesia and the surgical procedure to be performed. The surgeon must also maintain records of the surgical procedure, including a written informed consent from the patient if required for the particular procedure. Additional general standards regulate liposuction procedures, limit the duration of certain procedures, set the standards for anesthetic monitoring, require a current policy and procedure manual, and require a risk management program. All physicians must be qualified by education, training, and experience to perform any procedure in the office surgery setting.¹⁹

Specific standards for the levels of office surgery pertain to sedation and anesthesia; transfer agreements to, or staff privileges at, nearby hospitals; the physician's training; required equipment and supplies, including medications; assistance of other personnel; and emergency policies and procedures.

Level I office surgery includes the following:

- Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre-operative tranquilization of the patient.
- Liposuction involving the removal of less than 4000cc supernatant fat.
- Incision and drainage of superficial abscesses, limited endoscopies, skin biopsies, arthrocentesis, thoracentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations.
- Anesthesia is limited to minimal sedation. The patient's level of sedation is that of minimal sedation and anxiolysis and the chances of complications requiring hospitalization are remote. Minimal sedation and anxiolysis is a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Controlled substances²⁰ are limited to oral administration in doses appropriate for the unsupervised treatment of insomnia, anxiety, or pain.²¹
- Chances of complication requiring hospitalization are remote.

Under Level I, the surgeon's continuing medical education must include subjects relating to regional anesthetic drugs and the surgeon must hold current certification in Advanced Cardiac Life Support. At least one assistant must hold current certification in Basic Life Support. The physician's office must have available intravenous access supplies, oxygen, oral airways, and a positive pressure ventilation device. The current rule further requires the following medications in the office: atropine, diphenhydramine, epinephrine, and hydrocortisone.

¹⁹ Rule 64B8-9.009(2), F.A.C.

²⁰ Refers to controlled substances as defined in ss. 893.02 and 893.03, F.S.

²¹ This bullet is text from the adopted rule under consideration for ratification. This text is intended to clarify the rule currently in effect.

Amendment to Rule 64B8-9.009, F.A.C.

The board filed an amendment to Rule 648-9.009, F.A.C., for adoption with the Department of State on June 15, 2016. This amendment clarifies language pertaining to Level I office surgery and added two drugs to the list of medications that must be available for Level I office surgery. A physician's office that performs Level I office surgery is required to have Flumazenil if a benzodiazepine is administered and Naloxone if an opiate is administered. Flumazenil is used for reversing drowsiness, sedation, and other effects caused by benzodiazepines.²² Naloxone blocks or reverses the effects of opioid²³ medication, including extreme drowsiness, slowed breathing, or loss of consciousness. These newly listed medications may be administered, if needed, to reverse the effects of other medications administered for the surgical procedure.

The department prepared a SERC in accordance with state rulemaking requirements.²⁴ The estimated cost to each physician's office performing Level I office surgeries is \$29.98 for the required quantity of Flumazenil and \$55.96 for the required quantity of Naloxone for a total of \$85.96.²⁵ According to the board, the actual number of physician offices is unknown but the board assumes that approximately 20,468 physicians' offices in private practice would perform a minor procedure defined in the rule as Level I office surgery. The aggregate regulatory costs for initial compliance with the proposed rule is \$1,759,429.²⁶ As a result, the proposed rule amendment requires ratification by the Legislature prior to taking effect.

III. Effect of Proposed Changes:

The bill ratifies Rule 64B8-9.09, F.A.C., Standard of Care for Office Surgery solely to meet the condition for effectiveness of the rule imposed by s. 120.541(3), F.S.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of requirements governing adoption of the rule.

The act is effective upon becoming a law. At that time, the rule becomes effective.

²² Benzodiazepines include drugs such as Valium, Versed, and Xanax. Among other uses, they may be used before surgery to induce relaxation and amnesia (memory loss). See <https://www.drugs.com/drug-class/benzodiazepines.html> (last visited Feb. 15, 2017).

²³ Opioids reduce the sending of pain messages to the brain and reduce feelings of pain. See <http://www.webmd.com/pain-management/guide/narcotic-pain-medications#1> (last visited Feb. 15, 2017).

²⁴ *Supra* note 7. A copy of the SERC is available in the Senate Health Policy Committee.

²⁵ The SERC states that the shelf life of these drugs is at or exceed 5 years, therefore no replacement costs are included in the fiscal analysis.

²⁶ The SERC indicates that the rule increases regulatory costs by \$1,937,500.88 over the first 5 years of implementation. However, the cost of a medication that is currently required by rule, was inadvertently included in that calculation.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill enables a rule to go into effect that will impose a requirement on physicians who perform Level I office surgery to maintain specified drugs in the office. The estimated cost per physician's office is \$85.96 over a 5-year period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida law.

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 the Committee on Health Policy

588-01938-17

20177012__

A bill to be entitled

An act relating to ratification of Department of Health rules; ratifying a rule, adopted by the Board of Medicine, relating to the standard of care for office surgery for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule exceeding the specified thresholds for likely adverse impact on or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 64B8-9.009, Florida Administrative Code, titled "Standard of Care for Office Surgery" as filed for adoption with the Department of State pursuant to the certification package dated June 15, 2016.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or an exception to any provision of law governing adoption or enforcement of the cited rule, and is intended to preserve the status of the cited rule as a rule

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588-01938-17

20177012__

under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of the cited rule.

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

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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)

4-3

7012

Meeting Date

Bill Number (if applicable)

Topic Dept. of Health Runz

Amendment Barcode (if applicable)

Name Jerrold Fowler

Job Title Dir. Health Care Policy

Address 1430 Piedmont Dr. E.

Phone 850-224-6496

Tallahassee

City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/17

Meeting Date

7012

Bill Number (if applicable)

482232

Amendment Barcode (if applicable)

Topic

Name Chris Noland

Job Title 1000 Riverside Ave #240

Address Jacksonville, FL 32204

Street

Jacksonville FL 32204

City

State

Zip

Phone 904-233-3051

Email cnolandlaw@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Surgeons

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)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Committee on Banking and Insurance

Type:
Judge:

Started: 4/3/2017 4:02:49 PM
Ends: 4/3/2017 5:57:23 PM **Length:** 01:54:35

4:03:01 PM Meeting called to order - quorum present
4:03:21 PM TAB 5 - CS/SB 724 Passidomo - Estates
4:03:43 PM Sen. Passidomo recognized to explain the bill.
4:04:05 PM Amd. 842814 - fwo - adopted
4:04:33 PM Vote on CS/CS/SB 714 - Favorable
4:04:59 PM TAB 2 - SB 460 by Brandes - Personal Delivery Devices
4:05:20 PM Explanation of bill by Sen. Brandes
4:05:37 PM Vote on SB 460 - Favorable
4:06:03 PM TAB 9 - SB 1012 by Brandes - Investigative and forensic Servc.
4:06:22 PM Delete all amd. - explanation of amd. by Sen. Brandes - fwo - adopted
4:07:06 PM Vote on CS/SB 1012 - Favorable
4:07:34 PM TAB 10 SB 1014 Brandes, Public Records
4:08:01 PM Delete all Amd. adopted fwo
4:08:18 PM Vote on CS/SB 1014 - Favorable
4:08:45 PM TAB 14 - SB 1316 - Sen. Bracy - Preinsur. Inspec.
4:09:11 PM Explanation of b ill by Sen. Brandes
4:09:28 PM Explanation of amd. 571826 - fwo - adopted
4:11:41 PM Jan Gorrie
4:12:43 PM Vote on CS/SB 1316 - Favorable
4:13:17 PM TAB 4 CS/SB 680 - Bail Bonds
4:13:36 PM Explanation of bill - Sen. Baxley
4:13:53 PM Amd. 751988 -
4:14:11 PM Amd. to Amd (751988) - fwo - adopted
4:14:33 PM Back to Amd. 751988 as amended - fwo - adopted
4:14:49 PM Amd. 204770 - fwo - adopted
4:17:27 PM Vote on CS/CS/SB 680 - Favorable
4:18:38 PM TAB 1 - SB 248 - Broxson - Public Records
4:18:56 PM Explanation of bill by Sen Broxson
4:19:36 PM Vote on SB 248 - Favorable
4:20:38 PM TAB 12 - SB 1084 by Stargel - fighfighter Cert.
4:21:15 PM Explanation of Amd. 863310 by Sen. Stargel - fwo amendment adopted
4:22:00 PM Vote on CS/SB 1084 - Favorable
4:22:39 PM TAB 11 - SB 1032 - Sen. Mayfield - Unfair Ins. Trade Practices
4:23:07 PM Sen. Mayfield recognized to explain the bill.
4:23:28 PM Vote on SB 1032 - Favorable
4:24:08 PM TAB 19 - SB 7012 - Mayfield - Ratification of Dept. of Health
4:24:31 PM Explanation of bill by Sen. Mayfield
4:24:53 PM Vote on SB 7012 - Favorable
4:25:36 PM TAB 7 - SB 958 - Thurston - Financial Institutions
4:26:04 PM Explanation of Amd. 347510 - fwo - adopted
4:28:02 PM Vote on CS/SB 958 - Favorable
4:29:13 PM TAB 3 - SB 580 - Garcia - Insur. Administrators
4:29:33 PM Sen. Garcia recognized to explain the bill
4:30:36 PM Joy Ryan -Prime Therapeutics - speaking against the bill
4:32:43 PM Benjamin Banoit - The Medicine Shoppe Trinity
4:37:40 PM Vote on SB 580 -Favorable
4:39:51 PM TAB 6 - SB 922 - Garcia - Ins. Adjusters
4:40:15 PM Senator Garcia recognized to explain the bill.
4:40:53 PM AMD. 655674 - fwo - adopted
4:42:22 PM Vote on CS/SB 922 - Favorable
4:43:24 PM TAB 13 - SB 1218 Farmer - Property Repair
4:44:48 PM Sen. Farmer recognized to explain the delete all amd. (310588) (late filed)

4:49:13 PM Dave DeBlander representing self
4:55:48 PM David Altmaier, Ofc. of Ins. Reg.
4:56:51 PM Christine Ashburn, Citizens Property Ins.
5:03:27 PM Sha Ron James, DFS
5:05:10 PM Foyt Raiston, FL Assoc. of Restoration Specialist
5:06:19 PM Jeff Grant, Bone Dry Restoration
5:09:45 PM Cam Fentriss - FL Roofing and Sheet Metal Contractors Assn.
5:11:04 PM Amd. 310588 -
5:15:15 PM Ken Bell - ASI Insurance Group
5:16:16 PM William Large, FL Justice Reform Institute
5:18:04 PM Coretta Anthony-Smith representing self
5:19:25 PM Mark Cederberg representing self
5:21:21 PM David Alexander, Orlando, FL
5:22:34 PM Motion for time certain vote at 5:30 on S 1218
5:23:34 PM C. Glen Ged , attorney
5:24:23 PM Debate on S 1218
5:28:45 PM Sen. Farmer recognized to close on bill.
5:29:41 PM Vote on S 1218 - Fav.
5:30:53 PM TAB 15 - SB 1582 Bradley - Workers' Compensation Insurance
5:31:27 PM Senator Bradley recognized to explain the bill.
5:39:11 PM Rich Templin, FL AFL-CIO
5:40:46 PM Motion by Sen. Farmer - time certain vote at 5:45 for SB 1582 - fwo - adopted
5:42:14 PM Motion by Sen. Farmer - time certain vote at 5:45 for SB 1582 - fwo - adopted
5:42:16 PM Kimberly Fernandes, FL Justice Reform Institute
5:44:10 PM Thomas Koval, FL Insurance Group
5:45:26 PM Motion to extend time certain vote to 5:50
5:46:17 PM Senator Bradley recognized to close on bill.
5:50:23 PM Senator Bradley recognized to close on bill.
5:50:24 PM Vote on SB 1582 - Favorable
5:51:00 PM TAB 8 - SB 1008 - Perry/Bradley
5:51:33 PM Sen. Bradley recognized to present the bill.
5:52:28 PM Sen. Bradley recognized to present the bill.
5:53:01 PM AMD. 305854 (delete all amd.) fwo - adopted
5:54:07 PM Vote on CS/SB 1008 - Favorable
5:55:18 PM TAB 16 - S 1684 - Farmer - Ins. Rates
5:55:33 PM Delete all Amd. 164156 - fwo/adopted
5:56:12 PM Vote on CS/S 1684 - Fav.
5:57:09 PM Meeting adjourned.