

SB 520 by **Grimsley**; (Identical to H 0221) Long-term Care Insurance

SB 642 by **Benacquisto (CO-INTRODUCERS) Sobel**; Individuals with Disabilities

437886 A S RCS BI, Benacquisto Delete L.90 - 554: 02/17 10:16 AM

SB 646 by **Benacquisto**; Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program

914652 A S RCS BI, Benacquisto Delete L.31: 02/17 10:16 AM

SB 644 by **Benacquisto**; Florida ABLE Trust Fund/State Board of Administration

100100 D S RCS BI, Benacquisto Delete everything after 02/17 10:16 AM

SB 258 by **Brandes**; (Similar to H 0165) Property and Casualty Insurance

975754 A S RCS BI, Richter Delete L.45 - 107. 02/17 10:16 AM

724808 A S RCS BI, Richter Delete L.126 - 127: 02/17 10:16 AM

687824 A S RCS BI, Richter Delete L.216 - 217: 02/17 10:16 AM

385334 A S RCS BI, Richter Delete L.386 - 395: 02/17 10:16 AM

875536 A S RCS BI, Negron btw L.458 - 459: 02/17 10:16 AM

SB 600 by **Richter**; (Similar to H 0189) Insurance Guaranty Associations

727610 A S RCS BI, Richter Delete L.26: 02/17 10:16 AM

879430 A S RCS BI, Richter Delete L.40: 02/17 10:16 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Benacquisto, Chair
Senator Richter, Vice Chair

MEETING DATE: Tuesday, February 17, 2015
TIME: 9:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Benacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, Margolis, Montford, Negron, Simmons, and Smith

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|-----------------------------|
| 1 | SB 520 Grimsley (Identical H 221) | Long-term Care Insurance; Providing additional forms for the mandatory offer of nonforfeiture benefits in long-term care insurance policies, etc. BI 02/17/2015 Favorable CF FP | Favorable Yeas 11 Nays 0 |
| 2 | SB 642 Benacquisto (Link S 644, CS/S 646) | Individuals with Disabilities; Creating the "Florida Achieving a Better Life Experience (ABLE) Act"; requiring the Florida Prepaid College Board to establish a direct-support organization known as "Florida ABLE, Inc."; authorizing the organization to use certain services, property, and facilities of the Florida Prepaid College Board; providing that specified moneys, assets, and income of a qualified ABLE program, including the Florida ABLE program, are not subject to attachment, levy, garnishment, or certain legal process in favor of certain creditors or claimants, etc. BI 02/17/2015 Fav/CS AED AP | Fav/CS Yeas 11 Nays 0 |
| 3 | SB 646 Benacquisto (Link S 642) | Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program; Providing an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider thereof; authorizing the release of such information under specified circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 02/17/2015 Fav/CS GO AP | Fav/CS Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 17, 2015, 9:00 a.m.—12:00 noon

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|--------------------------|
| 4 | SB 644 Benacquisto (Link CS/S 642) | Florida ABLE Trust Fund/State Board of Administration; Creating the Florida ABLE Trust Fund within the State Board of Administration; authorizing sources of funds; specifying the purpose of the trust fund and authorized uses of the assets; providing for future review and termination or re-creation of the trust fund, etc. BI 02/17/2015 Fav/CS AED AP | Fav/CS Yeas 11 Nays 0 |
| 5 | SB 258 Brandes (Similar H 165, Compare CS/H 273, CS/S 202) | Property and Casualty Insurance; Requiring the Office of Insurance Regulation to use certain models or methods, or a straight average of model results or output ranges, to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; increasing the length of time during which an insurer is not required to adhere to certain models found by the Commission on Hurricane Loss Projection Methodology to be accurate or reliable in determining probable maximum loss levels with respect to certain rate filings, etc. BI 02/17/2015 Fav/CS AGG AP | Fav/CS Yeas 11 Nays 0 |
| 6 | SB 600 Richter (Similar H 189) | Insurance Guaranty Associations; Revising the definition of the term "asset" to include Florida Insurance Guaranty Association assessments, under certain conditions, for purposes of determining the financial condition of an insurer; transferring a provision relating to the obligation of the Florida Life and Health Insurance Guaranty Association to pay valid claims under certain circumstances, etc. BI 02/17/2015 Fav/CS CM FP | Fav/CS Yeas 11 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 520

INTRODUCER: Senator Grimsley

SUBJECT: Long-term Care Insurance

DATE: February 17, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Knudson | Knudson | BI | Favorable |
| 2. | | | CF | |
| 3. | | | FP | |

I. Summary:

SB 520 allows an insurer to offer a nonforfeiture provision in a long-term care insurance policy that returns premium if the insured dies or the policy is completely surrendered or cancelled.

II. Present Situation:

Nonforfeiture Provision in Long-term Care Insurance Policies

A long-term care insurance policy is defined in law as:

Any insurance policy or rider ... designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.¹

A long-term insurance policy may not be cancelled, nonrenewed, or terminated because of the age or health of the policyholder.² Policies may only be cancelled on a statewide basis if authorized by the OIR because renewal would jeopardize the insurer's solvency or that the insurer's loss experience is substantial, unexpected, and cannot reasonably be mitigated or remedied. A long-term care policy may also be cancelled for nonpayment of premium. The policyholder must be provided a grace period of at least 30 days to pay premium.³ The insurer must also, after the expiration of the grace period, provide at least 30-days written notice to the policyholder and a specified secondary addressee that coverage may lapse.⁴

¹ Section 627.9404(1), F.S.

² Section 627.9407(3)(a), F.S.

³ Section 627.94073(1), F.S.

⁴ Section 627.94073(2), F.S.

Insurers who offer long-term care policies must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the OIR.⁵ For example, the nonforfeiture benefit may entitle the policyholder to receive policy benefits for a reduced period of time or receive fewer benefits. The policyholder has the option to purchase a nonforfeiture benefit for an additional premium, but is not required to do so.

Since the passage of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), qualified long-term care insurance contract premiums may be included as a deductible medical expense on Schedule A of IRS Form 1040.⁶ A long-term care insurance contract does not qualify for preferred tax treatment unless any refund of premium is applied as a reduction in future premium or to increase future benefits.⁷ A premium refund may be made under HIPAA, however, on the death of the insured or the complete surrender or cancellation of the contract.⁸ At the time HIPAA was passed, Florida law did not restrict the return of premium to the death or complete surrender of the long term care contract.⁹ After the passage of HIPAA, Florida law was amended in 1997 to eliminate the return of premium as an available nonforfeiture protection.

III. Effect of Proposed Changes:

Current law requires insurers of long-term care policies to offer a nonforfeiture protection provision. The bill specifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of premium in the event of the insured's death, or surrender or cancellation of the policy. The return of a premium is not currently identified as a benefit in a nonforfeiture provision. This change adds an additional option to nonforfeiture provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Section 627.94072(2), F.S.

⁶ See IRS Publication 502 (2014), Medical and Dental Expenses <http://www.irs.gov/publications/p502/index.html> (accessed on February 2, 2015).

⁷ 26 U.S.C. 7702B(b)(1)(E)

⁸ 26 U.S.C. 7702B(b)(2)(C)

⁹ See s. 19, ch. 97-179, L.O.F.

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 627.94072 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 Grimsley

21-00841-15

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A bill to be entitled

An act relating to long-term care insurance; amending s. 627.94072, F.S.; providing additional forms for the mandatory offer of nonforfeiture benefits in long-term care insurance policies; providing an effective date.

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

Section 1. Subsection (2) of section 627.94072, Florida Statutes, is amended to read:

627.94072 Mandatory offers.—

(2) An insurer that offers a long-term care insurance policy, certificate, or rider in this state must offer a nonforfeiture protection provision providing reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by the office if all or part of a premium is not paid. A nonforfeiture protection provision may be offered in the form of a return of premium upon the death of the insured or upon the complete surrender or cancellation of the policy or contract. Nonforfeiture benefits and any additional premium for such benefits must be computed in an actuarially sound manner, using a methodology that ~~is~~ has been filed with and approved by the office.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 17, 2015

SB 520

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Paul Sanford

Job Title _____

Address 106 South Monroe Street

Phone 850-222-7200

Street

Tallahassee

FL

32301

Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Insurance Council

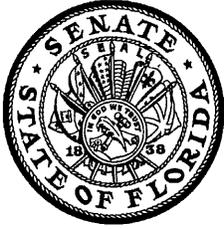
Appearing at request of Chair: Yes No

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

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 4, 2015

I respectfully request that **Senate Bill #0520**, relating to Long-term Care Insurance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Denise Grimsley", written over a horizontal line.

Senator Denise Grimsley
Florida Senate, District 21



437886

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/17/2015 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 90 - 554
and insert:

(a) "ABLE account" means an account established and maintained under the Florida ABLE program.

(b) "Contracting state" means a state that has entered into a contract with Florida ABLE, Inc., to provide residents of Florida or that state with access to a qualified ABLE program.

(c) "Designated beneficiary" means the eligible individual



437886

11 who established an ABLE account or the eligible individual to
12 whom an ABLE account was transferred.

13 (d) "Eligible individual" has the same meaning as provided
14 in s. 529A of the Internal Revenue Code.

15 (e) "Florida ABLE program" means the qualified ABLE program
16 established and maintained under this section by Florida ABLE,
17 Inc.

18 (f) "Internal Revenue Code" means the United States
19 Internal Revenue Code of 1986, as defined in s. 220.03(1), and
20 regulations adopted pursuant thereto.

21 (g) "Participation agreement" means the agreement between
22 Florida ABLE, Inc., and a participant in the Florida ABLE
23 program.

24 (h) "Qualified ABLE program" means the program authorized
25 under s. 529A of the Internal Revenue Code which may be
26 established by a state or agency, or instrumentality thereof, to
27 allow a person to make contributions for a taxable year to an
28 ABLE account established for the purpose of meeting the
29 qualified disability expenses of the designated beneficiary of
30 the ABLE account.

31 (i) "Qualified disability expense" has the same meaning as
32 provided in s. 529A of the Internal Revenue Code.

33 (3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.—

34 (a) The Florida Prepaid College Board shall establish a
35 direct-support organization to be known as "Florida ABLE, Inc.,"
36 which is:

37 1. A Florida not-for-profit corporation registered,
38 incorporated, organized, and operated in compliance with chapter
39 617.



437886

40 2. Organized and operated to receive, hold, invest, and
41 administer property and to make expenditures for the benefit of
42 the Florida ABLE program.

43 (b) Florida ABLE, Inc., shall operate under a written
44 contract with the Florida Prepaid College Board. The contract
45 must include, but is not limited to, provisions that require:

46 1. The articles of incorporation and bylaws of Florida
47 ABLE, Inc., to be approved by the Florida Prepaid College Board.

48 2. Florida ABLE, Inc., to submit an annual budget for
49 approval by the Florida Prepaid College Board. The budget must
50 comply with rules adopted by the Florida Prepaid College Board.

51 3. Florida ABLE, Inc., to pay reasonable consideration to
52 the Florida Prepaid College Board for products or services
53 provided directly or indirectly by the Florida Prepaid College
54 Board.

55 4. The Florida Prepaid College Board to solicit proposals,
56 to contract or subcontract, or to amend contractual service
57 agreements of the Florida Prepaid College Board for the benefit
58 of Florida ABLE, Inc.

59 5. The Florida Prepaid College Board to maintain the
60 website of Florida ABLE, Inc.

61 6. The Florida Prepaid College Board to annually certify
62 that Florida ABLE, Inc., is complying with the terms of the
63 contract and acting in a manner consistent with this section and
64 in the best interest of the state. The certification must be
65 reported in the official minutes of a meeting of the Florida
66 Prepaid College Board.

67 7. The disclosure of material provisions in the contract
68 and of the distinction between the Florida Prepaid College Board



437886

69 and Florida ABLE, Inc., to donors of gifts, contributions, or
70 bequests, and the inclusion of such disclosure on all
71 promotional and fundraising publications.

72 8. The fiscal year for Florida ABLE, Inc., to begin on July
73 1 and end on June 30 of the following year.

74 (c) Florida ABLE, Inc., shall provide for an annual
75 financial audit in accordance with s. 215.981. The Florida
76 Prepaid College Board and the Auditor General may require
77 Florida ABLE, Inc., or its independent auditor, to provide any
78 supplemental data relating to the operation of Florida ABLE,
79 Inc.

80 (d)1. The board of directors of Florida ABLE, Inc., shall
81 consist of:

82 a. The chair of the Florida Prepaid College Board, who
83 shall serve as the chair of the board of directors of Florida
84 ABLE, Inc.

85 b. One individual who possesses knowledge, skill, and
86 experience in the areas of accounting, risk management, or
87 investment management, who shall be appointed by the Florida
88 Prepaid College Board. A current member of the Florida Prepaid
89 College Board, other than the chair, may be appointed.

90 c. One individual who possesses knowledge, skill, and
91 experience in the areas of accounting, risk management, or
92 investment management, who shall be appointed by the Governor.

93 d. Two individuals who are advocates of persons with
94 disabilities, one of whom shall be appointed by the President of
95 the Senate and one of whom shall be appointed by the Speaker of
96 the House of Representatives. At least one of the individuals
97 appointed under this sub-subparagraph must be an advocate of



437886

98 persons with developmental disabilities, as that term is defined
99 in s. 393.063.

100 2.a. The term of the appointee under sub-subparagraph 1.b.
101 shall be up to 3 years as determined by the Florida Prepaid
102 College Board. Such appointee may be reappointed.

103 b. The term of the appointees under sub-subparagraphs 1.c.
104 and d. shall be 3 years. Such appointees may be reappointed for
105 up to one consecutive term.

106 3. Unless authorized by the board of directors of Florida
107 ABLE, Inc., an individual director has no authority to control
108 or direct the operations of Florida ABLE, Inc., or the actions
109 of its officers and employees.

110 4. The board of directors of Florida ABLE, Inc.:

111 a. Shall meet at least quarterly and at other times upon
112 the call of the chair.

113 b. May use any method of telecommunications to conduct, or
114 establish a quorum at, its meetings or the meetings of a
115 subcommittee or other subdivision if the public is given proper
116 notice of the telecommunications meeting and provided reasonable
117 access to observe and, if appropriate, to participate.

118 5. A majority of the total current membership of the board
119 of directors of Florida ABLE, Inc., constitutes a quorum of the
120 board.

121 6. Members of the board of directors of Florida ABLE, Inc.,
122 and the board's subcommittees or other subdivisions shall serve
123 without compensation; however, the members may be reimbursed for
124 reasonable, necessary, and actual travel expenses pursuant to s.
125 112.061.

126 (e) Subject to rule adopted by the Florida Prepaid College



437886

127 Board, Florida ABLE, Inc., may use property, other than money,
128 facilities, and personal services of the Florida Prepaid College
129 Board, provided that Florida ABLE, Inc., offers equal employment
130 opportunities to all persons regardless of race, color,
131 religion, sex, age, or national origin. As used in this
132 paragraph, the term "personal services" means use of the Florida
133 Prepaid College Board's full-time and part-time personnel,
134 payroll processing services, and other services prescribed by
135 rule of the Florida Prepaid College Board.

136 (4) FLORIDA ABLE PROGRAM.—

137 (a) On or before July 1, 2016, Florida ABLE, Inc., shall
138 establish and administer the Florida ABLE program. Before
139 implementing the program, Florida ABLE, Inc., must obtain a
140 written opinion from counsel specializing in:

141 1. Federal tax matters which indicates that the Florida
142 ABLE program is designed to comply with s. 529A of the Internal
143 Revenue Code.

144 2. Federal securities law which indicates that the Florida
145 ABLE program and the offering of participation in the program
146 are designed to comply with applicable federal securities law
147 and qualify for the available tax exemptions under such law.

148 (b) The participation agreement must include provisions
149 specifying that:

150 1. The participation agreement is only a debt or obligation
151 of the Florida ABLE program and the Florida ABLE Program Trust
152 Fund and, as provided under paragraph (f), is not a debt or
153 obligation of the Florida Prepaid College Board or the state.

154 2. Participation in the Florida ABLE program does not
155 guarantee that sufficient funds will be available to cover all



437886

156 qualified disability expenses for any designated beneficiary and
157 does not guarantee the receipt or continuation of any product or
158 service for the designated beneficiary.

159 3. The designated beneficiary must be a resident of this
160 state or a resident of a contracting state at the time the ABLE
161 account is established.

162 4. The establishment of an ABLE account in violation of
163 federal law is prohibited.

164 5. Contributions in excess of the limitations set forth in
165 s. 529A of the Internal Revenue Code are prohibited.

166 6. The state is a creditor of ABLE accounts as, and to the
167 extent, set forth in s. 529A of the Internal Revenue Code.

168 7. Material misrepresentations by a party to the
169 participation agreement, other than Florida ABLE, Inc., in the
170 application for the participation agreement or in any
171 communication with Florida ABLE, Inc., regarding the Florida
172 ABLE program may result in the involuntary liquidation of the
173 ABLE account. If an account is involuntarily liquidated, the
174 designated beneficiary is entitled to a refund, subject to any
175 fees or penalties provided by the participation agreement and
176 the Internal Revenue Code.

177 (c) The participation agreement may include provisions
178 specifying:

179 1. The requirements and applicable restrictions for opening
180 an ABLE account.

181 2. The eligibility requirements for a party to a
182 participation agreement and the rights of the party.

183 3. The requirements and applicable restrictions for making
184 contributions to an ABLE account.



437886

185 4. The requirements and applicable restrictions for
186 directing the investment of the contributions or balance of the
187 ABLE account.

188 5. The administrative fee and other fees and penalties
189 applicable to an ABLE account.

190 6. The terms and conditions under which an ABLE account or
191 participation agreement may be modified, transferred, or
192 terminated.

193 7. The disposition of abandoned ABLE accounts.

194 8. Other terms and conditions determined to be necessary or
195 proper.

196 (d) The participation agreement may be amended throughout
197 its term for purposes that include, but are not limited to,
198 allowing a participant to increase or decrease the level of
199 participation and to change designated beneficiaries and other
200 matters authorized by this section and s. 529A of the Internal
201 Revenue Code.

202 (e) If an ABLE account is determined to be abandoned
203 pursuant to rules adopted by the Florida Prepaid College Board,
204 Florida ABLE, Inc., may use the balance of the account to
205 operate the Florida ABLE program.

206 (f) A contract or participation agreement entered into by
207 or an obligation of Florida ABLE, Inc., on behalf of and for the
208 benefit of the Florida ABLE program does not constitute a debt
209 or obligation of the Florida Prepaid College Board or the state,
210 but is only a debt or obligation of the Florida ABLE program and
211 the Florida ABLE Program Trust Fund. The state does not have an
212 obligation to a designated beneficiary or any other person as a
213 result of the Florida ABLE program. The obligation of the



437886

214 Florida ABLE program is limited solely to amounts in the Florida
215 ABLE Program Trust Fund. All amounts obligated to be paid from
216 the Florida ABLE Program Trust Fund are limited to the amounts
217 available for such obligation. The amounts held in the Florida
218 ABLE program may be disbursed only in accordance with this
219 section.

220 (g) Notwithstanding any other provision of law, Florida
221 ABLE, Inc., may enter into an agreement with a contracting state
222 which allows Florida ABLE, Inc., to participate under the
223 design, operation, and rules of the contracting state's
224 qualified ABLE program or which allows the contracting state to
225 participate under the Florida ABLE program.

226 (h) The Florida ABLE program shall continue in existence
227 until terminated by law. If the state determines that the
228 program is financially infeasible, the state may terminate the
229 program. Upon termination, amounts in the Florida ABLE Program
230 Trust Fund held for designated beneficiaries shall be returned
231 in accordance with the participation agreement.

232 (i) The state pledges to the designated beneficiaries that
233 the state will not limit or alter their rights under this
234 section which are vested in the Florida ABLE program until the
235 program's obligations are met and discharged. However, this
236 paragraph does not preclude such limitation or alteration if
237 adequate provision is made by law for the protection of the
238 designated beneficiaries pursuant to the obligations of Florida
239 ABLE, Inc., and does not preclude termination of the Florida
240 ABLE program if the state determines that the program is not
241 financially feasible. This pledge and undertaking by the state
242 may be included in participation agreements.



437886

243 (5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLE, Inc.,
244 shall establish a comprehensive investment plan for the Florida
245 ABLE program, subject to the approval of the Florida Prepaid
246 College Board. The comprehensive investment plan must specify
247 the investment policies to be used by Florida ABLE, Inc., in its
248 administration of the program. Florida ABLE, Inc., may place
249 assets of the program in investment products and in such
250 proportions as may be designated or approved in the
251 comprehensive investment plan. Such products shall be
252 underwritten and offered in compliance with the applicable
253 federal and state laws or regulations or exemptions therefrom. A
254 designated beneficiary may not direct the investment of any
255 contributions to the Florida ABLE program, unless specific fund
256 options are offered by Florida ABLE, Inc. Directors, officers,
257 and employees of Florida ABLE, Inc., may enter into
258 participation agreements, notwithstanding their fiduciary
259 responsibilities or official duties related to the Florida ABLE
260 program.

261 (6) EXEMPTION FROM CLAIMS OF CREDITORS.—Moneys paid into or
262 out of the Florida ABLE Program Trust Fund by or on behalf of a
263 designated beneficiary are exempt, as provided by s. 222.22,
264 from all claims of creditors of the designated beneficiary if
265 the participation agreement has not been terminated. Moneys paid
266 into the Florida ABLE program and benefits accrued through the
267 program may not be pledged for the purpose of securing a loan.

268 (7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—
269 (a) Upon the death of the designated beneficiary, the
270 Agency for Health Care Administration and the Medicaid program
271 for another state may file a claim with the Florida ABLE program



437886

272 for the total amount of medical assistance provided for the
273 designated beneficiary under the Medicaid program, less any
274 premiums paid by or on behalf of the designated beneficiary to a
275 Medicaid buy-in program. Funds in the ABLE account of the
276 deceased designated beneficiary must first be distributed for
277 qualified disability expenses followed by distributions for the
278 Medicaid claim authorized under this paragraph. Any remaining
279 amount shall be distributed as provided in the participation
280 agreement.

281 (b) Florida ABLE, Inc., shall assist and cooperate with the
282 Agency for Health Care Administration and Medicaid programs in
283 other states by providing the agency and programs with the
284 information needed to accomplish the purpose and objective of
285 this subsection.

286 (8) PAYROLL DEDUCTION AUTHORITY.—The payroll deduction
287 authority provided under s. 1009.975 applies to the Florida
288 Prepaid College Board and Florida ABLE, Inc., for purposes of
289 administering this section.

290 (9) REPORTS.—

291 (a) On or before November 1, 2015, Florida ABLE, Inc.,
292 shall prepare a report on the status of the establishment of the
293 Florida ABLE program by Florida ABLE, Inc. The report must also
294 include, if warranted, recommendations for statutory changes to
295 enhance the effectiveness and efficiency of the program. Florida
296 ABLE, Inc., shall submit copies of the report to the Governor,
297 the President of the Senate, and the Speaker of the House of
298 Representatives.

299 (b) On or before March 31 of each year, Florida ABLE, Inc.,
300 shall prepare or cause to be prepared a report setting forth in



437886

301 appropriate detail an accounting of the Florida ABLE program
302 which includes a description of the financial condition of the
303 program at the close of the fiscal year. Florida ABLE, Inc.,
304 shall submit copies of the report to the Governor, the President
305 of the Senate, the Speaker of the House of Representatives, and
306 the minority leaders of the Senate and the House of
307 Representatives and shall make the report available to each
308 designated beneficiary. The accounts of the Florida ABLE program
309 are subject to annual audit by the Auditor General.

310 (10) RULES.—The Florida Prepaid College Board shall adopt
311 rules to administer this section. Such rules must include, but
312 are not limited to:

313 (a) Specifying the procedures by which Florida ABLE, Inc.,
314 shall be governed and operate, including requirements for the
315 budget of Florida ABLE, Inc., and conditions with which Florida
316 ABLE, Inc., must comply to use property, facilities, or personal
317 services of the Florida Prepaid College Board.

318 (b) The procedures for determining that an ABLE account has
319 been abandoned.

320 (c) Adoption of provisions determined necessary by the
321 Florida Prepaid College Board for the Florida ABLE program to
322 retain its status as a qualified ABLE program or the tax-exempt
323 status or other similar status of the program or its
324 participants under the Internal Revenue Code. Florida ABLE,
325 Inc., shall inform participants in the Florida ABLE program of
326 changes to the tax or securities status of their interests in
327 the ABLE program and participation agreements.

328 (11) STATE OUTREACH PARTNERS.—The Agency for Health Care
329 Administration, the Agency for Persons with Disabilities, the



437886

330 Department of Children and Families, and the Department of
331 Education shall assist, cooperate, and coordinate with Florida
332 ABLE, Inc., in the provision of public information and outreach
333 for the Florida ABLE program.

334 (12) REPEAL.—In accordance with s. 20.058, this section is
335 repealed October 1, 2020, unless reviewed and saved from repeal
336 by the Legislature.

337 Section 3. Subsection (5) is added to section 222.22,
338 Florida Statutes, to read:

339 222.22 Exemption of assets in qualified tuition programs,
340 medical savings accounts, Coverdell education savings accounts,
341 and hurricane savings accounts from legal process.—

342 (5) Except as provided in s. 1009.986(7), as it relates to
343 any validly existing qualified ABLE program authorized by s.
344 529A of the Internal Revenue Code, including, but not limited
345 to, the Florida ABLE program participation agreements under s.
346 1009.986, moneys paid into or out of such a program, and the
347 income and assets of such a program, are not liable to
348 attachment, levy, garnishment, or legal process in this state in
349 favor of any creditor of or claimant against any designated
350 beneficiary or other program participant.

351 Section 4. Subsections (1) and (4) of section 1009.971,
352 Florida Statutes, are amended to read:

353 1009.971 Florida Prepaid College Board.—

354 (1) FLORIDA PREPAID COLLEGE BOARD; CREATION.—The Florida
355 Prepaid College Board is hereby created as a body corporate with
356 all the powers of a body corporate for the purposes delineated
357 in this section. The board shall administer the prepaid program
358 and the savings program, and shall perform essential



437886

359 governmental functions as provided in ss. 1009.97-1009.988 ~~ss.~~
360 ~~1009.97-1009.984~~. For the purposes of s. 6, Art. IV of the State
361 Constitution, the board shall be assigned to and
362 administratively housed within the State Board of
363 Administration, but it shall independently exercise the powers
364 and duties specified in ss. 1009.97-1009.988 ~~ss. 1009.97-~~
365 ~~1009.984~~.

366 (4) FLORIDA PREPAID COLLEGE BOARD; POWERS AND DUTIES.—The
367 board shall have the powers and duties necessary or proper to
368 carry out the provisions of ss. 1009.97-1009.988 ~~ss. 1009.97-~~
369 ~~1009.984~~, including, but not limited to, the power and duty to:

370 (a) Appoint an executive director to serve as the chief
371 administrative and operational officer of the board and to
372 perform other duties assigned to him or her by the board.

373 (b) Adopt an official seal and rules.

374 (c) Sue and be sued.

375 (d) Make and execute contracts and other necessary
376 instruments.

377 (e) Establish agreements or other transactions with
378 federal, state, and local agencies, including state universities
379 and Florida College System institutions.

380 (f) Administer the trust fund in a manner that is
381 sufficiently actuarially sound to defray the obligations of the
382 prepaid program and the savings program, considering the
383 separate purposes and objectives of each program. The board
384 shall annually evaluate or cause to be evaluated the actuarial
385 soundness of the prepaid fund. If the board perceives a need for
386 additional assets in order to preserve actuarial soundness of
387 the prepaid program, the board may adjust the terms of



437886

388 subsequent advance payment contracts to ensure such soundness.

389 (g) Invest funds not required for immediate disbursement.

390 (h) Appear in its own behalf before boards, commissions, or
391 other governmental agencies.

392 (i) Hold, buy, and sell any instruments, obligations,
393 securities, and property determined appropriate by the board.

394 (j) Require a reasonable length of state residence for
395 qualified beneficiaries.

396 (k) Segregate contributions and payments to the trust fund
397 into the appropriate fund.

398 (l) Procure and contract for goods and services, employ
399 personnel, and engage the services of private consultants,
400 actuaries, managers, legal counsel, and auditors in a manner
401 determined to be necessary and appropriate by the board.

402 (m) Solicit and accept gifts, grants, loans, and other aids
403 from any source or participate in any other way in any
404 government program to carry out the purposes of ss. 1009.97-
405 1009.988 ~~ss. 1009.97-1009.984~~.

406 (n) Require and collect administrative fees and charges in
407 connection with any transaction and impose reasonable penalties,
408 including default, for delinquent payments or for entering into
409 an advance payment contract or a participation agreement on a
410 fraudulent basis.

411 (o) Procure insurance against any loss in connection with
412 the property, assets, and activities of the trust fund or the
413 board.

414 (p) Impose reasonable time limits on use of the benefits
415 provided by the prepaid program or savings program. However, any
416 such limitations shall be specified within the advance payment



437886

417 contract or the participation agreement, respectively.

418 (q) Delineate the terms and conditions under which payments
419 may be withdrawn from the trust fund and impose reasonable fees
420 and charges for such withdrawal. Such terms and conditions shall
421 be specified within the advance payment contract or the
422 participation agreement.

423 (r) Provide for the receipt of contributions in lump sums
424 or installment payments.

425 (s) Require that purchasers of advance payment contracts or
426 benefactors of participation agreements verify, under oath, any
427 requests for contract conversions, substitutions, transfers,
428 cancellations, refund requests, or contract changes of any
429 nature. Verification shall be accomplished as authorized and
430 provided for in s. 92.525(1)(a).

431 (t) Delegate responsibility for administration of one or
432 both of the comprehensive investment plans required in s.
433 1009.973 to persons the board determines to be qualified. Such
434 persons shall be compensated by the board.

435 (u) Endorse insurance coverage written exclusively for the
436 purpose of protecting advance payment contracts, and
437 participation agreements, and the purchasers, benefactors, and
438 beneficiaries thereof, including group life policies and group
439 disability policies, which are exempt from the provisions of
440 part V of chapter 627.

441 (v) Form strategic alliances with public and private
442 entities to provide benefits to the prepaid program, savings
443 program, and participants of either or both programs.

444 (w) Solicit proposals and contract, pursuant to s. 287.057,
445 for the marketing of the prepaid program or the savings program,



437886

446 or both together. Any materials produced for the purpose of
447 marketing the prepaid program or the savings program shall be
448 submitted to the board for review. No such materials shall be
449 made available to the public before the materials are approved
450 by the board. Any educational institution may distribute
451 marketing materials produced for the prepaid program or the
452 savings program; however, all such materials shall be approved
453 by the board prior to distribution. Neither the state nor the
454 board shall be liable for misrepresentation of the prepaid
455 program or the savings program by a marketing agent.

456 (x) Establish other policies, procedures, and criteria to
457 implement and administer the provisions of ss. 1009.97-1009.988
458 ~~ss. 1009.97-1009.984~~.

459 (y) Adopt procedures to govern contract dispute proceedings
460 between the board and its vendors.

461 (z) Amend board contracts to provide Florida ABLE, Inc., or
462 the Florida ABLE program with contractual services.

463 Section 5. This act shall take effect upon becoming a law.

464
465 ===== T I T L E A M E N D M E N T =====

466 And the title is amended as follows:

467 Delete lines 25 - 68

468 and insert:

469 requiring the organization to establish and administer
470 the Florida ABLE program by a specified date;
471 specifying requirements that must be met before
472 implementation of the program; requiring a
473 participation agreement for the program which contains
474 specified provisions; authorizing other provisions



437886

475 that may be included in the agreement; providing for
476 the amendment of the agreement under certain
477 circumstances; providing for the use of the balance of
478 an abandoned ABLE account by the organization;
479 providing that a contract or participation agreement
480 entered into by the organization or an obligation of
481 the organization does not constitute a debt or
482 obligation of the Florida Prepaid College Board or the
483 state; authorizing the organization to contract with
484 other states for specified purposes under certain
485 circumstances; providing for termination of the
486 program under certain circumstances and for the
487 disposition of certain assets upon termination;
488 prohibiting the state from limiting or altering the
489 specified vested rights of designated beneficiaries
490 except under specified circumstances; requiring the
491 organization to establish a comprehensive investment
492 plan for the program; exempting funds paid into the
493 program's trust fund from the claims of specified
494 creditors; providing for recovery by Medicaid of
495 certain medical assistance provided to a deceased
496 designated beneficiary; providing for the distribution
497 of the balance of a deceased designated beneficiary's
498 ABLE account; requiring the organization to assist and
499 cooperate with the Agency for Health Care
500 Administration and Medicaid program in other states by
501 providing specified information; providing that
502 specified payroll deduction authority applies to the
503 Florida Prepaid College Board and the organization for



437886

504 the purpose of administering the program; requiring
505 the organization to submit certain reports to
506 specified entities; requiring the Florida Prepaid
507 College Board to adopt rules; requiring the Agency for
508 Health Care Administration, the Agency for Persons
509 with Disabilities, the Department of Children and
510 Families, and the Department of Education to assist,
511 cooperate, and coordinate with the organization in the
512 provision of public information and outreach for the
513 program; providing that the section is repealed on a
514 specified date; amending s. 222.22, F.S.; providing
515 that specified moneys, assets, and income of a
516 qualified ABLE program, including the Florida ABLE
517 program, are not subject to attachment, levy,
518 garnishment, or certain legal process in favor of
519 certain creditors or claimants; amending s. 1009.971,
520 F.S.; conforming provisions to changes made by the
521 act; authorizing the Florida Prepaid College Board to
522 amend its contracts to provide the organization or
523 program with contractual services; providing an
524 effective date.

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 642

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Individuals with Disabilities

DATE: February 18, 2015 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------------|
| 1. | Johnson/Knudson | Knudson | BI | Favorable/CS |
| 2. | _____ | _____ | AED | _____ |
| 3. | _____ | _____ | AP | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 642 creates the Florida Achieving a Better Life Experience (ABLE) program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. The ABLE accounts resemble in some respects the federal 529-college savings plan that are tax-advantaged savings accounts. This program was created by the federal ABLE Act of 2014 (“ABLE Act”), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.¹ Florida ABLE, Inc., is required to implement the Florida ABLE Program on or before July 1, 2016.

Currently, many individuals with disabilities and their families face financial challenges in paying for living expenses, and necessary care and treatment, such as medical bills, educational and early intervention programs, and related expenses. Individuals with disabilities can also face significant barriers to finding and holding employment and living independently because their access to certain state and federal programs, such as Supplemental Security Insurance (SSI) and Medicaid can be lost once they establish a minimum level of savings and income. The Florida ABLE program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLE program, an eligible individual for the program would be an individual who

¹ H.R. 5771, Division B, Title I. Public Law 113-295.

becomes blind or disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process and meets other requirements. A designated beneficiary is defined to mean an eligible individual who establishes an ABLE account or the eligible individual to whom an account is transferred.

Under the Florida ABLE Program, individuals with disabilities family members and other can contribute funds to an ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

The bill creates the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. It would be comprised of the chair of the Florida Prepaid College Board, another director of the Florida Prepaid College Board, the director of the Agency for Persons with Disabilities, one appointee of the Florida Senate, and one appointee of the Florida House of Representatives. The legislative appointees would include one advocate for individuals with disabilities and one advocate for individuals with developmental disabilities. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid Board.

The bill provides that the state Medicaid agency, the Agency for Health Care Administration would be a creditor of ABLE accounts. Upon the death of designated beneficiary of an account, and subject to any outstanding payments due for qualified disability expenses, all amounts remaining in the account, not to exceed the total medical assistance paid by or on behalf of Medicaid for such individuals after the account was opened would be distributed to a state Medicaid program.

II. Present Situation:

In 2011, almost 28 percent of non-institutionalized individuals in the United States with disabilities, ages 21-64, lived below the federal poverty line, compared with 12 percent of individuals without disabilities. In Florida, approximately 9.5 percent of individuals ages 16-64

are individuals with disabilities.² The unemployment rate of this group is 35.6 percent and the poverty rate is 24.2 percent.³

The costs associated with caring for an individual with disabilities can vary based on the individual's unique circumstances. Some of these costs may include out-of-pocket health care, behavioral therapy, speech therapy, physical therapy, occupational therapy, educational services, transportation, caregivers, and other services.

State and Federal Programs for Individuals with Disabled

Often, individuals with disabilities may qualify for state or federal assistance. The Social Security Disability Insurance (SSDI)⁴ and Supplemental Security Income⁵ (SSI) programs are two types of disability programs administered by the federal Social Security Administration. Applicants for each of the programs must meet strict medical requirements to qualify for disability benefits. Under the programs, disability is defined as the inability to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months.⁶ A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA.⁷

The SSDI program is an insurance program that provides benefits to individuals who have contributed to the Social Security system and meet certain minimum work requirements. In contrast, SSI is a means-tested program for aged, blind, or disabled individuals who meet certain income and resource limitations; however, there are no contribution or minimum work requirements.⁸ The SSI program provides cash payments assuring a minimum income for aged, blind, or disabled individuals who have very limited income and assets. Effective January 1, 2015, the maximum monthly Federal benefit rate is \$733 for an eligible individual and \$1,100 for an eligible individual with an eligible spouse.⁹ The countable resource limit for SSI eligibility is \$2,000 for individuals and \$3,000 for couples with exclusions.¹⁰ In December 2013, there were 547,594 SSI recipients (aged, blind, or disabled) and 551,858 disabled workers that were recipients of SSDI in Florida.¹¹

A SSI recipient living alone or in a household where all members receive SSI benefits are generally eligible for Medicaid. The Department of Children and Families is responsible for

² National Disability Institute with support from the Florida Developmental Disabilities Council, *The Changing Face of Benefits, Knowledge for Successful Employment and Asset Development*, March 2013.

³ *Id.*

⁴ 42 U.S.C. ss. 401-433.

⁵ 42 U.S.C. ss. 1381 note-1385 note.

⁶ See <http://www.socialsecurity.gov/disability/professionals/bluebook/general-info.htm> (last accessed January 16, 2015).

⁷ The monthly SGA earnings limit in 2015 for statutorily blind individuals is \$1,820. For non-blind individuals, the monthly SGA amount for 2015 is \$1,090. The amount of some SSI payments may be adjusted based on receipt of other income.

⁸ The definition of disability for disabled children receiving SSI benefits is slightly different from the definition for adults. See criteria at: <http://www.ssa.gov/ssi/text-eligibility-ussi.htm#disabled-child> (last accessed on January 12, 2015).

⁹ Generally, the maximum monthly payment changes yearly due to changes in the Consumer Price Index. The 2015 schedule is available at: <http://www.socialsecurity.gov/OACT/COLA/SSI.html> (last visited January 11, 2015).

¹⁰ 20 C.F.R. s. 416.1201 and 20 C.F.R. ss. 416.1210-416.1239.

¹¹ Social Security Administration *Annual Statistical Supplement, 2014* available at:

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/5j.pdf> and

<http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2014/7b.pdf> (last accessed January 12, 2015).

determining eligibility for Medicaid and other programs. Medicaid is the medical assistance program, administered by the Agency for Health Care Administration (agency), which provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. Medicaid is a partnership between the states and the federal government, with each paying about half the cost. The Division of Operations' Third Party Liability (TPL) Unit of the agency is responsible for identifying, managing and recovering funds for claims paid for by Florida Medicaid for which a third party was liable, thereby ensuring Medicaid is the payer of last resort. The TPL recovery services are contracted with Xerox State Healthcare, LLC (Formerly ACS State Healthcare, LLC). Some examples of liable third parties include Medicare and other insurance companies, casualty settlements, recipient estates, and trust and annuity recovery. An estimated 446,000 individuals in Florida are under age 65 and are recipients of SSI and Medicaid benefits.¹²

Federal ABLÉ Act of 2014

The federal ABLÉ Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014.¹³ The ABLÉ Act permits a state to implement a qualified ABLÉ program and establish ABLÉ accounts for individuals with disabilities that meet certain criteria and are deemed "eligible individuals." A designated beneficiary of an ABLÉ account is an eligible individual who establishes an ABLÉ account and is the owner of such of an account.¹⁴ The provisions of the ABLÉ Act are effective for taxable years beginning after December 31, 2014.

Qualified ABLÉ Program

A qualified ABLÉ program is a program established and maintained by a state or an agency or instrumentality of the state. A qualified ABLÉ program must meet many requirements, including the following:

- A person may make contributions for the benefit of an eligible individual to an ABLÉ account which is established for meeting the qualified disability expenses of the designated beneficiary of the account.
- The program must limit a designated beneficiary to one ABLÉ account.
- The program must allow for the establishment of ABLÉ accounts only for designated beneficiaries who are either residents of the state maintaining such ABLÉ program or residents of a state that has not established an ABLÉ program ("contracting state") but has entered into a contract with a program state to provide the contracting state's residents with access to the program state's ABLÉ program.
- Contributions must be made in cash.
- The program must provide a separate accounting for each designated beneficiary.
- The program must limit investment directions from the designated beneficiary to a maximum of two times in any calendar year.
- The program may not pledge any interest in the program as a security for a loan.

¹² A number of individuals in the SSI file under age 65 did not have a disability onset set. Information provided by the Department of Children and Families (January 21, 2015) (on file with the Senate Committee on Banking and Insurance).

¹³ H.R. 5771, Division B, Title I. Public Law 113-295.

¹⁴ A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLÉ account, provided such new designated beneficiary is also an eligible individual.

- The program must establish adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the amount established by the state under s. 529(b)(6). Aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality thereof.¹⁵
- Each officer or employee having control of the qualified ABLE program or their designee is required to report to the Secretary of the Department of Treasury information concerning the contributions, distributions, the return of excess contributions, and other information that may be required.
- A State Able program is required to submit electronically on a monthly basis to the Commissioner of Social Security statements on relevant distributions and account balances of all ABLE accounts.

As discussed earlier, an ABLE account provides favorable tax treatment for a designated beneficiary if certain conditions are met. Earnings in an ABLE Act and distributions from the account for qualified disability expense would not count as taxable income of the contributor or the designated beneficiary. The act provides that an ABLE account may not receive aggregate contributions during a taxable year in excess of the annual gift-tax exclusion amount (\$14,000 for 2015).¹⁶ If the distributions from a qualified ABLE account do not exceed the qualified distribution expenses of the designated beneficiary, no amount is includible in gross income. If the distributions exceed the qualified distribution expenses, the amount otherwise includible in gross income would be reduced by an amount that bears the same ratio to the distributed amount as the qualified disability expenses bear to that amount. The portion of any distribution that is includible in gross income is subject to an additional 10-percent tax unless it was made after the death of the beneficiary. Amounts in an ABLE account may be rolled over without income tax liability to another ABLE account for the same beneficiary or another ABLE account for the designated beneficiary's brother, sister, stepbrother or stepsister who is also an eligible individual. Taxes may apply, however, to a change of designated beneficiary during any taxable year unless, as of the beginning of the year, the new beneficiary is both an eligible individual for the taxable year and a brother, sister, stepbrother or stepsister of the former beneficiary.

Eligible individuals

As described above, a qualified ABLE program may provide for the establishment of ABLE accounts only if those accounts have as their designated beneficiary an eligible individual. An individual is an eligible individual for a taxable year during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date the individual attained age 26; or
- A disability certification with respect to such individual has been filed with the Secretary of Treasury for the taxable year. A disability certification is a certification to the satisfaction of the Secretary of Treasury made by the eligible individual or the parent or guardian of the

¹⁵ . The current maximum account balance for 529 plans in Florida is \$418,000. This cap is subject to periodic review and possible revision. States may be required to share information about account balances to ensure this provision is not violated. Caps in other states range from \$235,000 to \$450,000. Email from Florida Prepaid College Board staff (February 7, 2015) (on file with the Senate Committee on Banking and Insurance).

¹⁶ See Internal Revenue Service information at <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Whats-New-Estate-and-Gift-Tax> (last visited February 7, 2015).

eligible individual, that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind and such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician.

Qualified Disability Expenses

The ABLE Act provides that earnings on distributions from an ABLE account are excluded from income only to the extent total distributions do not exceed the qualified disability expenses of the designated beneficiary. For purposes of the act, qualified disability expenses are any expenses related to the eligible individual's blindness or disability that are made for the benefit of the designated beneficiary. Those funds could be used for the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are authorized pursuant to regulations adopted by the Secretary of the U.S. Department of Treasury.

Medicaid Recovery

In the event the designated beneficiary dies, the account is subject to Medicaid recovery for the total amount of medical assistance provided for the designated beneficiary under the Medicaid program, less any premiums paid by or on behalf of the designated beneficiary to a Medicaid buy-in program. Prior to the Medicaid payback, funds in the ABLE account of the deceased designated beneficiary would be distributed for the payment of qualified disability expenses. The state is deemed a creditor of an ABLE account

Treatment of ABLE accounts under Federal programs

Generally, any amount in an ABLE account, and any distribution for qualified disability expenses, is disregarded for determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program with respect to any period an individual maintains, makes contributions to, or receives distributions from such ABLE account. However, in the case of the SSI program, a distribution for housing expenses is not disregarded, nor are amounts in an ABLE account in excess of \$100,000. In the case that an individual's ABLE account balance exceeds \$100,000, the individual's SSI benefits will be suspended until the individual's resources fall below \$100,000. However, the suspension does not apply for purposes of Medicaid eligibility. For the purposes of determining eligibility for SSI, the eligible individual is the owner of the account.

The Secretary of the U.S. Department of Treasury is required to issue regulations or other guidance no later than six months after the date of enactment of the ABLE Act to implement the Act, including regulations:

- to enforce the one ABLE account per eligible individual limit;
- to specify information required to be presented to open an ABLE account;

- to define qualified disability expenses;
- to provide a process for disability certifications and determinations of disability, to be developed in consultation with the Commissioner of Social Security,
- to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses; and
- to allow for transfers from one ABLE account to another ABLE account in cases in which an eligible individual has a change in state of residence.

Sunset Review of Direct Support Organizations

Pursuant to s. 20.058, F.S., any law creating or authorizing the creation of a direct support organization must state that the creation of or authorization for the DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature.

III. Effect of Proposed Changes:

CS/SB 642 creates the Florida Achieving a Better Life Experience (ABLE) Act. The Florida ABLE Act establishes the Florida ABLE program, which would assist individuals with disabilities in saving money without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence and a better quality of life. This program was created by the federal Achieving a Better Life Experience Act of 2014 (ABLE Act), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.

The Florida ABLE program would facilitate the ability of individuals with disabilities to work and live independently without losing access to Medicaid and SSI if certain conditions are met. Under the Florida ABLE program, an eligible individual for the program would be an individual who becomes disabled prior to age 26 and is entitled to benefits due to blindness or disability under the Social Security Disability Income program or SSI program or meets eligibility through the disability certification process. A designated beneficiary is defined to mean an eligible individual who establishes an ABLE account or the eligible individual to whom an account was transferred.

Under the Florida ABLE Program, individuals with disabilities family members and others can contribute funds to a tax-exempt ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses that include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

Earnings, cash contributions, and qualified distributions associated with an ABLE account would not count as taxable income or resources for an individual with disabilities who meets certain eligibility requirements. For 2015, aggregate contributions to an ABLE Account during a taxable year are capped at \$14,000. For purposes of eligibility for Supplemental Security Income (SSI) disability eligibility, only the first \$100,000 in an ABLE account is disregarded. If the balance in

an ABLE account exceeds \$100,000, any SSI benefits are suspended until the balance is reduced to \$100,000; however, an individual would continue to be eligible for Medicaid and other means-tested programs.

Section 1 of the bill creates s. 1009.985, F.S., which provides that sections 1009.985-1009.988 may be cited as the “Florida Achieving a Better Life Experience (ABLE) Act.”

Section 2 of the bill creates s. 1009.986, F.S., creating the Florida ABLE, Inc., as a direct support organization, and the Florida ABLE program. The bill provides a statement that the Legislature intends to establish a qualified ABLE program in Florida that is implemented consistently with federal law and maximizes program efficiency and effectiveness. The bill also provides definitions consistent with the federal ABLE Act.

Creation of Florida ABLE, Inc. [s. 1009.986(3), F.S.]

The Florida ABLE program (Program) will be established through the creation of Florida ABLE, Inc., (Florida ABLE), a not-for-profit direct support organization (DSO) established by the Florida Prepaid College Fund Board (Florida Prepaid). Florida ABLE will receive, hold, invest, and administer property and make expenditures for the Florida ABLE Program. Florida ABLE will be audited in accordance with s. 215.981, F.S., which contains the audit requirements for state agency DSOs.

Oversight by Florida Prepaid College Board – Florida ABLE will operate under a written contract with the Florida Prepaid College Board that requires the articles of incorporation and bylaws of Florida ABLE to be approved by Florida Prepaid. Florida ABLE is also required to submit an annual budget to Florida Prepaid for its approval. Florida Prepaid is required to certify annually that Florida ABLE, Inc., is complying with contract terms and acting in accordance with statute and in the best interest of the state. The Florida ABLE fiscal year will begin on July 1, and end June 30 of the following year.

The bill allows Florida ABLE to utilize the resources of Florida Prepaid and requires Florida ABLE to pay reasonable consideration to Florida Prepaid for its products and services. Florida ABLE must authorize Florida Prepaid to solicit proposals, contract, or subcontract, or amend Florida Prepaid contractual service agreements for the benefit of Florida ABLE. Florida Prepaid will also maintain the website of Florida ABLE.

Moneys and property held in trust by Florida ABLE, if it is no longer approved to operate, will revert to Florida Prepaid or the state. Disclosure must be made to donors of the distinction between Florida Prepaid and Florida ABLE, and the material provisions of the contract;

Board of Directors of Florida ABLE, Inc. – The Florida ABLE, Inc., board of directors has the following 5 members:

- Chair of Florida Prepaid, who serves as chair of Florida ABLE board;
- Advocate for persons with disabilities appointed by the President of the Senate;
- Advocate for persons with disabilities appointed by the Speaker of the House;

- One of the two advocates for the disabled must be an advocate of persons with developmental disabilities as defined in s. 393.063, F.S., which are intellectual disability, cerebral palsy, autism, spina bifida, and Prader-Willi syndrome;
- A person with expertise in accounting, risk management, or investment management appointed by the Florida Prepaid board of directors;
- A person with expertise in accounting, risk management, or investment management appointed by the Governor.

The board must meet at least quarterly and may also meet upon the call of the chair. A quorum consists of a majority of the current membership of the board. Appointees to the board serve for 3 years and may be reappointed. Board members serve without compensation and may be reimbursed for travel expenses pursuant to s. 112.061, F.S.

Participation Agreements and Contracting [s. 1009.986(4), F.S.]

Participation Agreements – The Florida ABLE program will enter into participation agreements with disabled beneficiaries. The participation agreement is the contract between Florida ABLE and qualified disabled beneficiaries that will allow the latter to set up an ABLE account.

The bill sets forth mandatory provisions of participation agreements including provisions prohibiting beneficiaries from establishing accounts in violation of federal law (such as establishing more than one account) or in excess of federal law (currently, the maximum annual contribution is \$14,000 per year). A participation agreement may be amended to increase or decrease the level of participation, change beneficiaries, and for other authorized purposes. The participation agreement must allow the involuntary liquidation of an ABLE account if a material misrepresentation is made.

A contract or participation agreement is not a debt of the state but is an obligation of the Florida ABLE program. The obligation of Florida ABLE, Inc., is limited to the amount in the Florida ABLE Trust Fund.

Contracting – Florida ABLE, Inc., may contract to participate in the ABLE program of another state if Florida does not establish a qualified ABLE program. Florida may also contract with other states that do not have an authorized ABLE program to allow those states to participate in the Florida ABLE program.

Vested Rights of Beneficiaries – Under the bill, the state pledges to designated beneficiaries that their vested rights will not be limited or altered until the program's obligations are met and discharged. Limiting or altering rights may be done if adequate provision is made by law to protect designated beneficiaries pursuant to the obligations of Florida ABLE, Inc. The pledge to beneficiaries also does not preclude termination of the Florida ABLE program if the program is determined to not be financially feasible.

Implementation of the Florida ABLE Program [s. 1009.986(4), (9) F.S.]

Legal Opinions Required Prior to Implementation – On or before July 1, 2016, Florida ABLE, Inc., will establish and administer the Florida ABLE program. Before doing so, it must obtain a

legal opinion that the Florida ABLE program complies with s. 529A of the Internal Revenue Code (the federal ABLE Act) and complies with federal securities law and qualifies for tax exemptions under such law.

Status Report – On or before November 1, 2015, Florida ABLE, Inc., must provide to the Governor, President of the Senate, and Speaker of the House a status report and recommendations on the establishment of the Florida ABLE program.

Termination of ABLE Program – The Florida ABLE program shall continue in existence until terminated by law by the Legislature. The bill specifies that the state may terminate the program if it is financially infeasible. Generally a Legislature cannot bind the acts of a future Legislature by restricting the grounds for the repeal of a statute. Amounts in the Florida ABLE Trust Fund must be returned in accordance with the participation agreement. Unclaimed amounts may be transferred to the Florida Prepaid Tuition Scholarship Program.

Provisions Related to Investment Management, Creditor's Claims and Medicaid Recovery, and Annual Reporting [s. 1009.986(5)-(7) and (9), F.S.]

Comprehensive Investment Plan – Florida ABLE, Inc., must establish a comprehensive investment plan for the ABLE program. Florida ABLE, Inc., may place Florida ABLE program assets in investment products, but only in proportions designated in the investment plan and in compliance with federal and state laws and regulations. Designated beneficiaries may not direct investment of their contributions unless specific fund options are offered by Florida ABLE. The Federal ABLE Act prohibits direction of investments by beneficiaries more than two times in a calendar year. The plan is subject to the approval of the Florida Prepaid College Board.

Exemption from Creditor's Claims – Moneys paid into or out of the Florida ABLE Trust Fund by or for a designated beneficiary are exempt from creditors' claims. Section 3 of the bill amends s. 222.22, F.S., to provide that moneys paid into or out of an ABLE program, and the income and assets of the ABLE program, are exempt from creditor's claims against any designated beneficiary or other ABLE program participant.

Priority of Distributions and Medicaid Recovery – ABLE account funds of a deceased beneficiary must first be distributed for qualified disability expenses followed by distributions for a Medicaid claim. Any remaining amount is distributed pursuant to the participation agreement.

Annual Report – Florida ABLE, Inc., must prepare an annual report providing a detailed accounting of the Florida ABLE program, and describes the financial condition of the program. Copies of the report must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of each legislative chamber. The report

must be made available to designated beneficiaries. Florida ABLE program accounts are subject to an annual audit by the Auditor General.

Rulemaking Authority [s. 1009.986(10), F.S.]

The Florida Prepaid College Board must adopt rules to administer the Florida ABLE program. The rules must include the governance and operating procedures for Florida ABLE, Inc.; the conditions for Florida ABLE, Inc., to use the property, facilities, or personnel of Florida Prepaid.; the procedures for determining that an ABLE account has been abandoned; and the provisions necessary for the Florida ABLE program to retain status as a qualified ABLE program, tax exempt status, or other similar status for the program or participants under the Internal Revenue Code. The Florida ABLE program must inform participants of changes to the tax or securities status of their participation agreements and interests in the ABLE program.

Outreach Partners [s. 1009.986(11), F.S.]

The Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education must assist Florida ABLE in providing public information and outreach about the Florida ABLE program.

Repeal Date [s. 1009.986(12), F.S.]

Section 2 of the bill, establishing the Florida ABLE program, will be repealed October 2, 2020, unless reviewed and saved from repeal by the Legislature. The repeal provision is necessary to comply with s. 20.058, F.S., which requires each law creating a direct-support organization to require its repeal on October 1 of the 5th year after enactment.

Section 3 of the bill amends s. 222.22, F.S., to provide that, except as provided in s. 1009.986(7), F.S., (detailing priority of distributions upon the death of an ABLE account designated beneficiary) moneys paid into or out of an ABLE account, and the income and assets of the ABLE account program, are not liable to attachment, levy, garnishment or legal process in favor of any creditor or claimant against any designated beneficiary or other program participant.

Section 4 amends s. 1009.971, F.S., to specify that the Florida Prepaid College Board has the powers and duties necessary to perform its obligations regarding the Florida ABLE program created by Section 2 of the bill.

Section 5 of the bill provides that the act will take effect 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 Florida ABLE program will assist individuals with disabilities in saving money in tax-advantaged accounts without losing their eligibility for state and federal benefits, and thereby providing a pathway for economic independence. The bill would allow an indeterminate number of individuals to save additional assets or resources in these accounts and use the funds to pay for qualified disability expenses.

The Florida Prepaid College Board estimates that 4,000 individuals in Florida may open ABLE accounts out of an estimated target population of 400,000.

C. Government Sector Impact:

The Florida Prepaid College Board estimates the costs for FY 2015-2016 associated with the implementation of the Florida ABLE program will be \$3,386,000. This budget anticipates starting the program as early as April 1, 2016 but no later than July 1, 2016. The FY 2015-1016 budget assumes having the plan open for one quarter of that fiscal year. As referenced above, the Florida Prepaid College Board estimates 4,000 individuals may open ABLE accounts during FY 2015-2016.

The impact on Medicaid and other federally means-tested programs is indeterminate at this time. According to a report¹⁷ by the Congressional Budget Office (CBO), the legislation would increase the number of beneficiaries of federal means tested programs. The CBO expects that the ABLE Act would increase SSI caseloads for individuals whose eligibility for SSI benefits was denied or interrupted because of excess resources and individuals who do not apply for SSI under current law because of excess resources, but who would meet SSI's age or disability requirement and income requirement.

The CBO expects that enacting the ABLE Act would increase the number of disabled adults under the age of 65 who enroll in Medicaid because they could hold cash assets in an ABLE account that would not count against Medicaid eligibility. Because a beneficiary of an ABLE account must have a disability that occurred before he reached age 26, CBO does not expect an increase in the number of elderly individuals who enroll in Medicaid. Additionally, the CBO does not expect that establishment of ABLE accounts would increase the number of children and nondisabled adults enrolled in

¹⁷ Congressional Budget Office Cost Estimate, H.R. 647, September 23, 2014, as ordered reported by the House Committee on Ways and Means on July 31, 2014.

Medicaid because those individuals are not required to meet an asset test under current law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 222.22 and 1009.971.

This bill creates the following sections of the Florida Statutes: 1009.985 and 1009.986.

IX. Additional Information:

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

CS by Banking and Insurance on February 17, 2015:

The CS provides the following changes:

Florida ABLE, Inc., Board of Directors

The CS revises the composition of the board by reducing the number of directors from seven to five and changing the membership. The CS provides that the chair of the Florida Prepaid College Board would continue to serve on the Florida ABLE, Inc, Board along with one member appointed by the Governor and one additional member appointed by the Florida Prepaid College Board, and two directors appointed by the Legislature. Under the CS, an appointee of the Governor and appointee of the Florida Prepaid College Board would replace the director of the Agency for Persons with Disabilities and the executive director of the Florida Prepaid College Board. The CS reduces the number of legislative appointees from four to two—one from the Senate and one from the House. The legislative appointees would include an advocate for individuals with disabilities and one advocate for individuals with developmental disabilities.

Florida ABLE Program Implementation

The CS requires Florida ABLE Program to be implemented on or before July 1, 2016. Florida ABLE, Inc., is required to submit a status report to the Legislature by November 1, 2015, regarding the implementation of the program and any legislative recommendations, if applicable, that are necessary to ensure the program operates in an effective and efficient manner.

The CS changes the effective date of the bill from October 1, 2015, to effective upon becoming law to allow Florida ABLE, Inc., additional time to implement the ABLE program.

State Outreach Partners

The bill provides that the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education would coordinate with Florida ABLE, Inc, in the provision of outreach and public information about the ABLE accounts to reach the target audience.

Unclaimed Property

The CS provides that if an account is abandoned, as provided in rules adopted by the ABLE Program, the balance of the account could be used to operate the Florida ABLE program. CS/SB 642 allows these funds to be used for the ABLE program or for funding scholarships for economically disadvantaged youths. The CS provides that if the program is terminated because it is not financially feasible, funds would be distributed pursuant to the terms of the participation agreement unless the account is abandoned. CS/SB 642 provides that any unclaimed funds that were remaining would be used for scholarships for economically disadvantaged youths.

Technical and Clarifying Changes

The CS provides technical, clarifying changes relating to definitions and the provisions relating to powers and duties of Florida ABLE, Inc., Florida ABLE Program, and Florida Prepaid College Board.

B. Amendments:

None.

By Senator Benacquisto

30-01015B-15

2015642__

1 A bill to be entitled
 2 An act relating to individuals with disabilities;
 3 creating s. 1009.985, F.S.; providing a short title;
 4 creating s. 1009.986, F.S.; providing legislative
 5 intent; defining terms; requiring the Florida Prepaid
 6 College Board to establish a direct-support
 7 organization known as "Florida ABLE, Inc."; specifying
 8 requirements for the registration, organization,
 9 incorporation, and operation of the organization;
 10 requiring the organization to operate under a written
 11 contract with the Florida Prepaid College Board;
 12 specifying provisions that must be included in the
 13 contract; requiring the organization to provide for an
 14 annual financial audit and supplemental data under
 15 certain circumstances; establishing and providing for
 16 the membership of a board of directors for the
 17 organization; providing limits on a director's
 18 authority; specifying meeting and quorum requirements;
 19 prohibiting compensation for the service of directors
 20 and other specified members; authorizing specified
 21 reimbursement for the travel expenses of directors and
 22 specified members of the organization; authorizing the
 23 organization to use certain services, property, and
 24 facilities of the Florida Prepaid College Board;
 25 authorizing the organization to establish the Florida
 26 ABLE program; specifying requirements that must be met
 27 before implementation of the program; requiring that
 28 the organization develop a participation agreement
 29 that contains specified provisions; authorizing other

Page 1 of 20

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30-01015B-15

2015642__

30 provisions that may be included in the agreement;
 31 providing for the amendment of the agreement under
 32 certain circumstances; providing for the use of the
 33 balance of an abandoned ABLE account by the
 34 organization; providing that contracts and
 35 participation agreements entered into by the
 36 organization do not constitute a debt or obligation of
 37 the state; authorizing the organization to contract
 38 with other states for specified purposes; providing
 39 for termination of the program under certain
 40 circumstances and for the disposition of certain
 41 assets upon termination; prohibiting the state from
 42 limiting or altering the specified vested rights of
 43 designated beneficiaries except under specified
 44 circumstances; requiring the organization to establish
 45 a comprehensive investment plan for the program;
 46 exempting funds paid into the program's trust fund
 47 from the claims of specified creditors; providing for
 48 recovery by Medicaid of certain medical assistance
 49 provided to a deceased designated beneficiary;
 50 providing for the distribution of the balance of a
 51 deceased designated beneficiary's ABLE account;
 52 requiring the organization to provide specified data
 53 and files to the Agency for Health Care
 54 Administration; providing that specified payroll
 55 deduction authority applies to the Florida Prepaid
 56 College Board and the organization for the purpose of
 57 administering the program; requiring the organization
 58 to submit an annual report to specified entities;

Page 2 of 20

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30-01015B-15

2015642__

59 requiring the Florida Prepaid College Board to adopt
60 rules; providing that the section is repealed on a
61 specified date; amending s. 222.22, F.S.; providing
62 that specified moneys, assets, and income of a
63 qualified ABLE program, including the Florida ABLE
64 program, are not subject to attachment, levy,
65 garnishment, or certain legal process in favor of
66 certain creditors or claimants; amending s. 1009.971,
67 F.S.; conforming provisions to changes made by the
68 act; providing an effective date.

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

71
72 Section 1. Section 1009.985, Florida Statutes, is created
73 to read:

74 1009.985 Short title.—Sections 1009.985-1009.988 may be
75 cited as the “Florida Achieving a Better Life Experience (ABLE)
76 Act.”

77 Section 2. Section 1009.986, Florida Statutes, is created
78 to read:

79 1009.986 Florida ABLE program.—

80 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature
81 to establish a qualified ABLE program in this state which will
82 encourage and assist the saving of private funds in tax-exempt
83 accounts in order to pay for the qualified disability expenses
84 of eligible individuals with disabilities. The Legislature
85 intends that the qualified ABLE program be implemented in a
86 manner that is consistent with federal law authorizing the
87 program and that maximizes program efficiency and effectiveness.

Page 3 of 20

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30-01015B-15

2015642__

88 (2) DEFINITIONS.—As used in ss. 1009.986-1009.988, the
89 term:

90 (a) “ABLE account” means an account established by an
91 eligible individual which is owned by the eligible individual
92 and maintained under the Florida ABLE program.

93 (b) “Contracting state” means a state that does not have a
94 qualified ABLE program and that has entered into a contract with
95 Florida ABLE, Inc., to provide residents of the contracting
96 state with access to the Florida ABLE program.

97 (c) “Designated beneficiary” means an eligible individual
98 who established an ABLE account and is the owner of the account.

99 (d) “Disability certification” has the same meaning as
100 provided in s. 529A of the Internal Revenue Code.

101 (e) “Eligible individual” means a resident of this state or
102 a contracting state:

103 1. Who is entitled to benefits or disability under Title II
104 or Title XVI of the Social Security Act for a taxable year and
105 whose blindness or disability occurred before the date on which
106 the individual attained the age of 26 years; or

107 2. For whom a disability certification is filed with the
108 United States Department of Treasury for the taxable year.

109 (f) “Florida ABLE program” means the qualified ABLE program
110 established and maintained under this section by Florida ABLE,
111 Inc.

112 (g) “Internal Revenue Code” means the United States
113 Internal Revenue Code of 1986, as defined in s. 220.03(1), and
114 regulations adopted pursuant thereto.

115 (h) “Participation agreement” means the agreement between
116 Florida ABLE, Inc., and a participant in the Florida ABLE

Page 4 of 20

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30-01015B-15

2015642__

117 program.

118 (i) "Qualified ABLE program" means the program authorized
 119 under s. 529A of the Internal Revenue Code which may be
 120 established by a state, agency, or instrumentality thereof to
 121 allow a person to make contributions for a taxable year to an
 122 ABLE account established for the purpose of meeting the
 123 qualified disability expenses of the designated beneficiary of
 124 the ABLE account.

125 (j) "Qualified disability expense" has the meaning provided
 126 in s. 529A of the Internal Revenue Code.

127 (3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.-

128 (a) The Florida Prepaid College Board shall establish a
 129 direct-support organization to be known as "Florida ABLE, Inc.,"
 130 which is:

131 1. A Florida not-for-profit corporation registered,
 132 incorporated, organized, and operated in compliance with chapter
 133 617.

134 2. Organized and operated to receive, hold, invest, and
 135 administer property and to make expenditures for the benefit of
 136 the Florida ABLE program.

137 (b) Florida ABLE, Inc., shall operate under a written
 138 contract with the Florida Prepaid College Board. The contract
 139 must include, but is not limited to, provisions that:

140 1. Require the articles of incorporation and bylaws of
 141 Florida ABLE, Inc., to be approved by the Florida Prepaid
 142 College Board.

143 2. Require Florida ABLE, Inc., to submit an annual budget
 144 for approval by the Florida Prepaid College Board. The budget
 145 must comply with rules adopted by the Florida Prepaid College

30-01015B-15

2015642__

146 Board.

147 3. Require Florida ABLE, Inc., to pay reasonable
 148 consideration to the Florida Prepaid College Board for products
 149 or services provided directly or indirectly by the Florida
 150 Prepaid College Board.

151 4. Authorize the Florida Prepaid College Board to solicit
 152 proposals, contract or subcontract, or amend contractual service
 153 agreements of the Florida Prepaid College Board for the benefit
 154 of Florida ABLE, Inc.

155 5. Authorize the Florida Prepaid College Board to maintain
 156 the website of Florida ABLE, Inc.

157 6. Require the Florida Prepaid College Board to annually
 158 certify that Florida ABLE, Inc., is complying with the terms of
 159 the contract and acting in a manner consistent with this section
 160 and in the best interest of the state. The certification must be
 161 reported in the official minutes of a meeting of the Florida
 162 Prepaid College Board.

163 7. Require the reversion of moneys and property to the
 164 Florida Prepaid College Board, or to the state if the Florida
 165 Prepaid College Board ceases to exist, which are held in trust
 166 by Florida ABLE, Inc., for the benefit of the Florida ABLE
 167 program if Florida ABLE, Inc., is no longer approved to operate.

168 8. Require the disclosure of material provisions in the
 169 contract and of the distinction between the Florida Prepaid
 170 College Board and Florida ABLE, Inc., to donors of gifts,
 171 contributions, or bequests, and the inclusion of such disclosure
 172 on all promotional and fundraising publications.

173 9. Require the fiscal year for Florida ABLE, Inc., to begin
 174 on July 1 and end on June 30 of the following year.

30-01015B-15

2015642__

175 (c) Florida ABLE, Inc., shall provide for an annual
 176 financial audit in accordance with s. 215.981. The Florida
 177 Prepaid College Board and Auditor General may require Florida
 178 ABLE, Inc., or its independent auditor, to provide any
 179 supplemental data relating to the operation of Florida ABLE,
 180 Inc.

181 (d)1. The board of directors of Florida ABLE, Inc., shall
 182 consist of:

183 a. The chair and the executive director of the Florida
 184 Prepaid College Board and the director of the Agency for Persons
 185 with Disabilities. The chair of the Florida Prepaid College
 186 Board shall serve as the chair of the board of directors of
 187 Florida ABLE, Inc.

188 b. Two individuals who possess knowledge, skill, and
 189 experience in the areas of accounting, risk management, or
 190 investment management, one of whom shall be appointed by the
 191 President of the Senate and one of whom shall be appointed by
 192 the Speaker of the House of Representatives.

193 c. Two individuals who are advocates of persons with
 194 disabilities, one of whom shall be appointed by the President of
 195 the Senate and one of whom shall be appointed by the Speaker of
 196 the House of Representatives. At least one of the individuals
 197 appointed under this sub-subparagraph must be an advocate of
 198 persons with developmental disabilities, as that term is defined
 199 in s. 393.063.

200 2. The term of the appointees under sub-subparagraphs 1.b.
 201 and c. shall be 3 years. An appointee may be reappointed for up
 202 to one consecutive term.

203 3. Unless authorized by the board of directors of Florida

30-01015B-15

2015642__

204 ABLE, Inc., an individual director has no authority to control
 205 or direct the operations of Florida ABLE, Inc., or the actions
 206 of its officers and employees.

207 4. The board of directors of Florida ABLE, Inc.:

208 a. Shall meet at least quarterly and at other times upon
 209 the call of the chair.

210 b. May use any method of telecommunications to conduct, or
 211 establish a quorum at, its meetings or the meetings of a
 212 subcommittee or other subdivision if the public is given proper
 213 notice of the telecommunications meeting and provided reasonable
 214 access to observe and, if appropriate, to participate.

215 5. A majority of the total current membership of the board
 216 of directors of Florida ABLE, Inc., constitutes a quorum of the
 217 board.

218 6. Members of the board of directors of Florida ABLE, Inc.,
 219 and the board's subcommittees or other subdivisions shall serve
 220 without compensation; however, the members may be reimbursed for
 221 reasonable, necessary, and actual travel expenses pursuant to s.
 222 112.061.

223 (e) Subject to rule adopted by the Florida Prepaid College
 224 Board, Florida ABLE, Inc., may use property, other than money,
 225 facilities, and personal services of the Florida Prepaid College
 226 Board, provided that Florida ABLE, Inc., offers equal employment
 227 opportunities to all persons regardless of race, color,
 228 religion, sex, age, or national origin. As used in this
 229 paragraph, the term "personal services" means use of the Florida
 230 Prepaid College Board's full-time and part-time personnel,
 231 payroll processing services, and other services prescribed by
 232 rule of the Florida Prepaid College Board.

30-01015B-15

2015642__

233 (4) FLORIDA ABLE PROGRAM.—

234 (a) Florida ABLE, Inc., is authorized to establish and
 235 administer the Florida ABLE program. Before implementing the
 236 program, Florida ABLE, Inc., must obtain a written opinion from
 237 counsel specializing in:

238 1. Federal tax matters which indicates that the Florida
 239 ABLE program is designed to comply with s. 529A of the Internal
 240 Revenue Code.

241 2. Federal securities law which indicates that the Florida
 242 ABLE program and the offering of participation in the program
 243 are designed to comply with applicable federal securities law
 244 and qualify for the available tax exemptions under such law.

245 (b) Florida ABLE, Inc., must develop a participation
 246 agreement which must state that:

247 1. The participating agreement is only a debt or obligation
 248 of the Florida ABLE program and the Florida ABLE Trust Fund and,
 249 as provided under paragraph (f), is not a debt or obligation of
 250 the state.

251 2. Participation in the Florida ABLE program does not
 252 guarantee that sufficient funds will be available to cover all
 253 qualified disability expenses for any designated beneficiary and
 254 does not guarantee the receipt or continuation of any product or
 255 service for the designated beneficiary.

256 3. The establishment of an ABLE account in violation of
 257 federal law is prohibited.

258 4. Contributions in excess of the limitations set forth in
 259 s. 529A of the Internal Revenue Code are prohibited.

260 5. The withdrawal of funds from an ABLE account must comply
 261 with the requirements and procedures established by Florida

30-01015B-15

2015642__

262 ABLE, Inc., for a withdrawal. In establishing the requirements
 263 and procedures, Florida ABLE, Inc., shall provide for
 264 distributions to be made in as efficient and expeditious manner
 265 as is prudent and possible, consistent with the requirements of
 266 s. 529A of the Internal Revenue Code.

267 6. The state is a creditor of ABLE accounts as, and to the
 268 extent, set forth in s. 529A of the Internal Revenue Code.

269 7. Material misrepresentations by a party to the
 270 participation agreement, other than Florida ABLE, Inc., in the
 271 application for the participation agreement or in any
 272 communication with Florida ABLE, Inc., regarding the Florida
 273 ABLE program may result in the involuntary liquidation of the
 274 ABLE account. If an account is involuntarily liquidated, the
 275 designated beneficiary is entitled to a refund, subject to any
 276 fees or penalties provided by the participation agreement and
 277 the Internal Revenue Code.

278 (c) The participation agreement may include provisions
 279 specifying:

280 1. The requirements and applicable restrictions for opening
 281 an ABLE account.

282 2. The eligibility requirements for a party to a
 283 participation agreement and the rights of the party.

284 3. The requirements and applicable restrictions for making
 285 contributions to an ABLE account.

286 4. The requirements and applicable restrictions for
 287 directing the investment of the contributions or balance of the
 288 ABLE account.

289 5. The administrative fee and other fees and penalties
 290 applicable to an ABLE account.

30-01015B-15

2015642__

291 6. The terms and conditions under which an ABLÉ account or
 292 participation agreement may be modified, transferred, or
 293 terminated.

294 7. The disposition of abandoned ABLÉ accounts.

295 8. Other terms and conditions determined by Florida ABLÉ,
 296 Inc., to be necessary or proper.

297 (d) The participation agreement may be freely amended
 298 throughout its term for purposes that include, but are not
 299 limited to, allowing a participant to increase or decrease the
 300 level of participation and to change designated beneficiaries
 301 and other matters authorized by this section and s. 529A of the
 302 Internal Revenue Code.

303 (e) If an ABLÉ account is determined to be abandoned
 304 pursuant to rules adopted by the Florida Prepaid College Board,
 305 Florida ABLÉ, Inc., may use the balance of the account to
 306 operate the Florida ABLÉ program or may transfer the balance to
 307 the Florida Prepaid Tuition Scholarship Program to provide
 308 matching funds for prepaid tuition scholarships for economically
 309 disadvantaged youth under s. 1009.984.

310 (f) A contract or participation agreement entered into by
 311 or an obligation of Florida ABLÉ, Inc., on behalf of and for the
 312 benefit of the Florida ABLÉ program does not constitute a debt
 313 or obligation of the state but is the obligation of the Florida
 314 ABLÉ program. The state does not have an obligation to a
 315 designated beneficiary or any other person as a result of the
 316 Florida ABLÉ program. The obligation of the Florida ABLÉ program
 317 is limited solely to amounts in the Florida ABLÉ Trust Fund. All
 318 amounts obligated to be paid from the Florida ABLÉ Trust Fund
 319 are limited to the amounts available for such obligation. The

Page 11 of 20

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30-01015B-15

2015642__

320 amounts held in the Florida ABLÉ program may be disbursed only
 321 in accordance with this section.

322 (g) Florida ABLÉ, Inc., may contract with other states to
 323 participate under the rules of another state's qualified ABLÉ
 324 program or to authorize the participation of a contracting state
 325 in the Florida ABLÉ program.

326 (h) The Florida ABLÉ program shall continue in existence
 327 until terminated by law. If the state determines that the
 328 program is financially infeasible, the state may terminate the
 329 program. Upon termination, amounts in the Florida ABLÉ Trust
 330 Fund held for designated beneficiaries shall be returned in
 331 accordance with the participation agreement. Any unclaimed
 332 amounts remaining in the trust fund may be transferred to the
 333 Florida Prepaid Tuition Scholarship Program to provide matching
 334 funds for prepaid tuition scholarships for economically
 335 disadvantaged youth under s. 1009.984.

336 (i) The state pledges to the designated beneficiaries that
 337 the state will not limit or alter their rights under this
 338 section which are vested in the Florida ABLÉ program until the
 339 program's obligations are met and discharged. However, this
 340 paragraph does not preclude such limitation or alteration if
 341 adequate provision is made by law for the protection of the
 342 designated beneficiaries pursuant to the obligations of Florida
 343 ABLÉ, Inc., and does not preclude termination of the Florida
 344 ABLÉ program if the state or the Florida Prepaid College Board
 345 determines that the program is not financially feasible. Florida
 346 ABLÉ, Inc., on behalf of the state, may include this pledge and
 347 undertaking by the state in participation agreements.

348 (5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLÉ, Inc.,

Page 12 of 20

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30-01015B-15 2015642__
 349 shall establish a comprehensive investment plan for the Florida
 350 ABLE program, subject to the approval of the Florida Prepaid
 351 College Board. The comprehensive investment plan must specify
 352 the investment policies to be used by Florida ABLE, Inc., in its
 353 administration of the program. Florida ABLE, Inc., may place
 354 assets of the program in investment products and in such
 355 proportions as may be designated or approved in the
 356 comprehensive investment plan. Such products shall be
 357 underwritten and offered in compliance with the applicable
 358 federal and state laws or regulations or exemptions therefrom. A
 359 designated beneficiary may not direct the investment of any
 360 contributions to the Florida ABLE program, unless specific fund
 361 options are offered by Florida ABLE, Inc. Directors, officers,
 362 and employees of Florida ABLE, Inc., may enter into
 363 participation agreements, notwithstanding their fiduciary
 364 responsibilities or official duties related to the Florida ABLE
 365 program.

(6) EXEMPTION FROM CLAIMS OF CREDITORS.—Moneys paid into or
 366 out of the Florida ABLE Trust Fund by or on behalf of a
 367 designated beneficiary are exempt, as provided by s. 222.22,
 368 from all claims of creditors of the designated beneficiary if
 369 the participation agreement has not been terminated. Moneys paid
 370 into the Florida ABLE program and benefits accrued through the
 371 program may not be pledged for the purpose of securing a loan.

(7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—

(a) Upon the death of the designated beneficiary, the
 374 Agency for Health Care Administration or the state Medicaid
 375 program for a contracting state may file a claim with the
 376 Florida ABLE program for the total amount of medical assistance
 377

30-01015B-15 2015642__
 378 provided for the designated beneficiary under the Medicaid
 379 program, less any premiums paid by or on behalf of the
 380 designated beneficiary to a Medicaid buy-in program. Funds in
 381 the ABLE account of the deceased designated beneficiary must
 382 first be distributed for qualified disability expenses followed
 383 by distributions for the Medicaid claim authorized under this
 384 paragraph. Any remaining amount shall be distributed as provided
 385 in the participation agreement.

(b) Florida ABLE, Inc., shall provide to the Agency for
 387 Health Care Administration or the agency's contractor data
 388 files, layouts, data dictionaries, and any other necessary
 389 materials used by Florida ABLE, Inc., to carry out this section.
 390 The exchange of data must occur on a schedule mutually agreed
 391 upon by both parties.

(8) PAYROLL DEDUCTION AUTHORITY.—The payroll deduction
 392 authority provided under s. 1009.975 applies to the Florida
 393 Prepaid College Board and Florida ABLE, Inc., for purposes of
 394 administering this section.

(9) ANNUAL REPORT.—On or before March 31 of each year,
 396 Florida ABLE, Inc., shall prepare or cause to be prepared a
 397 report setting forth in appropriate detail an accounting of the
 398 Florida ABLE program which includes a description of the
 399 financial condition of the program at the close of the fiscal
 400 year. Florida ABLE, Inc., shall submit copies of the report to
 401 the Governor, the President of the Senate, the Speaker of the
 402 House of Representatives, and the minority leaders of the Senate
 403 and the House of Representatives and shall make the report
 404 available to each designated beneficiary. The accounts of the
 405 Florida ABLE program are subject to annual audit by the Auditor
 406

30-01015B-15

2015642__

407 General.

408 (10) RULES.—The Florida Prepaid College Board shall adopt
 409 rules to administer this section. Such rules must include, but
 410 are not limited to:

411 (a) Specifying the procedures by which Florida ABLE, Inc.,
 412 shall be governed and operate, including requirements for the
 413 budget of Florida ABLE, Inc., and conditions with which Florida
 414 ABLE, Inc., must comply to use property, facilities, or personal
 415 services of the Florida Prepaid College Board.

416 (b) The procedures for determining that an ABLE account has
 417 been abandoned.

418 (c) Adoption of provisions determined necessary by the
 419 Florida Prepaid College Board for the Florida ABLE program to
 420 retain its status as a qualified ABLE program or the tax-exempt
 421 status or other similar status of the program or its
 422 participants under the Internal Revenue Code. Florida ABLE,
 423 Inc., shall inform participants in the Florida ABLE program of
 424 changes to the tax or securities status of their interests in
 425 the ABLE program and participation agreements.

426 (11) REPEAL.—In accordance with s. 20.058, this section is
 427 repealed October 1, 2020, unless reviewed and saved from repeal
 428 by the Legislature.

429 Section 3. Subsection (5) is added to section 222.22,
 430 Florida Statutes, to read:

431 222.22 Exemption of assets in qualified tuition programs,
 432 medical savings accounts, Coverdell education savings accounts,
 433 and hurricane savings accounts from legal process.—

434 (5) Except as provided in s. 1009.986(7), as it relates to
 435 any validly existing qualified ABLE program authorized by s.

30-01015B-15

2015642__

436 529A of the Internal Revenue Code of 1986, as amended,
 437 including, but not limited to, the Florida ABLE program
 438 participation agreements under s. 1009.986, moneys paid into or
 439 out of such a program, and the income and assets of such a
 440 program, are not liable to attachment, levy, garnishment, or
 441 legal process in this state in favor of any creditor of or
 442 claimant against any designated beneficiary or other program
 443 participant.

444 Section 4. Subsections (1) and (4) of section 1009.971,
 445 Florida Statutes, are amended to read:

446 1009.971 Florida Prepaid College Board.—

447 (1) FLORIDA PREPAID COLLEGE BOARD; CREATION.—The Florida
 448 Prepaid College Board is hereby created as a body corporate with
 449 all the powers of a body corporate for the purposes delineated
 450 in this section. The board shall administer the prepaid program
 451 and the savings program, and shall perform essential
 452 governmental functions as provided in ss. 1009.97-1009.988 ~~ss.~~
 453 ~~1009.97-1009.984~~. For the purposes of s. 6, Art. IV of the State
 454 Constitution, the board shall be assigned to and
 455 administratively housed within the State Board of
 456 Administration, but it shall independently exercise the powers
 457 and duties specified in ss. 1009.97-1009.988 ~~ss. 1009.97-~~
 458 ~~1009.984~~.

459 (4) FLORIDA PREPAID COLLEGE BOARD; POWERS AND DUTIES.—The
 460 board shall have the powers and duties necessary or proper to
 461 carry out the provisions of ss. 1009.97-1009.988 ~~ss. 1009.97-~~
 462 ~~1009.984~~, including, but not limited to, the power and duty to:

463 (a) Appoint an executive director to serve as the chief
 464 administrative and operational officer of the board and to

30-01015B-15

2015642__

465 perform other duties assigned to him or her by the board.

466 (b) Adopt an official seal and rules.

467 (c) Sue and be sued.

468 (d) Make and execute contracts and other necessary
469 instruments.

470 (e) Establish agreements or other transactions with
471 federal, state, and local agencies, including state universities
472 and Florida College System institutions.

473 (f) Administer the trust fund in a manner that is
474 sufficiently actuarially sound to defray the obligations of the
475 prepaid program and the savings program, considering the
476 separate purposes and objectives of each program. The board
477 shall annually evaluate or cause to be evaluated the actuarial
478 soundness of the prepaid fund. If the board perceives a need for
479 additional assets in order to preserve actuarial soundness of
480 the prepaid program, the board may adjust the terms of
481 subsequent advance payment contracts to ensure such soundness.

482 (g) Invest funds not required for immediate disbursement.

483 (h) Appear in its own behalf before boards, commissions, or
484 other governmental agencies.

485 (i) Hold, buy, and sell any instruments, obligations,
486 securities, and property determined appropriate by the board.

487 (j) Require a reasonable length of state residence for
488 qualified beneficiaries.

489 (k) Segregate contributions and payments to the trust fund
490 into the appropriate fund.

491 (l) Procure and contract for goods and services, employ
492 personnel, and engage the services of private consultants,
493 actuaries, managers, legal counsel, and auditors in a manner

Page 17 of 20

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30-01015B-15

2015642__

494 determined to be necessary and appropriate by the board.

495 (m) Solicit and accept gifts, grants, loans, and other aids
496 from any source or participate in any other way in any
497 government program to carry out the purposes of ss. 1009.97-
498 1009.988 ~~ss. 1009.97-1009.984~~.

499 (n) Require and collect administrative fees and charges in
500 connection with any transaction and impose reasonable penalties,
501 including default, for delinquent payments or for entering into
502 an advance payment contract or a participation agreement on a
503 fraudulent basis.

504 (o) Procure insurance against any loss in connection with
505 the property, assets, and activities of the trust fund or the
506 board.

507 (p) Impose reasonable time limits on use of the benefits
508 provided by the prepaid program or savings program. However, any
509 such limitations shall be specified within the advance payment
510 contract or the participation agreement, respectively.

511 (q) Delineate the terms and conditions under which payments
512 may be withdrawn from the trust fund and impose reasonable fees
513 and charges for such withdrawal. Such terms and conditions shall
514 be specified within the advance payment contract or the
515 participation agreement.

516 (r) Provide for the receipt of contributions in lump sums
517 or installment payments.

518 (s) Require that purchasers of advance payment contracts or
519 benefactors of participation agreements verify, under oath, any
520 requests for contract conversions, substitutions, transfers,
521 cancellations, refund requests, or contract changes of any
522 nature. Verification shall be accomplished as authorized and

Page 18 of 20

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30-01015B-15

2015642__

523 provided for in s. 92.525(1)(a).

524 (t) Delegate responsibility for administration of one or
525 both of the comprehensive investment plans required in s.
526 1009.973 to persons the board determines to be qualified. Such
527 persons shall be compensated by the board.

528 (u) Endorse insurance coverage written exclusively for the
529 purpose of protecting advance payment contracts, and
530 participation agreements, and the purchasers, benefactors, and
531 beneficiaries thereof, including group life policies and group
532 disability policies, which are exempt from the provisions of
533 part V of chapter 627.

534 (v) Form strategic alliances with public and private
535 entities to provide benefits to the prepaid program, savings
536 program, and participants of either or both programs.

537 (w) Solicit proposals and contract, pursuant to s. 287.057,
538 for the marketing of the prepaid program or the savings program,
539 or both together. Any materials produced for the purpose of
540 marketing the prepaid program or the savings program shall be
541 submitted to the board for review. No such materials shall be
542 made available to the public before the materials are approved
543 by the board. Any educational institution may distribute
544 marketing materials produced for the prepaid program or the
545 savings program; however, all such materials shall be approved
546 by the board prior to distribution. Neither the state nor the
547 board shall be liable for misrepresentation of the prepaid
548 program or the savings program by a marketing agent.

549 (x) Establish other policies, procedures, and criteria to
550 implement and administer the provisions of ss. 1009.97-1009.988
551 ~~ss. 1009.97-1009.984~~.

Page 19 of 20

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30-01015B-15

2015642__

552 (y) Adopt procedures to govern contract dispute proceedings
553 between the board and its vendors.

554 Section 5. This act shall take effect October 1, 2015.

Page 20 of 20

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/15

Meeting Date

SB 642

Bill Number (if applicable)

Topic Pre Paid Services for Individuals w/ Disabilities Amendment Barcode (if applicable)

Name DEBORAH LINTON

Job Title CEO Arc of FL

Address 2898 Mahan Dr

Phone 850-921-0460

Street

Tallahassee FL 32308

City

State

Zip

Email deborah@arcflorida.org

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

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

Representing Arc of FL

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/15
Meeting Date

SB642
Bill Number (if applicable)

Topic Pain Services for Individuals w/ Disabilities Amendment Barcode (if applicable)

Name Dixie Sanson

Job Title Lobbyist

Address PO Box 98

Phone 321-543-2195

Cocoa FL 32923
City State Zip

Email DixieSanson@aol.com

Speaking: For Against Information

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

Representing The Arc of FL

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.



914652

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/17/2015 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 31
and insert:
consumer held by the Florida Prepaid College Board, Florida
ABLE, Inc., or the Florida ABLE

Delete line 36
and insert:
(3) The Florida Prepaid College Board or Florida ABLE,
Inc., may authorize the

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 646

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program

DATE: February 18, 2015 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Johnson | Knudson | BI | Fav/CS |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | AP | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 646 creates a public records exemption for specified personal financial and health information of a consumer relating to an ABLE account or a participation agreement or any information that would identify a consumer held by the Florida Prepaid College Board, Florida ABLE Inc., Florida ABLE program, or an agent or service provider of these entities. The bill defines a consumer as a party to a participation agreement, which would be under the Florida ABLE Program.

A related bill, SB 642, requires Florida Prepaid College Board to create Florida ABLE, Inc., as a direct support organization, which would administer the Florida ABLE program. The program would allow individuals with disabilities to save money without losing their eligibility for state and federal benefits and use such funds for qualified disability expenses. This program was created by the federal Achieving a Better Life Experience Act of 2014 (ABLE Act), which authorizes states to establish ABLE programs as an agency or instrumentality of the state or contract with other states to administer such accounts if certain conditions are met.¹

Because this bill creates a public-records exemption, it contains a public necessity statement and requires a two-thirds vote of each house of the Legislature for passage.

¹ H.R. 5771, Division B, Title I. Public Law 113-295.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.³ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.⁴

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁵ guarantees every person's right to inspect and copy any state or local government public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

The Legislature may create an exemption to public records or open meetings requirements.⁹ An exemption must specifically state the public necessity justifying the exemption¹⁰ and must be tailored to accomplish the stated purpose of the law.¹¹

² FLA. CONST., art. I, s. 24(a).

³ FLA. CONST., art. I, s. 24(b).

⁴ FLA. CONST., art. I, s. 24(b).

⁵ Chapter 119, 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." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. 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). 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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

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.¹² 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.¹³

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.¹⁴ An exemption serves an identifiable public purpose if it meets one of the following criteria: It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁵ 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;¹⁶ or it protects trade or business secrets.¹⁷ In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida’s open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁸

The OGSR also requires specific questions to be considered during the review process.¹⁹ In examining an exemption, the OGSR asks the Legislature to 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.²⁰ 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.²¹

¹² Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it 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 section 119.15(2), F.S.

¹³ Section 119.15(3), F.S.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ Section 119.15(6)(b)1., F.S.

¹⁶ Section 119.15(6)(b)2., F.S.

¹⁷ Section 119.15(6)(b)3., F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(a), F.S. The questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- 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?

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ Section 119.15(7), F.S.

Federal ABLE Act

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014. The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria and are deemed “eligible individuals.” A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.²² The provisions of the ABLE Act are effective for taxable years beginning after December 31, 2014.

Florida ABLE Program

SB 642 requires the Florida Prepaid College Board to create the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. Florida ABLE, Inc., would establish and administer the Florida ABLE Program. Florida ABLE, Inc., would be under the direction of a board comprised of the chair of the Florida Prepaid College Board, the executive director of the Florida Prepaid College Board, the director of the Agency for Persons with Disabilities, two appointees of the Florida Senate, and two appointees of the Florida House of Representatives. The legislative appointees would include one advocate for individuals with disabilities, one advocate for individuals with developmental disabilities, and two individuals with expertise in accounting, risk management. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid College Board.

Individuals who participate in the Florida ABLE Program must meet certain requirements. Under the provisions of SB 642, a designated beneficiary means the eligible individual who established an ABLE account or the eligible individual to whom an ABLE account was transferred. A designated beneficiary in the Florida ABLE program would be subject to the terms and conditions of the participation agreement.

An individual is an eligible individual for establishing an ABLE account for a taxable year if during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

Under the Florida ABLE Program, eligible individuals with disabilities, family members and others can contribute funds to an ABLE account without affecting the individual’s eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses relating to the individual’s blindness or disability. These expenses would include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

²² A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

III. Effect of Proposed Changes:

The bill provides that personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution.

For purposes of the bill, a “consumer” means a party to a participation agreement of the Florida ABLE program. The bill provides that “personal financial and health information” means:

- A consumer’s personal health condition, disease, injury, or 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; or
- The existence, identification, nature, or value of a consumer’s assets, liabilities, or net worth.

The bill authorizes Florida Prepaid College Board or Florida ABLE, Inc., to disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for this public records exemption. The Legislature finds that it is a public necessity to protect a consumer’s personal financial and health information. Disclosure of sensitive financial information held for a consumer under the Florida ABLE program would create the opportunity for theft, identity theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the consumer and placing him or her at risk for substantial financial harm. Further, each person has a reasonable expectation of and a right to privacy in all matters concerning personal financial interests.

The Legislature finds that it is a public necessity to protect a consumer’s personal health information because such information is traditionally a private and confidential matter between the patient and health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors, and public disclosure of such personal health information held for a consumer under the Florida ABLE program could negatively affect a person’s business and personal relationships and cause detrimental financial consequences.

The bill would take effect on the same date that SB 642 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

None.

B. Public Records/Open Meetings Issues:

This bill creates a public-records exemption. It complies with the requirements of s. 24(c), Art. I of the Florida Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill creates an exemption, it contains a statement of public necessity and is subject to a two-thirds vote of each house of the Legislature for passage as required by s. 24(c), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill would prevent the disclosure of specified personal financial and health information of a consumer that is held by the Florida Prepaid College Board, Florida ABLE Inc., Florida ABLE program, or an agent or service provider of these entities relating to an ABLE account or a participation agreement or any information held that would identify a consumer. The bill provides a limited exception for the release of such confidential and exempt information to governmental entities in furtherance of their duties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.987 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 February 17, 2015:

The CS replaces the word, “board” with the term, “Florida Prepaid College Board.”

- 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 Benacquisto

30-01014-15

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1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 1009.987, F.S.; providing an exemption from public
 4 records requirements for certain personal financial
 5 and health information held by the Florida Prepaid
 6 College Board, Florida ABLE, Inc., the Florida ABLE
 7 program, or an agent or service provider thereof;
 8 authorizing the release of such information under
 9 specified circumstances; providing for future
 10 legislative review and repeal of the exemption;
 11 providing a statement of public necessity; providing a
 12 contingent effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 1009.987, Florida Statutes, is created
 17 to read:

18 1009.987 Public records exemption.-

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

20 (a) "Consumer" means a party to a participation agreement.

21 (b) "Personal financial and health information" means:
 22 1. A consumer's personal health condition, disease, injury,
 23 or medical diagnosis or treatment;

24 2. The existence, nature, source, or amount of a consumer's
 25 personal income or expenses;

26 3. Records of or relating to a consumer's personal
 27 financial transactions of any kind; or

28 4. The existence, identification, nature, or value of a
 29 consumer's assets, liabilities, or net worth.

Page 1 of 3

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30-01014-15

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30 (2) The personal financial and health information of a
 31 consumer held by the board, Florida ABLE, Inc., the Florida ABLE
 32 program, or an agent or service provider thereof, relating to an
 33 ABLE account or a participation agreement or any information
 34 that would identify a consumer is confidential and exempt from
 35 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

36 (3) The board or Florida ABLE, Inc., may authorize the
 37 disclosure of information made confidential and exempt under
 38 subsection (2) to another state or federal government entity if
 39 disclosure is necessary for the receiving entity to perform its
 40 duties or responsibilities or to verify the eligibility of an
 41 eligible individual or authorize the use of an ABLE account.

42 (4) This section is subject to the Open Government Sunset
 43 Review Act in accordance with s. 119.15 and shall stand repealed
 44 on October 2, 2020, unless reviewed and saved from repeal
 45 through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public
 47 necessity to protect a consumer's personal financial and health
 48 information. Disclosure of sensitive financial information held
 49 for a consumer under the Florida ABLE program would create the
 50 opportunity for theft, identity theft, fraud, and other illegal
 51 activity, thereby jeopardizing the financial security of the
 52 consumer and placing him or her at risk for substantial
 53 financial harm. Further, each person has a reasonable
 54 expectation of and a right to privacy in all matters concerning
 55 personal financial interests. The Legislature further finds that
 56 it is a public necessity to protect a consumer's personal health
 57 information because such information is traditionally a private
 58 and confidential matter between the patient and health care

Page 2 of 3

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

30-01014-15

2015646__

59 provider. The private and confidential nature of personal health
60 matters pervades both the public and private health care
61 sectors, and public disclosure of such personal health
62 information held for a consumer under the Florida ABLE program
63 could negatively affect a person's business and personal
64 relationships and cause detrimental financial consequences.

65 Section 3. This act shall take effect on the same date that
66 SB __ or similar legislation takes effect, if such legislation
67 is adopted in the same legislative session or an extension
68 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2015
Meeting Date

646
Bill Number (if applicable)

Topic Public Records, Florida Prepaid

Amendment Barcode (if applicable)

Name Deborah Linton

Job Title CEO, The Arc of Florida

Address 2898 Mahan Drive
Street

Phone 850-921-0400

Tallahassee, FL 32308
City State Zip

Email deborah@arcflorida.org

Speaking: For Against Information

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

Representing The Arc of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



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LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/17/2015 | . | |
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| | . | |

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1009.988, Florida Statutes, is created
to read:

1009.988 Florida ABLE Program Trust Fund.-

(1) The Florida ABLE Program Trust Fund is created within
the State Board of Administration.

(2) The Florida ABLE Program Trust Fund shall consist of



11 appropriations, moneys acquired from other governmental or
12 private sources for the Florida ABLE program, and moneys
13 remitted in accordance with participation agreements. Assets
14 held in the trust fund may be expended only to carry out the
15 purposes of the Florida ABLE program.

16 (a) Any balance in the trust fund at the end of a fiscal
17 year shall remain in the trust fund and shall be available for
18 carrying out the purpose of the Florida ABLE program. Assets
19 held in the trust fund are exempt from the investment
20 requirements of s. 17.57 and may be invested pursuant to s.
21 215.47.

22 (b) Assets held in the trust fund shall be maintained,
23 invested, and expended solely for the purposes of the Florida
24 ABLE program and may not be loaned, transferred, or otherwise
25 used by the state for any purpose other than the Florida ABLE
26 program. This paragraph does not prohibit Florida ABLE, Inc.,
27 from investing in, by purchase or otherwise, bonds, notes, or
28 other obligations of the state or an agency or instrumentality
29 of the state. Unless otherwise specified by Florida ABLE, Inc.,
30 assets held in the trust fund shall be expended in the priority
31 of making payments to, or on behalf of, designated beneficiaries
32 and then paying for the costs of administration and operations
33 for the Florida ABLE program.

34 (3) In accordance with s. 19(f)(2), Art. III of the State
35 Constitution, unless terminated sooner, the Florida ABLE Program
36 Trust Fund shall be terminated 4 years after the effective date
37 of this act. Before its scheduled termination, the trust fund
38 shall be reviewed as provided under s. 215.3206(1) and (2).

39 Section 2. The Division of Law Revision and Information is



100100

40 directed to replace the phrase "4 years after the effective of
41 this act" where it occurs in this act with the date the act
42 becomes a law.

43 Section 3. This act shall take effect on the same date that
44 SB 642 or similar legislation takes effect, if such legislation
45 is adopted in the same legislative session or an extension
46 thereof and becomes a law.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete everything before the enacting clause
51 and insert:

52 A bill to be entitled
53 An act relating to trust funds; creating s. 1009.988,
54 F.S.; creating the Florida ABLE Program Trust Fund
55 within the State Board of Administration; authorizing
56 sources of funds; specifying the purpose of the trust
57 fund and authorized uses of the assets; providing for
58 future review and termination or re-creation of the
59 trust fund; providing a directive to the Division of
60 Law Revision and Information; providing a contingent
61 effective date.

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 644

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Florida ABLE Program Trust Fund/State Board of Administration

DATE: February 18, 2015 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Knudson | Knudson | BI | Fav/CS |
| 2. | | | AED | |
| 3. | | | AP | |

I. Summary:

CS/SB 644 creates the Florida ABLE Program Trust Fund (trust fund) within the State Board of Administration (SBA). The trust fund will hold appropriations and moneys acquired from private sources or other governmental or private sources for the Florida ABLE program. The trust fund will also hold ABLE account moneys.

II. Present Situation:

Trust Funds

Section 19(f), Art. III of the State Constitution, requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than 4 years after the initial creation unless recreated.

Federal ABLE Act

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014. The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria and are deemed “eligible individuals.” A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.¹ The provisions of the ABLE Act are effective for taxable years beginning after December 31, 2014.

¹ A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

Florida ABLE Program

CS/SB 642 requires the Florida Prepaid College Board to create the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. Florida ABLE, Inc., would establish and administer the Florida ABLE Program. Florida ABLE, Inc., would be under the direction of a board comprised of the chair of the Florida Prepaid College Board, two appointees with expertise in accounting, risk management or investment management, and two appointees who are advocates for individuals with disabilities, one of whom is an advocate for individuals with developmental disabilities. The bill provides that the Florida ABLE, Inc., would operate under a contract with the Florida Prepaid College Board.

Individuals who participate in the Florida ABLE Program must meet certain requirements. Under the provisions of CS/SB 642, a designated beneficiary means the eligible individual who established an ABLE account or the eligible individual to whom an ABLE account was transferred. A designated beneficiary in the Florida ABLE program would be subject to the terms and conditions of the participation agreement.

An individual is an eligible individual for establishing an ABLE account for a taxable year if during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

Under the Florida ABLE Program, eligible individuals with disabilities, family members and others can contribute funds to an ABLE account without affecting the individual's eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses relating to the individual's blindness or disability. These expenses would include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

III. Effect of Proposed Changes:

Section 1 creates the Florida ABLE Program Trust Fund within the State Board of Administration. The trust fund will hold appropriations and moneys acquired from private sources or other governmental or private sources for the Florida ABLE program. The trust fund will also hold moneys held in ABLE accounts. The priority of expending trust fund assets is first to make payment to, or on behalf of, designated beneficiaries of the Florida ABLE program and then to pay administrative and operations costs of the Florida ABLE program.

Trust fund assets may be maintained, expended, and invested only to carry out the purposes of Florida ABLE program. Florida ABLE may, however, make investments in bonds, notes, or other obligations of the state, a state agency, or instrumentality of the state. Any year-end

balance remains in the trust fund. Trust fund assets are exempt from the investment requirements of s. 17.57, F.S., and may be invested pursuant to s. 215.47, F.S.

The trust fund terminates on October 1, 2019, as required by s. 19(f)(2), Art. III of the Florida Constitution. Prior to termination, the trust fund will be reviewed by the State Board of Administration and the Governor who will recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or be re-created.

Section 2 provides that the bill will take effect on the same date as CS/SB 642 or similar legislation if such legislation is adopted in the same legislative session, or an extension of the same session, and becomes law. The effective date of CS/SB 642 is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article II, subsection 19(f) of the Florida Constitution prohibits the Legislature from creating or re-creating a trust fund unless the trust fund is created or re-created by law and approved by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

State trust funds must terminate within 4 years after the effective date of the act authorizing the initial creation of the trust fund. Once re-created, a trust fund remains in existence indefinitely.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.988 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 January 17, 2015:

The CS renames the trust fund created by the bill the Florida ABLE Program Trust Fund to avoid confusion with the Florida Endowment Foundation for Vocational Rehabilitation, which is also known as “The Able Trust.”

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/15

Meeting Date

SB0644

Bill Number (if applicable)

Topic Florida ABLE TRUST

Amendment Barcode (if applicable)

Name Deborah Linton

Job Title CEO, The Arc of Florida

Address 2898 Mahan

Phone 850-921-0460

Street

Tallahassee

City

FL

State

32308

Zip

Email deborah@arcflorida.org

Speaking: For Against Information

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

Representing The Arc of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-15

Meeting Date

SB 642, 644, 646

Bill Number (if applicable)

Topic ABLE Act

Amendment Barcode (if applicable)

Name William Thompson

Job Title Deputy Executive Director

Address 1801 Hermitage Blvd, Suite 210

Phone 850 488-8514

Street

Tallahassee

FL

32308

City

State

Zip

Email William.Thompson@

myflorida.gov

Speaking: For Against Information

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

Representing Florida Prepaid College Board

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-15

Meeting Date

SB 442 244, 446
Bill Number (if applicable)

Topic ABLE Act

Amendment Barcode (if applicable)

Name Kenn Thompson

Job Title Exec. Dir.

Address 1800 Heritage

Phone 408-8514

Street

Tall
City

FL
State

32308
DB
Zip

Email KennThompson@myfloridaprep.org
com

Speaking: For Against Information

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

Representing Florida Prep

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)



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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 02/17/2015 | . | |
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 45 - 107.

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

And the title is amended as follows:

Delete lines 3 - 8

and insert:

amending s.



724808

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/17/2015 | . | |
| | . | |
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 126 - 127
and insert:
purposes of a rate filing for personal lines residential flood
insurance coverage under s. 627.062.

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

And the title is amended as follows:

Delete lines 14 - 18



724808

11 and insert:
12 to certain rate filings; amending s. 627.0651, F.S.;
13 revising



687824

LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 02/17/2015 | . | |
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment

Delete lines 216 - 217
and insert:
comply, within 90 days after the date of effectuation of
coverage, with the underwriting requirements established by the
insurer before the effectuation of coverage, or a



385334

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/17/2015 | . | |
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 386 - 395
and insert:
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, and the applicable fee schedule or payment
limitation applies to services, supplies, or care rendered
during ~~throughout the remainder of that~~ service year,



385334

11 notwithstanding any subsequent change made to the fee schedule
12 or payment limitation, except that it may not be less than the
13 allowable amount under the applicable schedule of Medicare Part
14 B for 2007 for medical services, supplies, and care subject to
15 Medicare Part B. As used in this subparagraph, the term "service
16 year" means the period from March 1 through the last day of
17 February of the following year.

18
19

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

21 And the title is amended as follows:

22 Delete lines 37 - 38

23 and insert:

24 revising the applicability of certain Medicare fee
25 schedules or payment limitations; defining the term
26 "service year";



875536

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 02/17/2015 | . | |
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The Committee on Banking and Insurance (Negron) recommended the following:

Senate Amendment (with title amendment)

Between lines 458 and 459

insert:

Section 10. Section 631.65, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete line 41

and insert:



875536

11 vehicles; repealing s. 631.65, F.S., relating to
12 prohibited advertisement or solicitation; providing an
13 effective date.

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 258

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Property and Casualty Insurance

DATE: February 17, 2015 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 258 makes various changes to statutes relating to property and casualty insurance. Current law provides that the use of a single United States Postal Service zip code as a rating territory for auto insurance is unfairly discriminatory. This bill allows the use of a single zip code as a rating territory if the territory incorporates sufficient actual or expected loss and loss adjustment expenses experience so as to be actuarially measurable and credible.

Current law requires the Office of Insurance Regulation to consider projected hurricane losses using a model or method found reliable by the Florida Commission on Hurricane Loss Methodology when reviewing a rate filing. This bill increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model.

In addition, this bill:

- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal and commercial lines residential property insurance policies;
- Allows a personal lines policyholder to elect electronic delivery of documents;
- Provides that an insurer has to notify a policyholder of the availability of neutral evaluation of a sinkhole claim when there is coverage available under the policy and the claim was submitted within the statutory timeframe;
- Amends a provision in the personal injury protection statute to resolve an ambiguity relating to the applicability of medical fee schedules;

- Creates exemptions to preinsurance inspection requirements for private passenger automobiles; and
- Repeals a prohibition against using the existence of the Florida Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase insurance.

This bill takes effect July 1, 2015.

II. Present Situation:

Insurance Rate Standards

Insurance rates for property and casualty insurance may not be excessive, inadequate, or unfairly discriminatory.¹ Proposed rates must be filed with the Office of Insurance Regulation (OIR) and the OIR must determine whether the rates comply with the law.² When reviewing the rate filing, the OIR must consider loss experience, expenses, competition, investment income, the cost of reinsurance, and other factors.³

Hurricane Loss Projection Models

Section 627.062(2)(b)11., F.S., requires the OIR to consider projected hurricane losses. The losses must be estimated using a model or models found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology (Commission).⁴ The Commission was established by the Legislature to serve as an independent body to provide expert evaluation of computer models that project hurricane losses.⁵ The Commission is assigned to the State Board of Administration.⁶ The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses.⁷ Members of the Commission include:

- The Insurance Consumer Advocate;
- The person responsible for Florida Hurricane Catastrophe Fund operations;
- The Executive Director of Citizens Property Insurance Corporation (Citizens);
- The Director of the Division of Emergency Management;
- An actuary member from the Florida Hurricane Catastrophe Fund Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an insurance finance expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is a statistics expert and who is a full-time faculty member in the State University System;

¹ s. 627.062(1), F.S.

² s. 627.062(2)(b), F.S.

³ s. 627.062(2)(b)

⁴ s. 627.062(2)(b)11., F.S.

⁵ s. 627.0628, F.S.

⁶ s. 627.0628(2)(a), F.S.

⁷ s. 627.0628(3)(a), F.S.

- An appointment by the state Chief Financial Officer who is a meteorology expert and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System and
- An appointment by the Governor who is a licensed professional structural engineer and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates.⁸ After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."⁹

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.0651, F.S., provides that the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited.

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days' written notice of nonrenewal or cancellation;¹⁰
- For any nonrenewal or cancellation effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days notice, whichever is earlier;¹¹
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;¹²
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;¹³
- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;¹⁴
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;¹⁵

⁸ s. 627.0628(3)(d), F.S.

⁹ s. 627.062(3)(d), F.S.

¹⁰ s. 627.4133(2)(b), F.S.

¹¹ s. 627.4133(2)(b), F.S.

¹² s. 627.4133(2)(b)5.a., F.S.

¹³ s. 627.4133(2)(b)5.b., F.S.

¹⁴ s. 627.4133(2)(b)1., F.S.

¹⁵ s. 627.4133(2)(b)2., F.S.

- If the OIR finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days' written notice of cancellation or nonrenewal;¹⁶
- If a policy covers both home and motor vehicle, the insurer must give the insured 90 days' written notice of nonrenewal.¹⁷

Electronic Delivery of a Policy

Section 627.421, F.S., requires every insurance policy¹⁸ to be mailed or delivered to the insured within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.¹⁹ Insurance is specifically included in E-SIGN.²⁰ E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. The UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct the transaction by electronic means.

Neutral Evaluation

Sections 627.707-627.7074, F.S., create requirements for investigation of sinkhole claims and a neutral evaluation program to help resolve sinkhole claims. Section 627.707, F.S., requires an insurer, upon receipt of a sinkhole claim, to inspect the policyholder's premises to determine if there is structural damage that may be the result of sinkhole activity. If the insurer confirms that structural damage exists but is unable to identify the cause or discovers that such damage is consistent with sinkhole loss, the insurer shall engage a professional engineer or a professional geologist to conduct testing²¹ to determine the cause of the loss if sinkhole loss is covered under

¹⁶ s. 627.4133(2) (b)6., F.S.

¹⁷ s. 627.4133(2)(b)7., F.S.

¹⁸ Section 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit disability insurance policies do not have to be mailed or delivered. *See* s. 627.401, F.S.

¹⁹ Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000). Many of the provisions of E-SIGN took effect October 1, 2000.

²⁰ *Id.*

²¹ s. 627.7072, F.S., contains testing standards in sinkhole claims.

the policy.²² If the insurer determines that there is no sinkhole loss, the insurer may deny the claim.²³

Neutral evaluation is available to either party if a sinkhole report has been issued.²⁴ Neutral evaluation must determine causation, all methods of stabilization and repair both above and below ground, and the costs of stabilization and all repairs.²⁵ Following the receipt of the sinkhole report or the denial of a claim for a sinkhole loss, the insurer notifies the policyholder of the right to participate in the neutral evaluation program.²⁶

Neutral evaluation is nonbinding, but mandatory if requested by either the insurer or the insured.²⁷ A request for neutral evaluation is filed with the Department of Financial Services. The request for neutral evaluation must state the reason for the request and must include an explanation of all the issues in dispute at the time of the request.²⁸ The neutral evaluator receives information from the parties and may have access to the structure. The neutral evaluator evaluates the claim and prepares a report describing whether a sinkhole loss occurred and, if necessary, the costs of repairs or stabilization.²⁹ The report is admissible in subsequent court proceedings.³⁰ Section 627.7074(6), F.S., requires the insurer to pay reasonable costs associated with the neutral evaluation.

Personal Injury Protection Insurance

In 2012, the personal injury protection (PIP) reform bill established the date on which Medicare fee schedule changes are effective.³¹ The amended section 627.736(5)(a)2., F.S., provides, in part::

[T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered...and the applicable fee schedule or payment limitation applies throughout the remainder of that year....

It is uncertain whether the Medicare fee schedule in place on March 1 applied to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

²² s. 627.707(2), F.S.

²³ s. 627.707(4)(a), F.S.

²⁴ s. 627.7073, F.S., requires that a report be issued if testing required under s. 627.707-7074, F.S., is performed.

²⁵ s. 627.7074(2), F.S.

²⁶ s. 627.7074(3), F.S.

²⁷ s. 627.7074(4), F.S.

²⁸ s. 627.7074, F.S. The statute also requires the Department of Financial Services to maintain a list of neutral evaluators and provides for disqualification of neutral evaluators in specified circumstances.

²⁹ ss. 627.7074(5), (12), F.S.

³⁰ s. 627.7074(13), F.S.

³¹ Ch. 212-151, L.O.F.

Preinsurance Inspections

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, used 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 and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

Prohibition on Certain Advertising

When a property and casualty insurance company becomes insolvent, the Florida Insurance Guaranty Association (FIGA) is required by law to take over the claims of the insurer and pay the claims of the company’s policyholders.³² This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. It is a nonprofit corporation.³³

If a property and casualty insurance company has been declared insolvent, covered claims will be paid by FIGA. The maximum amount FIGA will cover is \$300,000 with special limits applying to (1) damages to structure and contents on homeowners’ claims and (2) on condominium and homeowners’ association claims.³⁴ For damages to structure and contents on homeowners’ claims the FIGA cap is an additional \$200,000, for a total of \$500,000. For condominium and homeowners’ association claims the cap will be the lesser of policy limits or \$100,000 multiplied by the number of units in the association.³⁵ All claims are subject to a \$100 FIGA deductible in addition to any deductible identified in the insurance policy.

Section 631.65, F.S. prohibits any advertisement for insurance to use the existence of FIGA for the purpose of the sale of insurance. The prohibition was enacted in 1970, and similar prohibitions are contained in s. 631.735, F.S. (relating to the Florida Life and Health Guaranty Association (FLHIGA)), s. 631.827, F.S. (relating to the Florida Health Maintenance Organization Consumer Assistance Plan), and s. 631.919, F.S. (relating to the Florida Workers’ Compensation Insurance Guaranty Association). A number of other states have the prohibition with regard to their life and health guaranty associations³⁶ and the prohibition appears in the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Guaranty Model Act,³⁷ but is not found in the NAIC Property and Casualty Insurance Guaranty Association Model Act.³⁸ The proceedings citations for the NAIC Life and Health Insurance Guaranty Model Act indicates that during the original creation of the property and casualty

³² s. 631.57, F.S.

³³ s. 631.55, F.S.

³⁴ s. 631.57, F.S.

³⁵ s. 631.57, F.S.

³⁶ See Texas Ins. Code Title 4, s. 463.461 (2013); Cal. Ins. Code s.1037.17 (2012); Ga. Code Ann. s. 33-38.21 (2014).

³⁷ National Association of Insurance Commissioners Life and Health Guaranty Association Model Act MDL-520 (2009) at pg. 520-34. <http://www.naic.org/store/free/MDL-520.pdf> (accessed February 18, 2015).

³⁸ NAIC Association of Insurance Commissioners Property and Casualty Guaranty Association Model Act MDL-540 (2009). <http://www.naic.org/store/free/MDL-540.pdf> (accessed February 18, 2015).

model act in 1970, insurance industry commenters at the time favored the prohibition to prevent agents from indicating to potential customers that the assets of an insurer are unimportant since the assets of other companies in the state would provide protection.³⁹ The prohibition was substantially rewritten in the 1985 NAIC Life and Health Insurance Guaranty Association Model Act, which called for guaranty associations to create a document to deliver to policyholders to explain the availability and limitations of the guaranty fund.⁴⁰ This was done because the breadth of the prohibition had caused confusion to the public regarding the purposes and limitations of the guaranty association.⁴¹ Florida law currently requires FLHIGA to provide documentation regarding the availability of life and health guaranty fund coverage, but does not require FIGA to do so for property and casualty guaranty fund coverage. A document providing such an explanation has been created by FIGA, however, and is available on its Internet page.⁴²

III. Effect of Proposed Changes:

Hurricane Loss Projection Models

Section 1 of this bill amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer may make rate filings with a prior accepted version of a hurricane model.

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 2 of this bill amends s. 627.0651, F.S., to provide that the use of a single United States Postal Service zip code as a rating territory is not unfairly discriminatory if the territory incorporates sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible. The OIR would determine if the rates for such territories are excessive, inadequate, or unfairly discriminatory.

Notice of Cancellation and Nonrenewal

Section 4 of this bill amends s. 627.4133(2)(b), F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Section 3 of this bill changes a citation to conform to the changes made by section 4 of this bill.

Electronic Delivery of a Policy

Section 5 of this bill amends s. 627.421, F.S., to provide that an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of policy documents, including policies, endorsements, documents or notices by electronic means.

³⁹ See fn. 37 at pg. PC-520-53.

⁴⁰ See id.

⁴¹ See fn. 37 at pg. PC-520-24

⁴² See Florida Insurance Guaranty Association: How Florida's Insurance Safety Net Protects Consumers (August 2009). <http://www.figafacts.com/media/files/FIGA%20Brouchure%20for%20Website%20pages.pdf> (accessed February 18, 2015).

Notice to Policyholder of Availability of Sinkhole Neutral Evaluations

Section 6 of this bill amends s. 627.7074(3), F.S., to limit the circumstances when an insurer must notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim. The insurer must provide the notice only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period which is 2-years after the policyholder knew or reasonably should have known about the sinkhole loss. There are no parameters under current law about notification of neutral evaluation. Thus, insurers are required under current law to notify a policyholder about neutral evaluation in cases where there is no sinkhole coverage or when the sinkhole claim is untimely filed.

Personal Injury Protection Insurance Medical Fee Schedule

Section 7 of this bill amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Preinsurance Motor Vehicle Inspections

Section 8 of this bill amends s. 627.744, F.S., to exempt from preinsurance inspection new, unused motor vehicles that are leased from a licensed motor vehicle dealer or leasing company, if the insurer is provided with a lease agreement that contains a full description of the motor vehicle or a copy of the title or registration and a copy of the window sticker. In addition, this section deletes the preinsurance inspection exemption for new, unused motor vehicles purchased if the following conditions apply:

- If the bill of sale or buyer's order contains a full description of all options and accessories, or
- If the dealer invoice showing the itemized options, equipment, and total retail price is submitted as documentation.

Repeal of Prohibition on Certain Advertising Related to FIGA

Section 9 of this bill repeals the prohibition on advertisements which uses the existence of FIGA for the purpose of sales, solicitation, or inducement to purchase insurance covered by Part II of ch. 631, F.S. Part II applies to all insurance except:

- Life, annuity, health, or disability insurance;
- Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- Fidelity or surety bonds, or any other bonding obligations;
- Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- Warranty, including motor vehicle service, home warranty, or service warranty;
- Ambulance service, health care service, or preneed funeral merchandise or service;
- Optometric service plan, pharmaceutical service plan, or dental service plan;
- Legal expense;
- Health maintenance, prepaid health clinic, or continuing care;
- Ocean marine or wet marine insurance;

- Self-insurance and any kind of self-insurance fund, liability pool, or risk management fund;
- Title insurance;
- Surplus lines;
- Workers' compensation, including claims under employer liability coverage;
- Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or
- Any insurance provided by or guaranteed by government.

This bill does not remove the prohibitions contained in contained in s. 631.735, F.S. (relating to the Florida Life and Health Guaranty Association), s. 631.827, F.S. (relating to the Florida Health Maintenance Organization Consumer Assistance Plan), and s. 631.919, F.S. (relating to the Florida Workers' Compensation Insurance Guaranty Association).

Section 10 of this bill provides an effective date of July 1, 2015.

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 Department of Financial Services bill analysis, dated January 13, 2015 (on file with the Committee), states that the bill's provision that insurers are not required to notify insureds about neutral evaluation in situations where sinkhole coverage is not available or where the claim was not timely reported should reduce the cost associated with notification and the costs associated with neutral evaluations in those cases.

C. **Government Sector Impact:**

Bill analyses from the OIR, the State Board of Administration Hurricane Catastrophe Fund, and the Department of Financial Services (on file with the Committee) indicate no fiscal impact on those agencies.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.0628, 627.0651, 627.3518, 627.4133, 627.421, 627.7074, 627.736, and 627.744.

This bill repeals section 631.65 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 February 17, 2015:

The Committee adopted four amendments. The amendments removed a provision allowing for the use of a straight average of hurricane models in rate filings, added a provision repealing s. 631.65, F.S., and made technical changes.

- B. **Amendments:**

None.

By Senator Brandes

22-00261B-15

2015258__

1 A bill to be entitled
 2 An act relating to property and casualty insurance;
 3 amending s. 627.062, F.S.; requiring the Office of
 4 Insurance Regulation to use certain models or methods,
 5 or a straight average of model results or output
 6 ranges, to estimate hurricane losses when determining
 7 whether the rates in a rate filing are excessive,
 8 inadequate, or unfairly discriminatory; amending s.
 9 627.0628, F.S.; increasing the length of time during
 10 which an insurer is not required to adhere to certain
 11 models found by the Commission on Hurricane Loss
 12 Projection Methodology to be accurate or reliable in
 13 determining probable maximum loss levels with respect
 14 to certain rate filings; providing that the
 15 requirement to adhere to such findings does not
 16 prohibit an insurer from using a straight average of
 17 model results or output ranges under specified
 18 circumstances; amending s. 627.0651, F.S.; revising
 19 provisions for the making and use of rates for motor
 20 vehicle insurance; amending s. 627.3518, F.S.;
 21 conforming a cross-reference; amending s. 627.4133,
 22 F.S.; increasing the amount of prior notice required
 23 with respect to the nonrenewal, cancellation, or
 24 termination of certain insurance policies; deleting
 25 certain provisions that require extended periods of
 26 prior notice with respect to the nonrenewal,
 27 cancellation, or termination of certain insurance
 28 policies; prohibiting the cancellation of certain
 29 policies that have been in effect for a specified

Page 1 of 16

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22-00261B-15

2015258__

30 amount of time except under certain circumstances;
 31 amending s. 627.421, F.S.; authorizing a policyholder
 32 of personal lines insurance to affirmatively elect
 33 delivery of policy documents by electronic means;
 34 amending s. 627.7074, F.S.; revising notification
 35 requirements for participation in the neutral
 36 evaluation program; amending s. 627.736, F.S.;
 37 revising the period for applicability of certain
 38 Medicare fee schedules or payment limitations;
 39 amending s. 627.744, F.S.; revising preinsurance
 40 inspection requirements for private passenger motor
 41 vehicles; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Paragraph (b) of subsection (2) of section
 46 627.062, Florida Statutes, is amended to read:
 47 627.062 Rate standards.—
 48 (2) As to all such classes of insurance:
 49 (b) Upon receiving a rate filing, the office shall review
 50 the filing to determine whether ~~if~~ a rate is excessive,
 51 inadequate, or unfairly discriminatory. In making that
 52 determination, the office shall, in accordance with generally
 53 accepted and reasonable actuarial techniques, consider the
 54 following factors:
 55 1. Past and prospective loss experience within and without
 56 this state.
 57 2. Past and prospective expenses.
 58 3. The degree of competition among insurers for the risk

Page 2 of 16

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22-00261B-15

2015258__

59 insured.

60 4. Investment income reasonably expected by the insurer,
61 consistent with the insurer's investment practices, from
62 investable premiums anticipated in the filing, plus any other
63 expected income from currently invested assets representing the
64 amount expected on unearned premium reserves and loss reserves.
65 The commission may adopt rules using reasonable techniques of
66 actuarial science and economics to specify the manner in which
67 insurers calculate investment income attributable to classes of
68 insurance written in this state and the manner in which
69 investment income is used to calculate insurance rates. Such
70 manner must contemplate allowances for an underwriting profit
71 factor and full consideration of investment income that produces
72 a reasonable rate of return; however, investment income from
73 invested surplus may not be considered.

74 5. The reasonableness of the judgment reflected in the
75 filing.

76 6. Dividends, savings, or unabsorbed premium deposits
77 allowed or returned to policyholders, members, or subscribers in
78 this state.

79 7. The adequacy of loss reserves.

80 8. The cost of reinsurance. The office may not disapprove a
81 rate as excessive solely due to the insurer having obtained
82 catastrophic reinsurance to cover the insurer's estimated 250-
83 year probable maximum loss or any lower level of loss.

84 9. Trend factors, including trends in actual losses per
85 insured unit for the insurer making the filing.

86 10. Conflagration and catastrophe hazards, if applicable.

87 11. Projected hurricane losses, if applicable, which must

Page 3 of 16

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22-00261B-15

2015258__

88 be estimated using a model or method, or a straight average of
89 model results or output ranges, independently found to be
90 acceptable or reliable by the Florida Commission on Hurricane
91 Loss Projection Methodology, and as further provided in s.
92 627.0628.

93 12. Projected flood losses for personal residential
94 property insurance, if applicable, which may be estimated using
95 a model or method, or a straight average of model results or
96 output ranges, independently found to be acceptable or reliable
97 by the Florida Commission on Hurricane Loss Projection
98 Methodology and as further provided in s. 627.0628.

99 13. A reasonable margin for underwriting profit and
100 contingencies.

101 14. The cost of medical services, if applicable.

102 15. Other relevant factors that affect the frequency or
103 severity of claims or expenses.

104
105 ~~The provisions of~~ This subsection does ~~de~~ not apply to workers'
106 compensation, employer's liability insurance, and motor vehicle
107 insurance.

108 Section 2. Paragraph (d) of subsection (3) of section
109 627.0628, Florida Statutes, is amended to read:

110 627.0628 Florida Commission on Hurricane Loss Projection
111 Methodology; public records exemption; public meetings
112 exemption.—

113 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

114 (d) With respect to a rate filing under s. 627.062, an
115 insurer shall employ and may not modify or adjust actuarial
116 methods, principles, standards, models, or output ranges found

Page 4 of 16

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22-00261B-15

2015258__

117 by the commission to be accurate or reliable in determining
 118 hurricane loss factors for use in a rate filing under s.
 119 627.062. An insurer shall employ and may not modify or adjust
 120 models found by the commission to be accurate or reliable in
 121 determining probable maximum loss levels pursuant to paragraph
 122 (b) with respect to a rate filing under s. 627.062 made more
 123 than 180 ~~60~~ days after the commission has made such findings.
 124 This paragraph does not prohibit an insurer from using a
 125 straight average of model results or output ranges for the
 126 purposes of a rate filing ~~for personal lines residential flood~~
 127 ~~insurance coverage~~ under s. 627.062.

128 Section 3. Subsection (8) of section 627.0651, Florida
 129 Statutes, is amended to read:

130 627.0651 Making and use of rates for motor vehicle
 131 insurance.—

132 (8) Rates are not unfairly discriminatory if averaged
 133 broadly among members of a group; nor are rates unfairly
 134 discriminatory even though they are lower than rates for
 135 nonmembers of the group. However, such rates are unfairly
 136 discriminatory if they are not actuarially measurable and
 137 credible and sufficiently related to actual or expected loss and
 138 expense experience of the group so as to ensure ~~assure~~ that
 139 nonmembers of the group are not unfairly discriminated against.
 140 Use of a single United States Postal Service zip code as a
 141 rating territory shall be deemed unfairly discriminatory unless
 142 filed pursuant to paragraph (1)(a) and such territory
 143 incorporates sufficient actual or expected loss and loss
 144 adjustment expense experience so as to be actuarially measurable
 145 and credible.

Page 5 of 16

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22-00261B-15

2015258__

146 Section 4. Subsection (9) of section 627.3518, Florida
 147 Statutes, is amended to read:

148 627.3518 Citizens Property Insurance Corporation
 149 policyholder eligibility clearinghouse program.—The purpose of
 150 this section is to provide a framework for the corporation to
 151 implement a clearinghouse program by January 1, 2014.

152 (9) The 45-day notice of nonrenewal requirement set forth
 153 in s. 627.4133(2)(b)5. ~~s. 627.4133(2)(b)5.b.~~ applies when a
 154 policy is nonrenewed by the corporation because the risk has
 155 received an offer of coverage pursuant to this section which
 156 renders the risk ineligible for coverage by the corporation.

157 Section 5. Paragraph (b) of subsection (2) of section
 158 627.4133, Florida Statutes, is amended to read:

159 627.4133 Notice of cancellation, nonrenewal, or renewal
 160 premium.—

161 (2) With respect to any personal lines or commercial
 162 residential property insurance policy, including, but not
 163 limited to, any homeowner, mobile home owner, farmowner,
 164 condominium association, condominium unit owner, apartment
 165 building, or other policy covering a residential structure or
 166 its contents:

167 (b) The insurer shall give the first-named insured written
 168 notice of nonrenewal, cancellation, or termination at least 120
 169 ~~100~~ days before the effective date of the nonrenewal,
 170 cancellation, or termination. ~~However, the insurer shall give at~~
 171 ~~least 100 days' written notice, or written notice by June 1,~~
 172 ~~whichever is earlier, for any nonrenewal, cancellation, or~~
 173 ~~termination that would be effective between June 1 and November~~
 174 ~~30.~~ The notice must include the reason for the nonrenewal,

Page 6 of 16

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22-00261B-15

2015258__

175 cancellation, or termination, except that:

176 ~~1. The insurer shall give the first named insured written~~
 177 ~~notice of nonrenewal, cancellation, or termination at least 120~~
 178 ~~days before the effective date of the nonrenewal, cancellation,~~
 179 ~~or termination for a first named insured whose residential~~
 180 ~~structure has been insured by that insurer or an affiliated~~
 181 ~~insurer for at least 5 years before the date of the written~~
 182 ~~notice.~~

183 ~~1.2-~~ If cancellation is for nonpayment of premium, at least
 184 10 days' written notice of cancellation accompanied by the
 185 reason therefor must be given. As used in this subparagraph, the
 186 term "nonpayment of premium" means failure of the named insured
 187 to discharge when due her or his obligations for paying the
 188 premium on a policy or an installment of such premium, whether
 189 the premium is payable directly to the insurer or its agent or
 190 indirectly under a premium finance plan or extension of credit,
 191 or failure to maintain membership in an organization if such
 192 membership is a condition precedent to insurance coverage. The
 193 term also means the failure of a financial institution to honor
 194 an insurance applicant's check after delivery to a licensed
 195 agent for payment of a premium even if the agent has previously
 196 delivered or transferred the premium to the insurer. If a
 197 dishonored check represents the initial premium payment, the
 198 contract and all contractual obligations are void ab initio
 199 unless the nonpayment is cured within the earlier of 5 days
 200 after actual notice by certified mail is received by the
 201 applicant or 15 days after notice is sent to the applicant by
 202 certified mail or registered mail. If the contract is void, any
 203 premium received by the insurer from a third party must be

Page 7 of 16

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22-00261B-15

2015258__

204 refunded to that party in full.

205 ~~2.3-~~ If cancellation or termination occurs during the first
 206 90 days the insurance is in force and the insurance is canceled
 207 or terminated for reasons other than nonpayment of premium, at
 208 least 20 days' written notice of cancellation or termination
 209 accompanied by the reason therefor must be given unless there
 210 has been a material misstatement or misrepresentation or a
 211 failure to comply with the underwriting requirements established
 212 by the insurer.

213 3. After the policy has been in effect for 90 days, the
 214 policy may not be canceled by the insurer unless there has been
 215 a material misstatement, a nonpayment of premium, a failure to
 216 comply with underwriting requirements established by the insurer
 217 within 90 days after the date of effectuation of coverage, or a
 218 substantial change in the risk covered by the policy or unless
 219 the cancellation is for all insureds under such policies for a
 220 given class of insureds. This subparagraph does not apply to
 221 individually rated risks that have a policy term of less than 90
 222 days.

223 4. After a policy or contract has been in effect for more
 224 than 90 days, the insurer may not cancel or terminate the policy
 225 or contract based on credit information available in public
 226 records.

227 ~~5. The requirement for providing written notice by June 1~~
 228 ~~of any nonrenewal that would be effective between June 1 and~~
 229 ~~November 30 does not apply to the following situations, but the~~
 230 ~~insurer remains subject to the requirement to provide such~~
 231 ~~notice at least 100 days before the effective date of~~
 232 ~~nonrenewal.~~

Page 8 of 16

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22-00261B-15

2015258__

233 a. ~~A policy that is nonrenewed due to a revision in the~~
 234 ~~coverage for sinkhole losses and catastrophic ground cover~~
 235 ~~collapse pursuant to s. 627.706.~~

236 ~~5.b.~~ A policy that is nonrenewed by Citizens Property
 237 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 238 that has been assumed by an authorized insurer offering
 239 replacement coverage to the policyholder is exempt from the
 240 notice requirements of paragraph (a) and this paragraph. In such
 241 cases, the corporation must give the named insured written
 242 notice of nonrenewal at least 45 days before the effective date
 243 of the nonrenewal.

244 ~~After the policy has been in effect for 90 days, the policy may~~
 245 ~~not be canceled by the insurer unless there has been a material~~
 246 ~~misstatement, a nonpayment of premium, a failure to comply with~~
 247 ~~underwriting requirements established by the insurer within 90~~
 248 ~~days after the date of effectuation of coverage, a substantial~~
 249 ~~change in the risk covered by the policy, or the cancellation is~~
 250 ~~for all insureds under such policies for a given class of~~
 251 ~~insureds. This paragraph does not apply to individually rated~~
 252 ~~risks that have a policy term of less than 90 days.~~

254 6. Notwithstanding any other provision of law, an insurer
 255 may cancel or nonrenew a property insurance policy after at
 256 least 45 days' notice if the office finds that the early
 257 cancellation of some or all of the insurer's policies is
 258 necessary to protect the best interests of the public or
 259 policyholders and the office approves the insurer's plan for
 260 early cancellation or nonrenewal of some or all of its policies.
 261 The office may base such finding upon the financial condition of

Page 9 of 16

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22-00261B-15

2015258__

262 the insurer, lack of adequate reinsurance coverage for hurricane
 263 risk, or other relevant factors. The office may condition its
 264 finding on the consent of the insurer to be placed under
 265 administrative supervision pursuant to s. 624.81 or to the
 266 appointment of a receiver under chapter 631.

267 7. A policy covering both a home and a motor vehicle may be
 268 nonrenewed for any reason applicable to the property or motor
 269 vehicle insurance after providing 90 days' notice.

270 Section 6. Subsection (1) of section 627.421, Florida
 271 Statutes, is amended to read:

272 627.421 Delivery of policy.—

273 (1) Subject to the insurer's requirement as to payment of
 274 premium, every policy shall be mailed, delivered, or
 275 electronically transmitted to the insured or to the person
 276 entitled thereto not later than 60 days after the effectuation
 277 of coverage. Notwithstanding any other provision of law, an
 278 insurer may allow a policyholder of personal lines insurance to
 279 affirmatively elect delivery of the policy documents, including,
 280 but not limited to, policies, endorsements, notices, or
 281 documents, by electronic means in lieu of delivery by mail.

282 Electronic transmission of a policy for commercial risks,
 283 including, but not limited to, workers' compensation and
 284 employers' liability, commercial automobile liability,
 285 commercial automobile physical damage, commercial lines
 286 residential property, commercial nonresidential property,
 287 farmowners insurance, and the types of commercial lines risks
 288 set forth in s. 627.062(3)(d), constitutes ~~shall constitute~~
 289 delivery to the insured or to the person entitled to delivery,
 290 unless the insured or the person entitled to delivery

Page 10 of 16

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22-00261B-15

2015258__

291 communicates to the insurer in writing or electronically that he
 292 or she does not agree to delivery by electronic means.
 293 Electronic transmission shall include a notice to the insured or
 294 to the person entitled to delivery of a policy of his or her
 295 right to receive the policy via United States mail rather than
 296 via electronic transmission. A paper copy of the policy shall be
 297 provided to the insured or to the person entitled to delivery at
 298 his or her request.

299 Section 7. Subsection (3) of section 627.7074, Florida
 300 Statutes, is amended to read:

301 627.7074 Alternative procedure for resolution of disputed
 302 sinkhole insurance claims.—

303 (3) Following the receipt of the report provided under s.
 304 627.7073 or the denial of a claim for a sinkhole loss, the
 305 insurer shall notify the policyholder of his or her right to
 306 participate in the neutral evaluation program under this section
 307 if there is coverage available under the policy and the claim
 308 was submitted within the timeframe provided in s. 627.706(5).

309 Neutral evaluation supersedes the alternative dispute resolution
 310 process under s. 627.7015 but does not invalidate the appraisal
 311 clause of the insurance policy. The insurer shall provide to the
 312 policyholder the consumer information pamphlet prepared by the
 313 department pursuant to subsection (1) electronically or by
 314 United States mail.

315 Section 8. Paragraph (a) of subsection (5) of section
 316 627.736, Florida Statutes, is amended to read:

317 627.736 Required personal injury protection benefits;
 318 exclusions; priority; claims.—

319 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

Page 11 of 16

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22-00261B-15

2015258__

320 (a) A physician, hospital, clinic, or other person or
 321 institution lawfully rendering treatment to an injured person
 322 for a bodily injury covered by personal injury protection
 323 insurance may charge the insurer and injured party only a
 324 reasonable amount pursuant to this section for the services and
 325 supplies rendered, and the insurer providing such coverage may
 326 pay for such charges directly to such person or institution
 327 lawfully rendering such treatment if the insured receiving such
 328 treatment or his or her guardian has countersigned the properly
 329 completed invoice, bill, or claim form approved by the office
 330 upon which such charges are to be paid for as having actually
 331 been rendered, to the best knowledge of the insured or his or
 332 her guardian. However, such a charge may not exceed the amount
 333 the person or institution customarily charges for like services
 334 or supplies. In determining whether a charge for a particular
 335 service, treatment, or otherwise is reasonable, consideration
 336 may be given to evidence of usual and customary charges and
 337 payments accepted by the provider involved in the dispute,
 338 reimbursement levels in the community and various federal and
 339 state medical fee schedules applicable to motor vehicle and
 340 other insurance coverages, and other information relevant to the
 341 reasonableness of the reimbursement for the service, treatment,
 342 or supply.

343 1. The insurer may limit reimbursement to 80 percent of the
 344 following schedule of maximum charges:

345 a. For emergency transport and treatment by providers
 346 licensed under chapter 401, 200 percent of Medicare.

347 b. For emergency services and care provided by a hospital
 348 licensed under chapter 395, 75 percent of the hospital's usual

Page 12 of 16

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22-00261B-15

2015258__

349 and customary charges.

350 c. For emergency services and care as defined by s. 395.002
351 provided in a facility licensed under chapter 395 rendered by a
352 physician or dentist, and related hospital inpatient services
353 rendered by a physician or dentist, the usual and customary
354 charges in the community.

355 d. For hospital inpatient services, other than emergency
356 services and care, 200 percent of the Medicare Part A
357 prospective payment applicable to the specific hospital
358 providing the inpatient services.

359 e. For hospital outpatient services, other than emergency
360 services and care, 200 percent of the Medicare Part A Ambulatory
361 Payment Classification for the specific hospital providing the
362 outpatient services.

363 f. For all other medical services, supplies, and care, 200
364 percent of the allowable amount under:

365 (I) The participating physicians fee schedule of Medicare
366 Part B, except as provided in sub-sub-paragraphs (II) and
367 (III).

368 (II) Medicare Part B, in the case of services, supplies,
369 and care provided by ambulatory surgical centers and clinical
370 laboratories.

371 (III) The Durable Medical Equipment Prosthetics/Orthotics
372 and Supplies fee schedule of Medicare Part B, in the case of
373 durable medical equipment.

374
375 However, if such services, supplies, or care is not reimbursable
376 under Medicare Part B, as provided in this sub-subparagraph, the
377 insurer may limit reimbursement to 80 percent of the maximum

22-00261B-15

2015258__

378 reimbursable allowance under workers' compensation, as
379 determined under s. 440.13 and rules adopted thereunder which
380 are in effect at the time such services, supplies, or care is
381 provided. Services, supplies, or care that is not reimbursable
382 under Medicare or workers' compensation is not required to be
383 reimbursed by the insurer.

384 2. For purposes of subparagraph 1., the applicable fee
385 schedule or payment limitation under Medicare is the fee
386 schedule or payment limitation in effect on March 1 of the year
387 in which the services, supplies, or care is rendered and for the
388 area in which such services, supplies, or care is rendered, and
389 the applicable fee schedule or payment limitation applies from
390 March 1 until the last day of February ~~throughout the remainder~~
391 of the following ~~that~~ year, notwithstanding any subsequent
392 change made to the fee schedule or payment limitation, except
393 that it may not be less than the allowable amount under the
394 applicable schedule of Medicare Part B for 2007 for medical
395 services, supplies, and care subject to Medicare Part B.

396 3. Subparagraph 1. does not allow the insurer to apply any
397 limitation on the number of treatments or other utilization
398 limits that apply under Medicare or workers' compensation. An
399 insurer that applies the allowable payment limitations of
400 subparagraph 1. must reimburse a provider who lawfully provided
401 care or treatment under the scope of his or her license,
402 regardless of whether such provider is entitled to reimbursement
403 under Medicare due to restrictions or limitations on the types
404 or discipline of health care providers who may be reimbursed for
405 particular procedures or procedure codes. However, subparagraph
406 1. does not prohibit an insurer from using the Medicare coding

22-00261B-15

2015258__

407 policies and payment methodologies of the federal Centers for
 408 Medicare and Medicaid Services, including applicable modifiers,
 409 to determine the appropriate amount of reimbursement for medical
 410 services, supplies, or care if the coding policy or payment
 411 methodology does not constitute a utilization limit.

412 4. If an insurer limits payment as authorized by
 413 subparagraph 1., the person providing such services, supplies,
 414 or care may not bill or attempt to collect from the insured any
 415 amount in excess of such limits, except for amounts that are not
 416 covered by the insured's personal injury protection coverage due
 417 to the coinsurance amount or maximum policy limits.

418 5. ~~Effective July 1, 2012,~~ An insurer may limit payment as
 419 authorized by this paragraph only if the insurance policy
 420 includes a notice at the time of issuance or renewal that the
 421 insurer may limit payment pursuant to the schedule of charges
 422 specified in this paragraph. A policy form approved by the
 423 office satisfies this requirement. If a provider submits a
 424 charge for an amount less than the amount allowed under
 425 subparagraph 1., the insurer may pay the amount of the charge
 426 submitted.

427 Section 9. Paragraphs (a) and (b) of subsection (2) of
 428 section 627.744, Florida Statutes, are amended to read:

429 627.744 Required preinsurance inspection of private
 430 passenger motor vehicles.-

431 (2) This section does not apply:

432 (a) To a policy for a policyholder who has been insured for
 433 2 years or longer, without interruption, under a private
 434 passenger motor vehicle policy ~~that which~~ provides physical
 435 damage coverage for any vehicle, if the agent of the insurer

Page 15 of 16

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22-00261B-15

2015258__

436 verifies the previous coverage.

437 (b) To a new, unused motor vehicle purchased or leased from
 438 a licensed motor vehicle dealer or leasing company, ~~if~~ The
 439 insurer may require ~~is provided with~~:

440 1. A bill of sale, ~~or~~ buyer's order, or lease agreement
 441 ~~that which~~ contains a full description of the motor vehicle,
 442 ~~including all options and accessories;~~ or

443 2. A copy of the title or registration that which
 444 establishes transfer of ownership from the dealer or leasing
 445 company to the customer and a copy of the window sticker ~~or the~~
 446 ~~dealer invoice showing the itemized options and equipment and~~
 447 ~~the total retail price of the vehicle.~~

448
 449 For the purposes of this paragraph, the physical damage coverage
 450 on the motor vehicle may not be suspended during the term of the
 451 policy due to the applicant's failure to provide or the
 452 insurer's option not to require the ~~required~~ documents. However,
 453 if the insurer requires a document under this paragraph at the
 454 time the policy is issued, payment of a claim ~~may be~~ ~~is~~
 455 conditioned upon the receipt by the insurer of the required
 456 documents, and no physical damage loss occurring after the
 457 effective date of the coverage may be ~~is~~ payable until the
 458 documents are provided to the insurer.

459 Section 10. This act shall take effect July 1, 2015.

Page 16 of 16

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/17
Meeting Date

258
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

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 State Farm 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.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 19, 2015

I respectfully request that **Senate Bill #258**, relating to **Property and Casualty Insurance**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22



727610

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/17/2015 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 26
and insert:
(15) (a) Assessments levied under s. 631.57(3) (a) and (e)



879430

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/17/2015 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment

Delete line 40

and insert:

(b) Assessments levied as monthly installments under s. 631.57(3) (e)1.c. which are paid

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 600

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Insurance Guaranty Associations

DATE: February 17, 2015 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Johnson | Knudson | BI | Fav/CS |
| 2. | | | CM | |
| 3. | | | FP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 600 clarifies the statutory accounting treatment of assessments levied by the Florida Insurance Guaranty Association (FIGA) and codifies the Office of Insurance Regulation's interpretation. The bill provides that such assessments under certain conditions are admissible assets in determining the financial condition of an insurer. FIGA provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, the FIGA may levy regular assessments and emergency assessments.

The bill also clarifies the responsibilities of the Florida Life and Health Insurance Guaranty Association (FLAHIGA) by providing that FLAHIGA has the statutory duty to review policies, contracts, and claims of insolvent life and health insurers following either domestic or foreign liquidations or rehabilitations. Under current law, the statute is silent as to FLAHIGA's obligations to pay after a rehabilitation or liquidation of a foreign insurer.

II. Present Situation:

Florida Insurance Guaranty Association

Part II of chapter 631, Florida Statutes, governs the operations of the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, which provides a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. Property and casualty insurance companies doing business in Florida are required to

be a member of FIGA as a condition of their authority to transact insurance. When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is \$300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association.

FIGA Funding and Assessments

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. For example, FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies. In addition, FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After insolvency occurs, FIGA may levy assessments against Florida member insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment ("regular assessment") as necessary for up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., that may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. At the discretion of FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

Insurers pay the assessments upfront and recoup the assessment from policyholders upon issuance or renewal of the policies. The procedure used by FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines that an assessment is necessary to pay claims or administration costs, or to pay bonds issued by FIGA.
2. FIGA certifies the need for an assessment levy to the OIR.
3. The Office of Insurance Regulation (OIR) reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to FIGA.

4. Insurance companies must pay regular assessments within 30 days of the levy. Insurers may pay emergency assessments either paid in one payment at the end of that month, or spread out over 12 months, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.¹ An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for 1 year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a 1-year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the 1-year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholders by refunds or premium credits.

Accounting for Assessments

Most insurers authorized to do business in the United States are required by their state regulators to prepare financial statements in accordance with statutory accounting principles (SAP). These principles are tools that assist state insurance departments in the regulation of the solvency. SAP is characterized as a conservative approach since it evaluates liquidity and the ability to pay claims in the future. In contrast, other users of financial information, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP), which attempt to match revenues to expenses. The OIR requires insurers to file annual SAP statements and independently audited financial reports.²

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as the FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows the recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.³ For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset, resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue; retained earnings are reduced in the year the assessment is paid; however, it is increased the following year as the assessment is recouped from policyholders. The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must

¹ See Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last viewed on February 13, 2015).

² Section 624.424, F.S.

³ See Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments*, memorandum to Sandy Robinson at FIGA, December 3, 2013, (on file with the Senate Committee on Banking and Insurance).

be recognized as an admissible asset⁴ under SAP, to the extent the receivable is likely to be realized.⁵

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

The powers and duties of FLAHIGA are contained in part III of chapter 631, F.S. Insurance companies, with limited exceptions,⁶ authorized to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA. In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, FLAHIGA provides protection to Florida residents who have life and health insurance policies and certain annuities with the insolvent insurer.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts⁷ issued by FLAHIGA's member insurers are covered.⁸ A policy must meet coverage requirements, and there are limits to the amounts FLAHIGA pays as a maximum amount of protection provided by FLAHIGA for any one person, which is:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.⁹

When a FLAHIGA member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to another insurer with approval by the OIR.

In 2011, legislation¹⁰ was enacted specifying that FLAHIGA's immunity from bad faith lawsuits did not affect the FLAHIGA's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida *domestic* rehabilitation or liquidation. However,

⁴ As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

⁵ Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). <http://www.flair.com/siteDocuments/SupplementalMemo.pdf> (Last accessed by Banking and Insurance Committee Staff on February 10, 2015).

⁶ Section 631.713(3), F.S.

⁷ Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

⁸ FLAHIGA covers only policyholders and certificate holders that were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions.

⁹ See Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last viewed on February 13, 2015).

¹⁰ Ch. 2011-226, Laws of Fla.

the statute is silent as to FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

III. Effect of Proposed Changes:

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset under statutory accounting principles, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR. The bill provides that an asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For emergency assessments that are paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets would be based on the actual premium written offset by the obligation to FIGA. The bill does not appear to address assessments that are recouped through future premium rate structures, and therefore those assessments would still be subject to SSAP 35R¹¹ and would still be likely be non-admitted assets.¹²

The bill transfers the 2011 exception from immunity from FLAHIGA's powers and duties statute, s. 631.717, F.S., to s. 631.737, F.S., which pertains to FLAHIGA's duty to review claims involving covered policies, and clarifies that this duty is not limited solely to policies, contracts, and claims following domestic rehabilitations and liquidations. It would also include foreign rehabilitations and liquidations.

The bill takes effect July 1, 2015.

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.

¹¹ National Association of Insurance Commissioners, *Statements on Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R)*.

¹² Office of Insurance Regulation, *Senate Bill 600 Fiscal Analysis* (January 27, 2015) (on file with the Senate Committee on Banking and Insurance).

B. Private Sector Impact:

The bill will clarify statutory accounting treatment for the recognition of FIGA assessments as admissible assets by codifying the OIR's interpretation.

The bill also clarifies FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

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: 625.012, 631.717, 631.737, 624.316, 625.031, 625.305, 627.828, and 629.401.

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 February 17, 2015:

The CS provides technical, clarifying changes.

B. Amendments:

None.

By Senator Richter

23-00613-15

2015600__

A bill to be entitled

An act relating to insurance guaranty associations; amending s. 625.012, F.S.; revising the definition of the term "asset" to include Florida Insurance Guaranty Association assessments, under certain conditions, for purposes of determining the financial condition of an insurer; amending ss. 631.717 and 631.737, F.S.; transferring a provision relating to the obligation of the Florida Life and Health Insurance Guaranty Association to pay valid claims under certain circumstances; reenacting ss. 624.316(1)(a), 625.031, 625.305(1), 627.828(3)(b), and 629.401(6)(a), F.S., to incorporate the amendments made to s. 625.012, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (15) and (16) of section 625.012, Florida Statutes, are redesignated as subsections (16) and (17), respectively, and a new subsection (15) is added to that section, to read:

625.012 "Assets" defined.—In any determination of the financial condition of an insurer, there shall be allowed as "assets" only such assets as are owned by the insurer and which consist of:

(15) (a) Assessments levied under s. 631.57(3)(a) and (c) which are paid before policy surcharges are collected and result in a receivable for policy surcharges to be collected in the future. This amount, to the extent it is likely that it will be

Page 1 of 3

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23-00613-15

2015600__

realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

(b) Assessments levied under s. 631.57(3)(c) that are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the Florida Insurance Guaranty Association.

Section 2. Subsection (11) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(11) The association is ~~shall not be~~ liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer before ~~prior to~~ its liquidation. ~~This subsection does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or a liquidation.~~

Section 3. Section 631.737, Florida Statutes, is amended to read:

631.737 Rescission and review generally.—The association

Page 2 of 3

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23-00613-15

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59 shall review claims and matters regarding covered policies based
60 upon the record available to it on and after the date of
61 liquidation. Notwithstanding any other provision of this part,
62 in order to allow for orderly claims administration by the
63 association, entry of a liquidation order by a court of
64 competent jurisdiction ~~tolls shall be deemed to toll~~ for 1 year
65 any rescission or noncontestable period allowed by the contract,
66 the policy, or by law. The association's obligation is to pay
67 any valid insurance policy or contract claims, if warranted,
68 after its independent de novo review of the policies, contracts,
69 and claims presented to it, whether domestic or foreign,
70 following a rehabilitation or a liquidation.

71 Section 4. Paragraph (a) of subsection (1) of s. 624.316,
72 s. 625.031, subsection (1) of s. 625.305, paragraph (b) of
73 subsection (3) of s. 627.828, and paragraph (a) of subsection
74 (6) of s. 629.401, Florida Statutes, are reenacted for the
75 purpose of incorporating the amendments made by this act to s.
76 625.012, Florida Statutes, in references thereto.

77 Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2015
Meeting Date

SB600
Bill Number (if applicable)

Topic INSURER ACCOUNTING

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title _____

Address 325 W. College Ave.
Street

Phone 425-4000

City

State

Zip

Email joy@meenanlawfirm.com

Speaking: For Against Information

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

Representing Tower Hill

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)

Feb. 17, 2015

SB 600

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 South Monroe Street

Phone 850-222-7200

Street

Tallahassee

FL

32301

Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Life & Health Insurance Guaranty Association and Florida Insurance Council

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.

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)

Feb. 17, 2015

Meeting Date

SB 600

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title

Address 106 South Monroe Street

Phone 850-222-7200

Street

Tallahassee

FL

32301

Email paulsanf@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Life & Health Insurance Guaranty Association and Florida Insurance Council

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.

9:23:07 AM Senator Detert for follow up.
9:23:20 AM Senator Richter responds.
9:23:46 AM Amendment barcode 727610 introduced.
9:23:56 AM Senator Richter presents amendment.
9:24:07 AM Amendment barcode 727610 adopted without objection.
9:24:19 AM Amendment barcode 879420 introduced.
9:24:38 AM Amendment barcode 879420 adopted without objection.
9:24:50 AM Paul Sanford, Florida Life & Health Insur. Guaranty & FL Insurance Council, waives in support.
9:25:05 AM Joy Ryan, Tower Hill, waives in support.
9:25:13 AM Closing waived.
9:25:22 AM CS/SB 600 reported favorably.
9:25:50 AM Chair Benacquisto turns meeting over to Vice-Chair Richter.
9:26:07 AM Senator Benacquisto recognized to present SB 642.
9:27:18 AM Senator Margolis recognized for a question.
9:27:27 AM Senator Benacquisto responds.
9:27:57 AM Senator Margolis follows up.
9:28:05 AM Senator Benacquisto responds.
9:28:35 AM Senator Montford recognized.
9:28:48 AM Senator Benacquisto responds.
9:29:11 AM Amendment barcode 437886 introduced.
9:29:21 AM Senator Benacquisto explains the amendment.
9:30:13 AM Amendment barcode 437886 adopted without objection.
9:30:27 AM Back on the bill as amended.
9:30:31 AM William Thompson, Florida Pre-paid College Board, for informational purposes.
9:30:55 AM Kevin Thompson, Florida Pre-Paid, for informational purposes.
9:31:03 AM Deborah Linton, ARC of Florida, recognized.
9:31:41 AM Dixie Sansom, ARC of Florida, waives in support.
9:32:01 AM Closing waived.
9:32:17 AM CS/SB 642 adopted.
9:32:36 AM Senator Benacquisto recognized to introduce SB 646.
9:32:42 AM Senator Benacquisto explains the bill.
9:33:08 AM Senator Benacquisto explains amendment barcode 914652.
9:33:21 AM Amendment 914652 adopted without objection.
9:33:34 AM William Thompson and Kevin Thompson for informational purposes.
9:33:51 AM Senator Benacquisto needs to read appropriate amendment for SB 646 (read SB 644 amendment).
9:34:35 AM Show appearance records showing the same.
9:34:42 AM Show the amendment adopted.
9:34:52 AM Senator Benacquisto recognized to close.
9:35:37 AM CS/SB 646 reported favorably.
9:35:51 AM Senator Benacquisto recognized for SB 644.
9:36:03 AM Senator Benacquisto recognizes to present delete all Barcode 100100.
9:36:22 AM Deborah Linton, ARC of Florida, waives in support.
9:36:29 AM Kevin Thompson and William Thompson, Florida Pre-Paid, for informational purposes only.
9:36:47 AM Closing waived.
9:36:51 AM Back on bill as amended.
9:37:01 AM Waive close on bill (as amended).
9:37:14 AM CS/SB 644 reported favorably.
9:37:33 AM Chair turned back over to Senator Benacquisto.
9:37:43 AM Senator Negron recognized.
9:37:54 AM Senator Lee moves to rise.
9:37:58 AM Meeting adjourned.