SB 130	<b>6</b> by	Bradley; (Compa	re to CS/H 1127) Insurance Fraud		
716542	D	S	BI, Richter	Delete everything after	03/30 09:21 AM
CD 112	0	Duon do ou (Cincilou			
2B 113	8 Dy	Brandes; (Similar	to H 0887) Unclaimed Property		
SB 108	by by	Brandes; (Similai	to CS/H 1197) Civil Remedies Agai	nst Insurers	
SB 516	by <b>B</b>	<b>sean, Garcia</b> ; (Sin	nilar to CS/H 0681) Health Insuranc	e Coverage for Emergency Services	
773678	D	S	BI, Lee	Delete everything after	03/30 10:00 AM
CD 435					
			ar to CS/H 1053) Motor Vehicle Insu		
374116		S	BI, Montford	Before L.27:	03/30 09:18 AM
775650		S	BI, Montford	Delete L.68 - 81:	,
353870	Α	S L	BI, Montford	Delete L.183 - 192:	03/30 01:23 PM
CS/SB	872	by <b>JU, Hukill</b> ; (Co	ompare to CS/CS/H 0343) Estates		
846148	А	S	BI, Hukill	Delete L.1198 - 1201:	03/30 08:10 AM
CS/SB	744	by <b>RI. Richter</b> : (9	Similar to CS/H 0491) Property Insu	rance Appraisal Umpires and Proper	ty Insurance
Appraise		<i>,</i> ,,,,		· · · · · · · · · · · · · · · · · · ·	.,
892532		S	BI, Richter	Delete everything after	03/30 09:36 AM
SB 914	by R	<b>lichter</b> ; (Compare	to CS/H 0275) Offer or Sale of Sec	urities	
171858	D	S	BI, Richter	Delete everything after	03/30 08:19 AM

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The Florida Senate

**COMMITTEE MEETING EXPANDED AGENDA** 

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

	Senator Richter, vice Chair				
	MEETING DATE: TIME: PLACE:	10:00 a.m.—	arch 31, 2015 -12:00 noon gs <i>Committee Room,</i> 110 Senate Office Building		
			nacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, ontford, Negron, Simmons, and Smith		
TAB	BILL NO. and INTRODUCER		BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION	
1	SB 1306 Bradley (Compare CS/H 1127)		Insurance Fraud; Revising requirements for a health care clinic to receive certain insurance reimbursement; repealing provisions relating to the operation or reporting of unlicensed health care clinics; revising and providing penalties for making unlawful charges, operating or failing to report an unlicensed clinic, filing false or misleading information related to a clinic license application, and other violations of such responsibilities; requiring certain clinics to have a certificate of exemption to receive reimbursement under the Florida Motor Vehicle No-Fault Law under specified circumstances; providing penalties for failure to comply with such requirements, etc.		
2	<b>SB 1138</b> Brandes (Similar H 887)		Unclaimed Property; Providing for escheatment to the state of unclaimed United States savings bonds; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services, etc. BI 03/31/2015 AGG AP		
3	<b>SB 1088</b> Brandes (Similar CS/H 1197)		Civil Remedies Against Insurers; Requiring an insured, a claimant, or a person acting on behalf of an insured's or a claimant's behalf, to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common law action for a third- party bad faith action for failure to settle an insurance claim; providing that an insurer is not liable for such claim if certain conditions are met; reenacting provisions relating to bad faith actions, to incorporate the amendment made to s. 624.155, F.S., in a reference thereto, etc. BI 03/23/2015 Temporarily Postponed BI 03/31/2015 JU RC		

#### COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance Tuesday, March 31, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 516</b> Bean / Garcia (Similar CS/H 681)	<ul> <li>Health Insurance Coverage for Emergency Services;</li> <li>Prohibiting coverage for emergency services from requiring a prior authorization determination; requiring such coverage to be provided regardless of whether the service is furnished by a participating or nonparticipating provider; specifying coinsurance, copayment, limitation of benefits, and reimbursement requirements for nonparticipating providers; prohibiting a nonparticipating provider from collecting or attempting to collect an amount in excess of specified amounts, etc.</li> <li>BI 03/31/2015</li> <li>HP</li> <li>AP</li> </ul>	
5	SB 1250 Montford (Similar CS/H 1053, Compare CS/H 165, CS/CS/S 258)	Motor Vehicle Insurance; Authorizing insurers to electronically provide a form to reject, or select lower coverage amounts of, uninsured motorist vehicle coverage to an insurance applicant; revising the period during which the applicable fee schedule or payment limitation under Medicare applies with respect to certain personal injury protection insurance coverage; prohibiting the physical damage coverage on a motor vehicle from being suspended during the term of a policy due to the insurer's option not to require certain documents, etc. BI 03/31/2015 TR FP	
6	<b>CS/SB 872</b> Judiciary / Hukill (Compare CS/CS/H 343)	Estates; Authorizing the court, if costs and attorney fees are to be paid from the estate under specified sections of law, to direct payment from a certain part of the estate or, under specified circumstances, to direct payment from a trust; prohibiting an attorney or person related to the attorney from receiving compensation for serving as a personal representative if the attorney prepared or supervised execution of the will unless the attorney or person is related to the testator or the testator acknowledges in writing the receipt of certain disclosures, etc. JU 03/10/2015 Fav/CS BI 03/31/2015 RC	

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#### COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance Tuesday, March 31, 2015, 10:00 a.m.—12:00 noon

BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
<b>S/SB 744</b> gulated Industries / Richter milar CS/H 491)	Property Insurance Appraisal Umpires and Property Insurance Appraisers; Creating the property insurance appraisal umpire licensing program within the Department of Business and Professional Regulation; creating the property insurance appraiser licensing program within the Department of Business and Professional Regulation; providing for certification of partnerships and corporations offering property insurance appraiser services; providing grounds for compulsory refusal, suspension, or revocation of an appraiser's license, etc. RI 03/18/2015 Fav/CS BI 03/31/2015	
<b>3 914</b> chter ompare CS/H 275)	Offer or Sale of Securities; Defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; exempting certain issuers and intermediaries from registration requirements relating to the offer or sale of certain securities; providing limitations on offers or sales of securities; prohibiting the use of specified exemptions from registration requirements in conjunction with another exemption from registration requirements, etc. BI 03/31/2015	
		registration requirements in conjunction with another exemption from registration requirements, etc.

Other Related Meeting Documents



LEGISLATIVE ACTION

Senate

House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert: Section 1. <u>Section 400.993</u>, Florida Statutes, is repealed. Section 2. Subsections (3) and (4) of section 400.9935, Florida Statutes, are amended to read: 400.9935 Clinic responsibilities.-(3) A charge All charges or reimbursement claim claims made

10 by or on behalf of a clinic that is required to be licensed

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11	under this part $_{ au}$ but that is not so licensed, or that is
12	otherwise operating in violation of this part or rules of the
13	agency, regardless of whether a service is rendered or whether
14	the charge or reimbursement claim is paid, is an, are unlawful
15	charge charges, and is therefore are noncompensable and
16	unenforceable. A person who knowingly makes or causes to be made
17	an unlawful charge commits theft within the meaning of, and
18	punishable as provided in, s. 812.014.
19	(4) (a) Regardless of whether notification is provided by
20	the agency under In addition to the requirements of s. 408.812,
21	a any person commits a felony of the third degree, punishable as
22	provided in s. 775.082, s. 775.083, or s. 775.084, if the person
23	knowingly:
24	1. Establishes, owns, operates, manages, or maintains
25	establishing, operating, or managing an unlicensed clinic
26	otherwise required to be licensed under this part or part II of
27	chapter 408 <u>;</u> 7 or
28	2. Offers or advertises services that require licensure as
29	a clinic under this part or part II of chapter 408 without a
30	license.
31	(b) If the agency provides notification under s. 408.812
32	of, or if a person is arrested for, a violation of subparagraph
33	(a)1. or subparagraph (a)2., each day during which a violation
34	of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a
35	separate offense.
36	(c) A person convicted of a second or subsequent violation
37	of subparagraph (a)1. or subparagraph (a)2. commits a felony of
38	the second degree, punishable as provided in s. 775.082, s.
39	775.083, or s. 775.084. If the agency provides notification of,

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40	or if a person is arrested for, a violation of this paragraph,
41	each day that this paragraph is violated thereafter constitutes
42	a separate offense. For purposes of this paragraph, the term
43	"convicted" means a determination of guilt which is the result
44	of a trial or the entry of a plea of guilty or nolo contendere,
45	regardless of whether adjudication is withheld.
46	(d) In addition to the requirements of part II of chapter
47	408, a health care provider who is aware of the operation of an
48	unlicensed clinic shall report the clinic to the agency. The
49	agency shall report to the provider's licensing board a failure
50	to report a clinic that the provider knows or has reasonable
51	cause to suspect is unlicensed.
52	(e) A person commits a felony of the third degree,
53	punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
54	<u>if the</u> <del>any</del> person <del>who</del> knowingly <u>:</u>
55	1. Files a false or misleading license application or
56	license renewal application $_{m{ au}}$ or <u>files</u> false or misleading
57	information related to such application or <u>agency</u> department
58	rule <u>; or</u>
59	2. Fails to report information to the agency as required by
60	s. 408.810(3), commits a felony of the third degree, punishable
61	as provided in s. 775.082, s. 775.083, or s. 775.084.
62	Section 3. Subsection (5) of section 626.9894, Florida
63	Statutes, is amended to read:
64	626.9894 Gifts and grants
65	(5) Notwithstanding s. 216.301 and pursuant to s. 216.351,
66	any balance of moneys deposited into the Insurance Regulatory
67	Trust Fund pursuant to this section or s. 626.9895 remaining at
68	the end of any fiscal year is available for carrying out the

COMMITTEE AMENDMENT

Florida Senate - 2015 Bill No. SB 1306

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69	duties and responsi	bilities	of the division. The department may		
70	request annual appropriations from the grants and donations				
71	received pursuant to this section <del>or s. 626.9895</del> and cash				
72	balances in the Ins	urance R	egulatory Trust Fund for the purpose		
73	of carrying out its duties and responsibilities related to the				
74	division's anti-fra	ud effor	ts, including the funding of		
75	dedicated prosecuto	rs and r	elated personnel.		
76	Section 4. <u>Sec</u>	tion 626	.9895, Florida Statutes, is repealed.		
77	Section 5. Par	agraphs	(c) and (f) of subsection (3) of		
78	section 921.0022, F	lorida S	tatutes, are amended to read:		
79	921.0022 Crimi	nal Puni	shment Code; offense severity ranking		
80	chart				
81	(3) OFFENSE SE	VERITY R	ANKING CHART		
82	(c) LEVEL 3				
83					
84					
	Florida	Felony	Description		
	Statute	Degree			
85					
	119.10(2)(b)	3rd	Unlawful use of confidential		
			information from police		
			reports.		
86					
	316.066	3rd	Unlawfully obtaining or using		
	(3) (b) - (d)		confidential crash reports.		
87					
	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.		
88					
	316.1935(2)	3rd	Fleeing or attempting to elude		
	1	т	Page 4 of 21		
		L			

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89			law enforcement officer in patrol vehicle with siren and lights activated.
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
90 91	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
92	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
93	327.35(2)(b)	3rd	Felony BUI.
94	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
95	328.07(4)	3rd	Manufacture, exchange, or

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possess vessel with counterfeit or wrong ID number.

96			number.
	376.302(5)	3rd	Fraud related to reimbursement
			for cleanup expenses under the
			Inland Protection Trust Fund.
97			
	379.2431	3rd	Taking, disturbing,
	(1)(e)5.		mutilating, destroying,
			causing to be destroyed,
			transferring, selling,
			offering to sell, molesting,
			or harassing marine turtles,
			marine turtle eggs, or marine
			turtle nests in violation of
			the Marine Turtle Protection
			Act.
98			
	379.2431	3rd	Soliciting to commit or
	(1)(e)6.		conspiring to commit a
			violation of the Marine Turtle
			Protection Act.
99			
	400.9935(4) <u>(a) or</u>	3rd	Operating a clinic <u>, or</u>
	<u>(b)</u>		offering services requiring
			licensure, without a license
			or filing false license
			application or other required
	I		

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information.

100			
	400.9935(4)(e)	3rd	Filing a false license
			application or other required
			information or failing to
			report information.
101			
	440.1051(3)	3rd	False report of workers'
			compensation fraud or
			retaliation for making such a
			report.
102			
	501.001(2)(b)	2nd	Tampers with a consumer
			product or the container using
			materially false/misleading
			information.
103			
	624.401(4)(a)	3rd	Transacting insurance without
			a certificate of authority.
104			
	624.401(4)(b)1.	3rd	Transacting insurance without
			a certificate of authority;
			premium collected less than
			\$20,000.
105			
	626.902(1)(a) &	3rd	Representing an unauthorized
	(b)		insurer.
106			
	697.08	3rd	Equity skimming.

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107			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
108	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
110	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
112	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
112	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
113	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
114			



115	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
II J	817.233	3rd	Burning to defraud insurer.
116	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
118	817.236	3rd	Filing a false motor vehicle insurance application.
119	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
120	817.413(2)	3rd	Sale of used goods as new.
121 122	817.505(4)	3rd	Patient brokering.
± 4 6	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury,

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or death.

123			
	831.28(2)(a)	3rd	Counterfeiting a payment
			instrument with intent to
			defraud or possessing a
			counterfeit payment
			instrument.
124			
	831.29	2nd	Possession of instruments for
			counterfeiting driver licenses
105			or identification cards.
125	838.021(3)(b)	3rd	Threatens unlawful harm to
	030.UZI(3)(D)	310	public servant.
126			public Servanc.
120	843.19	3rd	Injure, disable, or kill
			police dog or horse.
127			
	860.15(3)	3rd	Overcharging for repairs and
			parts.
128			
	870.01(2)	3rd	Riot; inciting or encouraging.
129			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
			cannabis (or other s.
			893.03(1)(c), (2)(c)1.,
			(2)(c)2., (2)(c)3., (2)(c)5.,
			(2)(c)6., (2)(c)7., (2)(c)8.,
			(2)(c)9., (3), or (4) drugs).

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130			
131	893.13(1)(d)2.	2nd	<pre>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.</pre>
-	893.13(1)(f)2.	2nd	<pre>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.</pre>
132	893.13(6)(a)	3rd	Possession of any controlled
133			substance other than felony possession of cannabis.
133	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
	893.13(7)(a)9.	3rd I	Obtain or attempt to obtain controlled substance by fraud, Page 11 of 21

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135			forgery, misrepresentation, etc.
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
136	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
138	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
	893.13(8)(a)3.	3rd	Knowingly write a prescription

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for a controlled substance for a fictitious person. 140 893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner. 141 918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence. 142 944.47 3rd Introduce contraband to (1) (a) 1. & 2. correctional facility. 143 2nd Possess contraband while upon 944.47(1)(c) the grounds of a correctional institution. 144 985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility). 145 (f) LEVEL 6 146 147 Florida Felony Description

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148	Statute	Degree	
140	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
149			
	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
150			
	<u>400.9935(4)(c)</u>	<u>2nd</u>	<u>Operating a clinic, or</u> <u>offering services requiring</u> licensure, without a license.
151			
	499.0051(3)	2nd	Knowing forgery of pedigree papers.
152			
	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from
153			unauthorized person.
	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
154			-
	775.0875(1)	3rd	Taking firearm from law enforcement officer.
155	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
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156	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
157	784.041	3rd	Felony battery; domestic battery by strangulation.
158 159	784.048(3)	3rd	Aggravated stalking; credible threat.
160	784.048(5)	3rd	Aggravated stalking of person under 16.
161	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
-	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
162	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
100	784.081(2)	2nd	Aggravated assault on specified official or employee.
164	784.082(2)	2nd	Aggravated assault by detained person on visitor or other
		F	Page 15 of 21

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detainee.

165	784.083(2)	2nd	Aggravated assault on code inspector.
	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
167 168	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
100	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
169	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
171	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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172	794.05(1)	2nd	Unlawful sexual activity with specified minor.
173	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
175	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
176	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
177	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
178	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
1.0	812.014(2)(b)1.	2nd F	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree. Page 17 of 21



179	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of
180			others.
	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
181	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
182	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
183	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
184	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
185	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
186	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

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187			
	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
188			
	827.03(2)(c)	3rd	Abuse of a child.
189	827.03(2)(d)	3rd	Neglect of a child.
190	027.03(2)(d)	JIU	Neglect of a child.
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
191			Ĩ
	836.05	2nd	Threats; extortion.
192	836.10	2nd	Written threats to kill or do
	050.10	2110	bodily injury.
193			
	843.12	3rd	Aids or assists person to
194			escape.
194	847.011	3rd	Distributing, offering to
			distribute, or possessing with
			intent to distribute obscene
195			materials depicting minors.
195	847.012	3rd	Knowingly using a minor in the production of materials
		F	age 19 of 21



harmful to minors. 196 Facilitates sexual conduct of 847.0135(2) 3rd or with a minor or the visual depiction of such conduct. 197 914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury. 198 944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm. 199 944.40 2nd Escapes. 200 944.46 Harboring, concealing, aiding 3rd escaped prisoners. 201 944.47(1)(a)5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility. 202 951.22(1) 3rd Intoxicating drug, firearm, or weapon introduced into county

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facility.

203	
204	Section 6. This act shall take effect July 1, 2015.
205	
206	======================================
207	And the title is amended as follows:
208	Delete everything before the enacting clause
209	and insert:
210	A bill to be entitled
211	An act relating to insurance fraud; repealing s.
212	400.993, F.S., relating to criminal penalties
213	applicable to unlicensed health care clinics and the
214	reporting of unlicensed health care clinics; amending
215	s. 400.9935, F.S.; revising provisions related to
216	unlawful, noncompensable, and unenforceable health
217	care clinic charges or reimbursement claims; revising
218	and providing criminal penalties for making unlawful
219	charges, operating or failing to report an unlicensed
220	clinic, filing false or misleading information related
221	to a clinic license application, and other violations;
222	defining the term "convicted"; amending s. 626.9894,
223	F.S.; conforming provisions to changes made by the
224	act; repealing s. 626.9895, F.S., relating to the
225	establishment of a motor vehicle insurance fraud
226	direct-support organization; amending s. 921.0022,
227	F.S.; conforming provisions of the offense severity
228	ranking chart of the Criminal Punishment Code to
229	changes made by the act; providing an effective date.

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(	This document is l	based on t	he provisions contain	ned in the legislation a	s of the latest date listed below.) Banking and Insurance	
BILL:	SB 1306					
NTRODUCER:	Senator Brad	dley				
SUBJECT:	Insurance Fr	aud				
DATE:	March 30, 2	015	REVISED:			
ANAL	YST	STA	FF DIRECTOR	REFERENCE	ACTION	
. Billmeier		Knud	son	BI	Pre-meeting	
•				CJ		
				AP		

## I. Summary:

SB 1306 amends provisions relating to health care clinics who seek reimbursement under the Florida Motor Vehicle No-Fault Law. The bill requires an entity exempt from clinic licensure requirements to obtain a certificate of exemption from the Agency for Health Care Administration if the clinic treats 10 or more patients or seeks reimbursement pursuant to the Florida Motor Vehicle No-Fault Law in order to receive reimbursement. The bill requires clinics owned by physicians, dentists, and chiropractic physicians to obtain a certificate of exemption. The bill provides that unlawful claims for reimbursement under the Florida No Fault Law are considered theft, regardless of whether payments are made.

In 2012, the Department of Financial Services established a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The direct support organization has engaged in limited organizational activity during its existence. The bill repeals the statute authorizing the direct support organization.

The bill requires insurers to file annual updates with the division relating to their special investigative units (SIUs) and annually provide anti-fraud training to its underwriting, claims adjusting, and SIU personnel.

## II. Present Situation:

#### **Licensure Requirements for PIP**

Section 627.736(5)(h), F.S., requires all entities meeting the definition of a "clinic" in s. 400.9905(4), F.S., to be licensed by the Agency for Health Care Administration (AHCA) as a health care clinic in order to receive reimbursement pursuant to the Florida Motor Vehicle No-

Fault Law,<sup>1</sup> unless the entity is wholly owned by a doctor, dentist, chiropractor, or hospital, or is a hospital, ambulatory surgical center, or clinical facility affiliated with a medical school. Under s. 400.9935(6), F.S., these exempted entities may voluntarily apply to the AHCA for a certificate of exemption from licensure or may self-exempt and operate a health care clinic. According to the Department of Financial Services (DFS), the AHCA has no record of the self-exempted clinics and this lack of records facilitates straw ownership and other clinic insurance fraud schemes.<sup>2</sup>

## **Unlicensed Clinics and Unlawful Charges**

Section 408.812, F.S., prohibits an unlicensed clinic from offering or advertising services that require licensure by the AHCA and prohibits a person or entity from owning, operating, or maintaining an unlicensed provider. Violations of 408.812, F.S., are punished as third degree felony<sup>3</sup> for a first offense and a second degree felony<sup>4</sup> for a second or subsequent offense.<sup>5</sup> Section 408.812(3), F.S., requires any health care provider who is aware of the operation of an unlicensed clinic to report that facility to the AHCA. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.<sup>6</sup>

Section 400.9935(3), F.S., provides that the charges and reimbursement claims made by a health care clinic that is required to be licensed under ss. 400.990-995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, noncompensable, and unenforceable. According to the DFS, s. 400.9935(3), F.S., has routinely been applied in the civil context to permit insurance companies and third parties to deny paying, or to recover payments for, such unlawful charges. However, the DFS believes that prosecutors have been reluctant to file criminal theft charges because the theft statute does not specifically name such unlawful charges as theft.<sup>7</sup>

#### **Special Investigative Units**

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received \$10 million or more in direct premiums during the previous calendar year, to establish a unit, commonly referred to as a Special Investigations Unit (SIU), to investigate possible insurance claim fraud or to contract with others to investigate such fraud. The insurer must file a detailed description of the SIU with, or provide a copy of the contract to the DFS Division of Insurance Fraud ("division").<sup>8</sup> If the insurer received less than \$10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the division which describes its procedures to detect, investigate, and report suspected insurance fraud, its

<sup>&</sup>lt;sup>1</sup> See ss. 627.730–627.7405, F.S.

<sup>&</sup>lt;sup>2</sup> See Department of Financial Services, Agency Bill Analysis SB 1306, March 13, 2015 (on file with the Banking and Insurance Committee).

<sup>&</sup>lt;sup>3</sup> A third degree felony is punishable by up to 5 years imprisonment. See s. 775.082, F.S.

<sup>&</sup>lt;sup>4</sup> A second degree felony is punishable by up to 15 years imprisonment. See s. 775.082, F.S.

<sup>&</sup>lt;sup>5</sup> See s. 400.993, F.S.

<sup>&</sup>lt;sup>6</sup> See s. 400.993(3), F.S.

<sup>&</sup>lt;sup>7</sup> See Department of Financial Services, Agency Bill Analysis SB 1306, March 13, 2015 (on file with the Banking and Insurance Committee).

<sup>&</sup>lt;sup>8</sup> See s. 626.9891(1), F.S.

plan for anti-fraud training for its personnel, and its organizational arrangement of anti-fraud personnel.<sup>9</sup>.

Currently only workers' compensation insurers are required to report the following to the Department on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other.
- The number of fraud referrals submitted for the prior year.
- A description of the organization of its SIU, if applicable.
- The rationale for the level of staffing and resources being provided for the SIU.
- The in-service anti-fraud education and training provided to personnel.
- A description of a public awareness program focused on insurance fraud and methods by which the public can prevent it.

Under law, if an insurer fails to comply with the requirements for SIUs or anti-fraud plans or with the workers' compensation reporting requirement, statute authorizes the DFS, OIR, or Financial Services Commission (FSC) to impose certain administrative fines, as warranted by the circumstances.

## Automotive Insurance Fraud Strike Force

Section 626.9895, F.S., authorizes the division to establish a direct-support organization, known as the "Automobile Insurance Fraud Strike Force" (DSO). The DSO's sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud. The DSO is authorized to raise funds, conduct programs and activities, hold, invest, and administer assets in its name, and make grants and expenditures to state attorneys' offices, the statewide prosecutor, the AHCA, and the Department of Health to be used exclusively to prosecute, investigate, or prevent motor vehicle insurance fraud.

The Strike Force filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence. The DFS reports that the Strike Force has not: taken in any donations, paid any grants, established a bank account or made any transfers into the Insurance Regulatory Trust Fund.

## III. Effect of Proposed Changes:

## Licensure Requirements for PIP

**Section 4** of the bill requires an entity exempt from clinic licensure requirements to obtain a certificate of exemption from the AHCA if it treats 10 or more patients or seeks reimbursement pursuant to the Florida Motor Vehicle No-Fault Law in order to receive reimbursement under the Florida No Fault Law. This bill would require clinics owned by physicians, dentists, and chiropractic physicians to obtain a certificate of exemption in order for the clinics to receive reimbursement under the Florida No Fault Law. Section 1 of the bill makes conforming changes to s. 400.9905, F.S.

<sup>&</sup>lt;sup>9</sup> See s. 626.9891(2), F.S.

**Section 3** of the bill requires a separate certificate of exemption for each clinic location and creates a third degree felony for filing a false or misleading application for a certificate of exemption.

### **Unlicensed Clinic Activity and Unlawful Charges**

Section 2 of the bill repeals s. 400.993, F.S. Those provisions are moved to s. 400.9935, F.S.

**Section 3** of the bill consolidates existing criminal offenses provisions into s. 400.9935, F.S. The bill creates a new third degree felony offense applicable to any person who knowingly fails to report a change in information contained in the most recent health care clinic license application or a change regarding the required insurance or bonds. The bill provides that a person who knowingly makes an unlawful charge commits theft in violation of s. 812.014, F.S.

#### **Special Investigative Units**

**Section 5** of the bill amends s. 626.9891, F.S., to require insurers to file annual updates with the division relating to their SIUs and annually provide anti-fraud training to its underwriting, claims adjusting, and SIU personal.

The bill requires every admitted insurer to establish and maintain or contract for the establishment and maintenance of, an SIU that is responsible for the detection, investigation, and reporting of suspected insurance fraud. The bill requires each SIU to:

- Be separate from the insurer's underwriting, claims adjusting, and other units.
- Establish written procedures for the detection, investigation, and reporting of suspected insurance fraud.
- Be composed of personnel who have documented knowledge of the insurer's procedures for underwriting, issuing, and renewing policies and handling insurance claims, who have documented knowledge of insurance fraud law, and have documented knowledge of the insurer's written procedures for detecting and reporting insurance fraud.

The bill requires all insurers to file a written description of the insurer's procedures for the detection, investigation, and reporting of suspected insurance fraud and requires insurers to annually file updated procedures and information relating to anti-fraud training. New insurers must comply within 3 months of receipt of certificates of authority.

The bill requires insurers to report statistical information to the division on an annual basis. The report must include:

- The number of policies in effect.
- The amount of direct premiums written for policies.
- The number of applications received for policies.
- The number of claims filed that are referred or investigated by insurers.
- The number of reports of suspected insurance fraud submitted to the division and to other entities.
- :The number of cases involving suspected insurance fraud which were civilly litigated.
- The dollar amounts of the insurer's exposure for claims in which there was suspected insurance fraud.

- The dollar amounts paid by the insurer for claims in which there was suspected insurance fraud.
- The dollar amounts recovered by the insurer through restitution resulting from criminally prosecuted insurance fraud cases.
- The dollar amounts recovered by the insurer through judgments or settlements resulting from civilly litigated insurance fraud cases.
- The dollar amounts paid by the insurer for judgments or settlements resulting from civilly litigated insurance fraud cases.
- The rationale for the level of staffing and resources being provided for the SIU.
- A description of a public awareness program provided by the insurer.

The bill requires the DFS to review required filings for compliance with the law and empowers the DFS to impose administrative fines for noncompliance. The OIR is required to conduct market conduct examinations to determine compliance.

The bill provides that an insurer claiming that documents or other information submitted to the DFS or the OIR are trade secrets may file an action with the circuit court to determine whether the documents are trade secrets.

**Sections 6 and 7** of the bill impose the insurance fraud compliance and reporting requirements on Citizens Property Insurance Corporation and on admitted health maintenance organizations.

## Miscellaneous

**Section 5** of the bill provides that additional costs incurred in compliance with the bill must be included as administrative expense for ratemaking purposes.

Sections 8 and 9 of this bill repeal the motor vehicle fraud direct support organization.

**Section 10** of the bill amends the Criminal Punishment Code to reflect new crimes created by the bill. The bill will rank the crimes created or amended on the Offense Severity Ranking Chart. Third degree felonies that would rank as a Level 1 by default are ranked by the bill as Level 3. The second degree felony referenced in the bill is ranked as a Level 6.

Section 11 of the 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:

Insurers will have increased costs complying with the anti-fraud requirements and reporting requirements of this bill. The amount is indeterminate.

C. Government Sector Impact:

The DFS reports there could be an indeterminate increase in expenditures for rulemaking and administrative litigation related to this bill.

#### VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905, 400.9935, 627.736, 626.9891, 627.351, 641.3915, 626.9894, and 921.0022.

This bill repeals the following sections of the Florida Statutes: 400.993 and 626.9895.

### IX. Additional Information:

#### A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

SB 1306

SB 1306

By Senator Bradley

20151306 7-01123B-15 1 A bill to be entitled 2 An act relating to insurance fraud; amending s. 400.9905, F.S.; revising requirements for a health 3 care clinic to receive certain insurance reimbursement; repealing s. 400.993, F.S., relating to the operation or reporting of unlicensed health care clinics; amending s. 400.9935, F.S.; revising the responsibilities of a health care clinic; revising and ç providing penalties for making unlawful charges, 10 operating or failing to report an unlicensed clinic, 11 filing false or misleading information related to a 12 clinic license application, and other violations of 13 such responsibilities; revising and providing 14 penalties for violations of certificate of exemption 15 requirements; requiring the Agency for Health Care 16 Administration to adopt rules; amending s. 627.736, 17 F.S.; requiring certain clinics to have a certificate 18 of exemption to receive reimbursement under the 19 Florida Motor Vehicle No-Fault Law under specified 20 circumstances; amending s. 626.9891, F.S.; defining 21 terms; requiring insurers to establish insurance fraud 22 special investigative units; providing requirements 23 for such units; revising insurance fraud detection 24 requirements for insurers; providing penalties for 25 failure to comply with such requirements; authorizing 26 the Office of Insurance Regulation to adopt rules; 27 amending ss. 627.351 and 641.3915, F.S.; requiring 28 Citizens Property Insurance Corporation and health 29 maintenance organizations, respectively, to comply Page 1 of 38 CODING: Words stricken are deletions; words underlined are additions.

7-01123B-15 20151306 30 with certain insurance fraud detection provisions; 31 amending s. 626.9894, F.S.; conforming provisions to 32 changes made by the act; repealing s. 626.9895, F.S., 33 relating to the establishment of a motor vehicle 34 insurance fraud direct-support organization; amending 35 s. 921.0022, F.S.; conforming provisions of the 36 offense severity ranking chart of the Criminal 37 Punishment Code to changes made by the act; providing 38 an effective date. 39 40 Be It Enacted by the Legislature of the State of Florida: 41 Section 1. Subsection (4) of section 400.9905, Florida 42 43 Statutes, is amended to read: 44 400.9905 Definitions .-45 (4) "Clinic" means an entity where health care services are 46 provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a 47 48 portable equipment provider. As used in this part, the term does 49 not include and the licensure requirements of this part do not 50 apply to: (a) Entities licensed or registered by the state under 51 52 chapter 395; entities licensed or registered by the state and 53 providing only health care services within the scope of services 54 authorized under their respective licenses under ss. 383.30-55 383.335, chapter 390, chapter 394, chapter 397, this chapter 56 except part X, chapter 429, chapter 463, chapter 465, chapter 57 466, chapter 478, part I of chapter 483, chapter 484, or chapter 58 651; end-stage renal disease providers authorized under 42 Page 2 of 38

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SB 1306

20151306 7-01123B-15 20151306 88 405, subpart U; providers certified under 42 C.F.R. part 485, 89 subpart B or subpart H; or any entity that provides neonatal or 90 pediatric hospital-based health care services by licensed 91 practitioners solely within a hospital under chapter 395. (d) Entities that are under common ownership, directly or 92 93 indirectly, with an entity licensed or registered by the state 94 pursuant to chapter 395; entities that are under common 95 ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services 96 97 within the scope of services authorized pursuant to their 98 respective licenses under ss. 383.30-383.335, chapter 390, 99 chapter 394, chapter 397, this chapter except part X, chapter 100 429, chapter 463, chapter 465, chapter 466, chapter 478, part I 101 of chapter 483, chapter 484, or chapter 651; end-stage renal 102 disease providers authorized under 42 C.F.R. part 405, subpart 103 U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric 104 105 hospital-based health care services by licensed practitioners 106 solely within a hospital licensed under chapter 395. 107 (e) An entity that is exempt from federal taxation under 26 108 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan 109 under 26 U.S.C. s. 409 that has a board of trustees at least 110 two-thirds of which are Florida-licensed health care 111 practitioners and provides only physical therapy services under 112 physician orders, any community college or university clinic, 113 and any entity owned or operated by the federal or state 114 government, including agencies, subdivisions, or municipalities 115 thereof. 116 (f) A sole proprietorship, group practice, partnership, or Page 4 of 38 CODING: Words stricken are deletions; words underlined are additions.

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59 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. 60 part 485, subpart B or subpart H; or any entity that provides 61 neonatal or pediatric hospital-based health care services or 62 other health care services by licensed practitioners solely 63 within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities 64 65 licensed or registered by the state pursuant to chapter 395; 66 entities that own, directly or indirectly, entities licensed or 67 registered by the state and providing only health care services 68 within the scope of services authorized pursuant to their 69 respective licenses under ss. 383.30-383.335, chapter 390, 70 chapter 394, chapter 397, this chapter except part X, chapter 71 429, chapter 463, chapter 465, chapter 466, chapter 478, part I 72 of chapter 483, chapter 484, or chapter 651; end-stage renal 73 disease providers authorized under 42 C.F.R. part 405, subpart 74 U; providers certified under 42 C.F.R. part 485, subpart B or 75 subpart H; or any entity that provides neonatal or pediatric 76 hospital-based health care services by licensed practitioners 77 solely within a hospital licensed under chapter 395.

78 (c) Entities that are owned, directly or indirectly, by an 79 entity licensed or registered by the state pursuant to chapter 80 395; entities that are owned, directly or indirectly, by an 81 entity licensed or registered by the state and providing only 82 health care services within the scope of services authorized 83 pursuant to their respective licenses under ss. 383.30-383.335, 84 chapter 390, chapter 394, chapter 397, this chapter except part 85 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 86 478, part I of chapter 483, chapter 484, or chapter 651; endstage renal disease providers authorized under 42 C.F.R. part 87

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SB 1306

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117	corporation that provides health care services by physicians		146	therapy services by physicians licensed under chapter 458 or
118	covered by s. 627.419, that is directly supervised by one or		147	chapter 459 or entities that provide oncology or radiation
119	more of such physicians, and that is wholly owned by one or more		148	therapy services by physicians licensed under chapter 458 or
120	of those physicians or by a physician and the spouse, parent,		149	chapter 459 which are owned by a corporation whose shares are
121	child, or sibling of that physician.		150	publicly traded on a recognized stock exchange.
122	(g) A sole proprietorship, group practice, partnership, or		151	(j) Clinical facilities affiliated with a college of
123	corporation that provides health care services by licensed		152	chiropractic accredited by the Council on Chiropractic Education
124	health care practitioners under chapter 457, chapter 458,		153	at which training is provided for chiropractic students.
125	chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,		154	(k) Entities that provide licensed practitioners to staff
126	chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,		155	emergency departments or to deliver anesthesia services in
127	chapter 490, chapter 491, or part I, part III, part X, part		156	facilities licensed under chapter 395 and that derive at least
128	XIII, or part XIV of chapter 468, or s. 464.012, and that is		157	90 percent of their gross annual revenues from the provision of
129	wholly owned by one or more licensed health care practitioners,		158	such services. Entities claiming an exemption from licensure
130	or the licensed health care practitioners set forth in this		159	under this paragraph must provide documentation demonstrating
131	paragraph and the spouse, parent, child, or sibling of a		160	compliance.
132	licensed health care practitioner if one of the owners who is a		161	(1) Orthotic, prosthetic, pediatric cardiology, or
133	licensed health care practitioner is supervising the business		162	perinatology clinical facilities or anesthesia clinical
134	activities and is legally responsible for the entity's		163	facilities that are not otherwise exempt under paragraph (a) or
135	compliance with all federal and state laws. However, a health		164	paragraph (k) and that are a publicly traded corporation or are
136	care practitioner may not supervise services beyond the scope of		165	wholly owned, directly or indirectly, by a publicly traded
137	the practitioner's license, except that, for the purposes of		166	corporation. As used in this paragraph, a publicly traded
138	this part, a clinic owned by a licensee in s. 456.053(3)(b)		167	corporation is a corporation that issues securities traded on an
139	which provides only services authorized pursuant to s.		168	exchange registered with the United States Securities and
140	456.053(3)(b) may be supervised by a licensee specified in s.		169	Exchange Commission as a national securities exchange.
141	456.053(3)(b).		170	(m) Entities that are owned by a corporation that has $$250$
142	(h) Clinical facilities affiliated with an accredited		171	million or more in total annual sales of health care services
143	medical school at which training is provided for medical		172	provided by licensed health care practitioners where one or more
144	students, residents, or fellows.		173	of the persons responsible for the operations of the entity is a
145	(i) Entities that provide only oncology or radiation		174	health care practitioner who is licensed in this state and who
	Page 5 of 38			Page 6 of 38
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7-01123B-15 20151306 is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part. (n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection shall contain information that includes: the name, residence, and business address and phone number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under personal injury protection insurance coverage for the preceding year. If the agency determines that an entity which is exempt under this subsection has received payments for medical services under personal injury protection insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection. Notwithstanding this subsection, an entity is shall be deemed a Page 7 of 38 CODING: Words stricken are deletions; words underlined are additions.

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204	clinic and must be licensed under this part in order to receive
205	reimbursement under the Florida Motor Vehicle No-Fault Law, ss.
206	627.730-627.7405, unless the entity is exempted under s.
207	627.736(5)(h)1. and, if required under s. 627.736(5)(h)2., has
208	obtained a valid certificate of exemption 627.736(5)(h).
209	Section 2. Section 400.993, Florida Statutes, is repealed.
210	Section 3. Subsections $(3)$ , $(4)$ , and $(6)$ of section
211	400.9935, Florida Statutes, are amended to read:
212	400.9935 Clinic responsibilities
213	(3) <u>A charge</u> All charges or reimbursement <u>claim</u> claims made
214	by or on behalf of a clinic that is required to be licensed
215	under this part $_{\overline{r}}$ but that is not so licensed, or that is
216	otherwise operating in violation of this part or rules of the
217	agency, regardless of whether a service is rendered or whether
218	the charge or reimbursement claim is paid, is an, are unlawful
219	$\underline{\text{charge}} \xrightarrow{\text{charges}_{r}}$ and $\underline{\text{is}} \xrightarrow{\text{therefore}} \xrightarrow{\text{are}} \text{noncompensable}$ and
220	unenforceable. A person who knowingly makes or causes to be made
221	an unlawful charge commits theft within the meaning of, and
222	punishable as provided in, s. 812.014.
223	(4) (a) Regardless of whether notification is provided by
224	the agency under In addition to the requirements of s. 408.812,
225	$\underline{a}$ any person commits a felony of the third degree, punishable as
226	provided in s. 775.082, s. 775.083, or s. 775.084, if the person
227	knowingly:
228	1. Establishes, owns, operates, manages, or maintains
229	establishing, operating, or managing an unlicensed clinic
230	$\ensuremath{\mbox{otherwise}}$ required to be licensed under this part or part II of
231	chapter 408; $\tau$ or
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7-01123B-15 20151306 233 a clinic under this part or part II of chapter 408 without a 234 license. 235 (b) If the agency provides notification under s. 408.812 of, or if a person is arrested for, a violation of subparagraph 236 237 (a)1. or subparagraph (a)2., each day during which a violation 238 of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a 239 separate offense. 240 (c) A person convicted of a second or subsequent violation 241 of subparagraph (a)1. or subparagraph (a)2. commits a felony of 242 the second degree, punishable as provided in s. 775.082, s. 243 775.083, or s. 775.084. If the agency provides notification of, or if a person is arrested for, a violation of this paragraph, 2.4.4 245 each day that this paragraph is violated thereafter constitutes 246 a separate offense. For purposes of this paragraph, the term 247 "convicted" means a determination of quilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, 248 249 regardless of whether adjudication is withheld. 250 (d) In addition to the requirements of part II of chapter 251 408, a health care provider who is aware of the operation of an 252 unlicensed clinic shall report the clinic to the agency. Failure 253 to report a clinic that the provider knows or has reasonable 254 cause to suspect is unlicensed shall be reported to the 255 provider's licensing board. 256 (e) A person commits a felony of the third degree, 2.57 punishable as provided in s. 775.082, s. 775.083, or s. 775.084, 258 if the any person who knowingly: 259 1. Files a false or misleading license application or 260 license renewal application  $\overline{r}$  or files false or misleading 261 information related to such application or agency department Page 9 of 38 CODING: Words stricken are deletions; words underlined are additions.

7-01123B-15 20151306 262 rule; or 263 2. Fails to report information to the agency as required by 264 s. 408.810(3), commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 265 266 (6) (a) A Any person or entity providing health care services which is not a clinic, as defined under s. 400.9905, 267 268 may voluntarily apply, and an entity subject to s. 269 627.736(5)(h)2. shall apply, for a certificate of exemption from licensure under its exempt status with the agency on a form that 270 271 sets forth its name and the address of each physical location 272 where services are provided or names and addresses, a statement 273 of the reasons why it cannot be defined as a clinic, and other information deemed necessary by the agency. An exemption is not 274 275 transferable. The agency may charge an applicant for an initial 276 a certificate of exemption or for a renewal certificate of 277 exemption in an amount equal to \$100 or the actual cost of 278 processing the certificate, whichever is less. An entity seeking 279 an initial or renewal a certificate of exemption must publish 280 and maintain a schedule of charges for the medical services 281 offered to patients. The schedule must include the prices 282 charged to an uninsured person paying for such services by cash, 283 check, credit card, or debit card. The schedule must be posted 284 in a conspicuous place in the reception area of the entity and 285 must include, but is not limited to, the 50 services most 286 frequently provided by the entity. The schedule may group 287 services by three price levels, listing services in each price 288 level. The posting must be at least 15 square feet in size. As a 289 condition precedent to receiving an initial or renewal a certificate of exemption, an applicant must provide to the 290 Page 10 of 38

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7-01123B-15 20151306 291 agency documentation of compliance with this paragraph these 292 requirements. 293 (b) A separate certificate of exemption must be obtained 294 for each physical location where services are provided regardless of whether the location is operated under the same 295 296 business name or management as another location. 297 (c) A certificate of exemption issued on or before June 30, 298 2015, expires on June 30, 2017. An initial or renewal 299 certificate of exemption issued on or after July 1, 2015, 300 expires 2 years after the date of issuance. 301 (d) A clinic shall notify the agency of any change to information set forth in an application for an initial or 302 303 renewal certificate of exemption at least 10 days before the 304 change takes effect. A failure to comply with this paragraph 305 renders the clinic unlicensed. (e) If a change to a person's or entity's exempt status 306 307 occurs which causes the person or entity to no longer qualify 308 for an exemption from licensure as a clinic, the person's or 309 entity's certificate of exemption expires on the date the 310 disqualification occurs. In such case, the clinic must file with 311 the agency an application for licensure under this part within 5 312 days after becoming a clinic. Failure to timely file an 313 application for licensure within 5 days after becoming a clinic 314 renders the clinic unlicensed and subject to sanctions under 315 this part and part II of chapter 408. (f) An entity subject to s. 627.736(5)(h)2. which does not 316 317 have a valid certificate of exemption is deemed a clinic that 318 must be licensed under this part to receive reimbursement under 319 ss. 627.730-627.7405. Failure of such entity to have a valid Page 11 of 38

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320	certificate of exemption or license under this part renders the	
321	entity an unlicensed clinic that is subject to sanctions under	
322	this part and part II of chapter 408.	
323	(g) A person commits a felony of the third degree,	
324	punishable as provided in s. 775.082, s. 775.083, or s. 775.084,	
325	if the person knowingly files a false or misleading initial or	
326	renewal application for a certificate of exemption or files	
327	false or misleading information related to such application or	
328	agency rule.	
329	(h) The agency shall adopt rules to implement this	
330	subsection, including rules establishing initial and renewal	
331	application procedures.	
332	Section 4. Paragraph (h) of subsection (5) of section	
333	627.736, Florida Statutes, is amended to read:	
334	627.736 Required personal injury protection benefits;	
335	exclusions; priority; claims	
336	(5) CHARGES FOR TREATMENT OF INJURED PERSONS	
337	(h) $1$ . As provided in s. 400.9905, an entity excluded from	
338	the definition of a clinic shall be deemed a clinic and must be	
339	licensed under part X of chapter 400 in order to receive	
340	reimbursement under ss. 627.730-627.7405. However, this	
341	licensing requirement does not apply to:	
342	<u>a.</u> An entity wholly owned by a physician licensed under	
343	chapter 458 or chapter 459, or by the physician and the spouse,	
344	parent, child, or sibling of the physician;	
345	b.2. An entity wholly owned by a dentist licensed under	
346	chapter 466, or by the dentist and the spouse, parent, child, or	
347	sibling of the dentist;	
348	c.3. An entity wholly owned by a chiropractic physician	
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349	licensed under chapter 460, or by the chiropractic physician and					
350	the spouse, parent, child, or sibling of the chiropractic					
351						
352	d.4. A hospital or ambulatory surgical center licensed					
353	under chapter 395;					
354	e. <del>5.</del> An entity that wholly owns or is wholly owned,					
355	directly or indirectly, by a hospital or hospitals licensed					
356	under chapter 395; or					
357	<u>f.<del>6.</del> An entity that is a clinical facility affiliated with</u>					
358	an accredited medical school at which training is provided for					
359	medical students, residents, or fellows.					
360	2. An entity that is exempted from licensure under sub-					
361	subparagraph 1.a., sub-subparagraph 1.b., or sub-subparagraph					
362						
363	of \$100,000 or more, under ss. 627.730-627.7405 during any 12-					
364	month period may not receive reimbursement under those sections					
365	unless it has a valid certificate of exemption from licensure					
366	under s. 400.9935(6) and agency rule.					
367	Section 5. Section 626.9891, Florida Statutes, is amended					
368	to read:					
369	626.9891 Insurer <u>special</u> anti-fraud investigative units;					
370	reporting requirements; penalties for noncompliance					
371	(1) As used in this section, the term:					
372	(a) "Division" means the Division of Insurance Fraud within					
373	the Department of Financial Services.					
374	(b) "Insurance fraud" means a fraudulent insurance act as					
375	described in s. 626.989(1)(a) or any other act or practice that,					
376	upon conviction, constitutes a felony or misdemeanor under the					
377	Florida Insurance Code, chapter 440, s. 817.234, or s. 817.505.					
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378	(c) "Red flag" means facts, circumstances, or events that,					
379	individually or in combination, support an inference that					
380	insurance fraud is being or has been committed.					
381	(d) "Report of suspected insurance fraud" means the					
382	insurer's submission of reports or information pertinent to					
383	suspected insurance fraud to the division as required by ss.					
384	440.105, 626.989, 627.351, 627.711, and 627.736.					
385	(e) "SIU" means a special investigative unit.					
386	(f) "Suspected insurance fraud" means having knowledge or					
387	belief that insurance fraud is being or has been committed.					
388	(2) (1) Every insurer that is admitted to do business and					
389	that issues insurance policies in this state who in the previou					
390	calendar year, at any time during that year, had \$10 million or					
391	more in direct premiums written shall:					
392	(a) Establish and maintain <del>a unit or division</del> within the					
393	company, or contract for the establishment and maintenance of,					
394	an SIU that is responsible for the detection, investigation, an					
395	reporting of suspected insurance fraud. Each SIU shall:					
396	1. Be separate from the insurer's underwriting, claims					
397	adjusting, and other units.					
398	2. Establish written procedures for the:					
399	a. Detection of suspected insurance fraud in applications,					
400	claims, and other documents or information, which includes the					
401	identification of red flags, by underwriting, claims adjusting,					
402	and SIU personnel.					
403	b. Investigation and reporting of suspected insurance fraud					
404	by SIU personnel.					
405	3. Be composed of personnel who have documented knowledge					
406	<u>of:</u>					
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407 a. The insurer's procedures for underwriting, issuing, and				
408 renewing policies and handling insurance claims.				
409 b. Insurance fraud law.				
410 c. The written procedures required by subparagraph 3. to				
411 investigate possible fraudulent claims by insureds or by person	÷			
412 making claims for services or repairs against policies held by				
413 <del>insureds; or</del>				
(b) Annually provide anti-fraud training for its				
415 underwriting, claims adjusting, and SIU personnel which				
416 addresses the detection, referral, investigation, and reporting				
417 of suspected insurance fraud for the types of insurance lines				
418 written by the insurer Contract with others to investigate				
419 possible fraudulent claims for services or repairs against	possible fraudulent claims for services or repairs against			
420 <del>policies held by insureds</del> .				
421 (c) Electronically An insurer subject to this subsection				
422 shall file the following information with the division of	shall file the following information with the division of			
423 Insurance Fraud of the department on or before September 1,	Insurance Fraud of the department on or before September 1,			
424 <u>2015:</u>				
1. The name, title, telephone number, and e-mail address o	f			
426 the individual responsible for the management of the insurer's				
427 <u>SIU.</u>				
428 2. A written description of the insurer's procedures				
429 required by subparagraph (a)2.				
430 3. If the insurer has contracted for the establishment and				
431 <u>maintenance of the SIU,</u> July 1, 1996, a detailed description of				
432 the unit or division established pursuant to paragraph (a) or a				
433 copy of the contract and related documents required by paragrap	h			
434 (b). A contract for the establishment and maintenance of an SIU				
does not relieve the insurer of any obligation under this				
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1	7-01123B-15 20151306_
436	section.
437	(d) Electronically file the following information with the
438	division on or before September 1, 2016, and annually
439	thereafter:
440	1. A copy of any change to the documents required to be
441	filed under subparagraphs (c)1. and (c)2. or a written statement
442	indicating that no changes have occurred.
443	2. A description of the anti-fraud training completed by
444	the underwriting, claims adjusting, and SIU personnel of the
445	insurer during the previous calendar year.
446	(2) Every insurer admitted to do business in this state,
447	which in the previous calendar year had less than \$10 million in
448	direct premiums written, must adopt an anti-fraud plan and file
449	it with the Division of Insurance Fraud of the department on or
450	before July 1, 1996. An insurer may, in licu of adopting and
451	filing an anti-fraud plan, comply with the provisions of
452	subsection (1).
453	(3) Each insurers anti-fraud plans shall include:
454	(a) A description of the insurer's procedures for detecting
455	and investigating possible fraudulent insurance acts;
456	(b) A description of the insurer's procedures for the
457	mandatory reporting of possible fraudulent insurance acts to the
458	Division of Insurance Fraud of the department;
459	(c) A description of the insurer's plan for anti-fraud
460	education and training of its claims adjusters or other
461	personnel; and
462	(d) A written description or chart outlining the
463	organizational arrangement of the insurer's anti-fraud personnel
464	who are responsible for the investigation and reporting of
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465	possible fraudulent insurance acts.				
466	(3) (4) An Any insurer shall comply with this section within				
467	3 months after receipt of its who obtains a certificate of				
468	authority after July 1, 1995, shall have 18 months in which to				
469	comply with the requirements of this section.				
470	(4) (5) Additional costs incurred by For purposes of this				
471	section, the term "unit or division" includes the assignment of				
472	fraud investigation to employees whose principal				
473	responsibilities are the investigation and disposition of				
474	claims. If an insurer to establish and maintain or contract for				
475	the establishment and maintenance of an SIU creates a distinct				
476	unit or division, hires additional employees, or contracts with				
477	another entity to fulfill the requirements of this section, the				
478	additional cost incurred must be included as an administrative				
479	expense for ratemaking purposes.				
480	(5) (6) Each insurer issuing writing workers' compensation				
481	insurance policies in this state shall electronically file a				
482	report with to the division department, on or before September				
483	1, 2017, and annually thereafter August 1 of each year, on its				
484	experience in implementing an SIU and maintaining an anti-fraud				
485	investigative unit or an anti-fraud plan. For the previous				
486	calendar year, the report must include, at a minimum, for each				
487	line of insurance for policies issued in this state:				
488	(a) The number of policies in effect dollar amount of				
489	recoveries and losses attributable to workers' compensation				
490	fraud delineated by the type of fraud: claimant, employer,				
491	<del>provider, agent, or other</del> .				
492	(b) The amount of direct premiums written for policies.				
493	(c) The number of applications received for policies.				
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494	(d) The number of claims filed.					
495	(e) The number of applications and claims:					
496						
497	2. Investigated by SIU personnel.					
498	3. Denied, withdrawn, or mitigated after investigation.					
499	(f) (b) The number of reports of suspected insurance fraud					
500	submitted to the division referrals to the Bureau of Workers'					
501	Compensation Fraud for the prior year.					
502	(g) The number of cases of suspected insurance fraud					
503	referred to:					
504	1. Law enforcement agencies other than the division.					
505	2. Other entities such as insurance fraud associations.					
506	(h) The number of cases involving suspected insurance fraud					
507	which were civilly litigated.					
508	(i) The dollar amounts:					
509	1. Of the insurer's exposure for claims in which there was					
510	suspected insurance fraud.					
511	2. Paid by the insurer for claims in which there was					
512	suspected insurance fraud.					
513	3. Recovered by the insurer through restitution resulting					
514	from criminally prosecuted insurance fraud cases.					
515	4. Recovered by the insurer through judgments or					
516	settlements resulting from civilly litigated insurance fraud					
517	cases.					
518	5. Paid by the insurer for judgments or settlements					
519	resulting from civilly litigated insurance fraud cases.					
520	(c) A description of the organization of the anti fraud					
521	investigative unit, if applicable, including the position titles					
522	and descriptions of staffing.					
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523	(j) (d) The rationale for the level of staffing and			
524	resources being provided for the SIU anti-fraud investigative			
525	unit, which may include objective criteria such as number of			
526	policies written, number of applications and claims received on			
527	an annual basis, volume of suspected fraudulent applications and			
528	claims currently being detected, other factors, and an			
529	assessment of optimal caseload that can be handled by an			
530	investigator on an annual basis.			
531	(c) The inservice education and training provided to			
532	underwriting and claims personnel to assist in identifying and			
533	evaluating instances of suspected fraudulent activity in			
534	underwriting or claims activities.			
535	(k)(f) A description of a public awareness program provided			
536	by the insurer which is focused on the costs and frequency of			
537	insurance fraud and methods by which the public can prevent it.			
538	(6) (a) The division shall review the electronic filings			
539	received under this section to determine whether an insurer is			
540	in compliance with paragraphs (2)(c) and (2)(d) and subsection			
541	(5), and the office shall conduct examinations pursuant to s.			
542	624.3161 to determine whether an insurer is compliant with			
543	paragraphs (2)(a) and (2)(b).			
544	(b)(7) If an insurer fails to:			
545	1. Timely file with the division information in compliance			
546	with paragraph (2)(c) or paragraph (2)(d) or a report in			
547	compliance with subsection (5), the division shall impose an			
548	administrative fine of not more than \$2,000 per day for such			
549	failure until the division determines that the insurer is in			
550	compliance.			
551	2. Submit a final acceptable anti-fraud plan or anti-fraud			
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	investigative unit description, fails to Implement the
553	requirements for its SIU in compliance with paragraph (2) (a) or
554	paragraph (2)(b) provisions of a plan or an anti-fraud
555	investigative unit description, or otherwise refuses to comply
556	with the provisions of this section, the department, office
557	<u>shall</u> , or commission may:
558	(a) impose an administrative fine of not more than \$2,000
559	per day for such failure <del>by an insurer to submit an acceptable</del>
560	anti-fraud plan or anti-fraud investigative unit description,
561	until the department, office determines that, or commission
562	deems the insurer is to be in compliance;
563	(b) Impose an administrative fine for failure by an insurer
564	to implement or follow the provisions of an anti fraud plan or
565	anti-fraud investigative unit description; or
566	(c) Impose the provisions of both paragraphs (a) and (b).
567	(7) An insurer claiming that documents or other information
568	submitted to the division or office under this section contain a
569	trade secret shall comply with s. 624.4213.
570	(8) The department and office may adopt rules to administer
571	this section.
572	Section 6. Paragraph (k) of subsection (6) of section
573	627.351, Florida Statutes, is amended to read:
574	627.351 Insurance risk apportionment plans
575	(6) CITIZENS PROPERTY INSURANCE CORPORATION
576	(k)1. The corporation shall comply with the requirements
577	for an insurer that is admitted to do business and that issues
578	insurance policies in this state as set forth in establish and
579	maintain a unit or division to investigate possible fraudulent
580	claims by insureds or by persons making claims for services or
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1 repairs against policics held by insureds; or it may contract	610 (5) Notwithstanding s. 216.301 and pursuant to s. 216	
2 with others to investigate possible fraudulent claims for	611 any balance of moneys deposited into the Insurance Regulat	
3 services or repairs against policies held by the corporation	612 Trust Fund pursuant to this section or s. 626.9895 remaini	
4 pursuant to s. 626.9891. The corporation must comply with	613 the end of any fiscal year is available for carrying out t	
5 reporting requirements of s. 626.9891. An employee of the	614 duties and responsibilities of the division. The department	
6 corporation shall notify the corporation's Office of the	615 request annual appropriations from the grants and donation:	
7 Inspector General and the Division of Insurance Fraud within 48	616 received pursuant to this section or s. 626.9895 and cash	
8 hours after having information that would lead a reasonable	617 balances in the Insurance Regulatory Trust Fund for the pu	
9 person to suspect that fraud may have been committed by any	618 of carrying out its duties and responsibilities related to	
90 employee of the corporation. 619 division's anti-fraud efforts, including the funding of		
1 2. The corporation shall establish a unit or division	620 dedicated prosecutors and related personnel.	
2 responsible for receiving and responding to consumer complaints,	ing and responding to consumer complaints, 621 Section 9. Section 626.9895, Florida Statutes, is r	
3 which unit or division is the sole responsibility of a senior	622 Section 10. Paragraphs (c) and (f) of subsection (3)	
4 manager of the corporation.	623 section 921.0022, Florida Statutes, are amended to read:	
5 Section 7. Section 641.3915, Florida Statutes, is amended	624 921.0022 Criminal Punishment Code; offense severity r	
6 to read:	625 chart	
7 641.3915 Health maintenance organization special anti-fraud	626 (3) OFFENSE SEVERITY RANKING CHART	
8 plans and investigative unitsEach authorized health	627 (c) LEVEL 3	
9 maintenance organization and applicant for a certificate of	628	
0 authority shall comply with the provisions of ss. 626.989 and	629	
1 626.9891 as though such organization or applicant were an	Florida Felony Description	
2 authorized insurer that is admitted to do business and that	Statute Degree	
3 issues insurance policies in this state. For purposes of this	630	
4 section, the reference to the year 1996 in s. 626.9891 means the	119.10(2)(b) 3rd Unlawful use of confidential	
5 year 2000 and the reference to the year 1995 means the year	information from police	
6 <del>1999.</del>	reports.	
7 Section 8. Subsection (5) of section 626.9894, Florida	631	
8 Statutes, is amended to read:	316.066 3rd Unlawfully obtaining or using	
9 626.9894 Gifts and grants	(3)(b)-(d) confidential crash reports.	
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632	7-01123B-15		20151306
633	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
634	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
635	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
637	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
638	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
639	327.35(2)(b)	3rd	Felony BUI.
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of
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	7-01123B-15		20151306
			sale of vessels.
640	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit
641			or wrong ID number.
642	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
042	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
643			
	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
644	400.9935(4) <u>(a)</u> or (b)	3rd	services requiring licensure, without a license or filing false license application or
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			other required information.
645	<u>400.9935(4)(e)</u>	<u>3rd</u>	Filing a false license application or other required information or failing to report information.
	<u>400.9935(6)(g)</u>	<u>3rd</u>	Filing a false application or other required information.
647	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
649	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
650	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
651	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
001	626.902(1)(a) &	3rd	Representing an unauthorized
			Page 25 of 38
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	(b)		insurer.	
652 653	697.08	3rd	Equity skimming.	
654	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.	
655	806.10(1)	3rd	Maliciously injure, destroy interfere with vehicles or equipment used in firefight	-
	806.10(2)	3rd	Interferes with or assaults firefighter in performance duty.	
656	810.09(2)(c)	3rd	Trespass on property other structure or conveyance arr with firearm or dangerous weapon.	
657	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more less than \$10,000.	e but
659	812.0145(2)(c)	3rd	Theft from person 65 years age or older; \$300 or more less than \$10,000.	
	815.04(5)(b)		Computer offense devised to Page 26 of 38 eletions; words underlined a	
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			defraud or obtain property.
660	017 024 (4) (0) 2	3rd	Enverse in achime to define
	817.034(4)(a)3.	210	Engages in scheme to defraud (Florida Communications Fraud
			Act), property valued at less
			than \$20,000.
661			
662	817.233	3rd	Burning to defraud insurer.
002	817.234	3rd	Unlawful solicitation of
	(8)(b) & (c)		persons involved in motor
			vehicle accidents.
663	817.234(11)(a)	3rd	Insurance fraud; property value
	01/.234(11)(d)	510	less than \$20,000.
664			
	817.236	3rd	Filing a false motor vehicle
665			insurance application.
665	817.2361	3rd	Creating, marketing, or
			presenting a false or
			fraudulent motor vehicle
			insurance card.
666	817.413(2)	3rd	Sale of used goods as new.
667	01/01/01/01/02/	91.0	sale of abea goods as new.
	817.505(4)	3rd	Patient brokering.
668			
	828.12(2)	3rd	Tortures any animal with intent
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669			to inflict intense pain, serious physical injury, or death.
670	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
671 672	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
673	843.19	3rd	Injure, disable, or kill police dog or horse.
674	860.15(3)	3rd	Overcharging for repairs and parts.
675	870.01(2)	3rd	Riot; inciting or encouraging.
	893.13(1)(a)2.	3rd	<pre>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,</pre>
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	7-01123B-15		20151306
676			(2)(c)9., (3), or (4) drugs).
677	893.13(1)(d)2.	2nd	<pre>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.</pre>
678	893.13(1)(f)2.	2nd	<pre>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.</pre>
679	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
680	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
	893.13(7)(a)9.	3rd	controlled substance by fraud,
(	CODING: Words <del>stricker</del>	are (	Page 29 of 38 deletions; words <u>underlined</u> are additions.

	7-01123B-15		20151306 forgery, misrepresentation, etc.
681	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
682	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
684	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
685	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
680	893.13(8)(a)3.	3rd	
	CODING: Words stricken	are	Page 30 of 38 deletions; words <u>underlined</u> are additions.

	7-01123B-15		20151306
			for a controlled substance for
			a fictitious person.
686			
	893.13(8)(a)4.	3rd	Write a prescription for a
			controlled substance for a
			patient, other person, or an
			animal if the sole purpose of
			writing the prescription is a
			monetary benefit for the
607			practitioner.
687	010 10 (1) (-)	2]	
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
688			investigation evidence.
000	944.47	3rd	Introduce contraband to
	(1) (a) 1. & 2.	010	correctional facility.
689	(_, (2, _,		
	944.47(1)(c)	2nd	Possess contraband while upon
			the grounds of a correctional
			institution.
690			
	985.721	3rd	Escapes from a juvenile
			facility (secure detention or
			residential commitment
			facility).
691	(f) LEVEL 6		
692			
693			
	Florida	Felony	Description
		1	Page 31 of 38
c	CODING: Words strick	<del>en</del> are de	eletions; words <u>underlined</u> are additions.

1	7-01123B-15		20151306
694	Statute	Degree	
	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
695			
	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
696			
	400.9935(4)(c)	<u>2nd</u>	Operating a clinic, or offering services requiring licensure, without a license.
697			
	499.0051(3)	2nd	Knowing forgery of pedigree papers.
698			
	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
699			
70.0	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
700	775.0875(1)	3rd	Taking firearm from law enforcement officer.
701	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
c	CODING: Words strick		Page 32 of 38 eletions; words <u>underlined</u> are additions.

702	7-01123B-15		20151306
702	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
703	784.041	3rd	Felony battery; domestic battery by strangulation.
704	784.048(3)	3rd	Aggravated stalking; credible threat.
705	784.048(5)	3rd	Aggravated stalking of person under 16.
706	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
707	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
708	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
709 710	784.081(2)	2nd	Aggravated assault on specified official or employee.
, 10	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
c	ODING: Words <del>stricker</del>		Page 33 of 38 eletions; words <u>underlined</u> are additions.

711	7-01123B-15		20151306
/11	784.083(2)	2nd	Aggravated assault on code inspector.
712	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
713	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
714	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
715	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
716	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
717	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
c	CODING: Words <del>stricken</del>		Page 34 of 38 eletions; words <u>underlined</u> are additions.

	7-01123B-15		20151306
	794.05(1)	2nd	Unlawful sexual activity with
			specified minor.
719			
	800.04(5)(d)	3rd	Lewd or lascivious molestation;
			victim 12 years of age or older
			but less than 16 years of age;
			offender less than 18 years.
720			
	800.04(6)(b)	2nd	Lewd or lascivious conduct;
			offender 18 years of age or
			older.
721			
	806.031(2)	2nd	Arson resulting in great bodily
			harm to firefighter or any
			other person.
722			
	810.02(3)(c)	2nd	Burglary of occupied structure;
			unarmed; no assault or battery.
723			
	810.145(8)(b)	2nd	Video voyeurism; certain minor
			victims; 2nd or subsequent
			offense.
724			
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or
			more, but less than \$100,000,
			grand theft in 2nd degree.
725			
	812.014(6)	2nd	Theft; property stolen \$3,000
			or more; coordination of
I			Dama 35 of 30
	COTIC. Manda atriala	n ara á	Page 35 of 38
Ĺ	NOTAS SCIICKC	m are c	eletions; words <u>underlined</u> are additions.

I	7-01123B-15		20151306	
726			others.	
120	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.	
727	812.015(9)(b)	2nd	-	
	612.013(9)(b)	2110	\$3,000 or more; coordination of others.	
728	812.13(2)(c)	2nd	Robbery, no firearm or other	
729			weapon (strong-arm robbery).	
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.	
730	825.102(1)	3rd	Abuse of an elderly person or disabled adult.	
731				
	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.	
732	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.	
733	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is	
с	CODING: Words <del>stricken</del>		Page 36 of 38 eletions; words <u>underlined</u> are addition	ıs.

1	7-01123B-15		20151306
			valued at less than \$10,000.
734		Q1	
735	827.03(2)(c)	3rd	Abuse of a child.
, 55	827.03(2)(d)	3rd	Neglect of a child.
736			
	827.071(2) & (3)	2nd	Use or induce a child in a
			sexual performance, or promote or direct such performance.
737			or direct such periormance.
	836.05	2nd	Threats; extortion.
738			
	836.10	2nd	Written threats to kill or do
739			bodily injury.
155	843.12	3rd	Aids or assists person to
			escape.
740			
	847.011	3rd	Distributing, offering to
			distribute, or possessing with intent to distribute obscene
			materials depicting minors.
741			
	847.012	3rd	Knowingly using a minor in the
			production of materials harmful
742			to minors.
, 12	847.0135(2)	3rd	Facilitates sexual conduct of
			or with a minor or the visual
1			Page 37 of 38
с	ODING: Words stricker		eletions; words <u>underlined</u> are additions.

	7-01123B-15		20151306
743			depiction of such conduct.
744	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
745	944.40	2nd	Escapes.
746	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
747	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
740	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
749			
750	Section 11.	This act	shall take effect July 1, 2015.
			Page 38 of 38
	CODING: Words stric		eletions; words <u>underlined</u> are additions.

		-	SIS AND FIS		ST STATEMENT	
			•		Banking and Insurance	
BILL:	SB 1138					
INTRODUCER:	JCER: Senator Bra					
SUBJECT: Unclaimed		Property	y			
DATE:	March 30, 2	2015	REVISED:			
ANAL	YST	STA	FF DIRECTOR	REFERENCE	ACTION	
1. Matiyow		Knud	son	BI	Pre-meeting	
·				AGG		
·				AP		

#### I. Summary:

SB 1138 is intended to allow the Department of Financial Services, through their Unclaimed Property division, the ability to obtain the title to unclaimed savings bonds issued by the U.S. Department of the Treasury (Treasury) to citizens of the state, when such unclaimed bonds are more than 5 years past their maturity date.

#### II. Present Situation:

#### Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., the Act).<sup>1</sup> The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.<sup>2</sup> The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services (DFS) Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails

<sup>&</sup>lt;sup>1</sup> Ch. 87-105, L.O.F. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <u>http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act</u> (Last visited March 26, 2014) <sup>2</sup> ss. 717.104 – 717.116, F.S.

to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the Act.<sup>3</sup> Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate apparent owners within 180 days after an account becomes inactive.<sup>4</sup> Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.<sup>5</sup> The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.<sup>6</sup>

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.<sup>8</sup> The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.<sup>9</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>10</sup> The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.<sup>11</sup>

Like many other state unclaimed property act, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.<sup>12</sup>

#### U.S. Savings Bonds<sup>13</sup>

Pursuant to its constitutional power "to borrow money on the credit of the United States,"<sup>14</sup> Congress delegated authority to the United States Department of the Treasury (Treasury), with

- <sup>4</sup> s. 717.117(4), F.S.
- <sup>5</sup> s. 717.117, F.S.
- <sup>6</sup> s. 717.119, F.S.
- <sup>7</sup> s. 717.1201, F.S.
- <sup>8</sup> ss.717.117 and 717.124, F.S.

<sup>13</sup> Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U.S. Dep't of Treasury*, 684 F.3d 382 (3rd Cir. 2012).

<sup>14</sup> U.S. CONST. art. I, s. 8, cl. 2.

<sup>&</sup>lt;sup>3</sup> s. 717.102(1), F.S.

<sup>&</sup>lt;sup>9</sup> s.717.124, F.S.

<sup>&</sup>lt;sup>10</sup> s. 717.123, F.S.

<sup>&</sup>lt;sup>11</sup> Id.

<sup>&</sup>lt;sup>12</sup> Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

The federal government began selling savings bonds in 1941 for World War II defense spending, and subsequently to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.<sup>17</sup>

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, Treasury holds nearly 49.3 million matured, unredeemed savings bonds, with a maturity value of \$16.5 billion.<sup>18</sup> The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator's office, typically discovered from expired safe-deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, the DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.
- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. Treasury's online unredeemed bonds database, Treasury Hunt, does not contain a record of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.<sup>19</sup>

<sup>17</sup> TREASURYDIRECT, The Volunteer Program and Series E Savings Bonds,

<sup>&</sup>lt;sup>15</sup> 31 U.S.C. s. 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. *See* TREASURY DIRECT, *The History of U.S. Savings Bonds*, <u>http://www.treasurydirect.gov/timeline.htm</u> (Last visited March 26, 2014)

<sup>&</sup>lt;sup>16</sup> 91 C.J.S. United States s. 249 (Government bonds, generally).

http://www.treasurydirect.gov/indiv/research/history/history\_ebond.htm. (Last visited March 26, 2014) The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.

<sup>&</sup>lt;sup>18</sup> TREASURYDIRECT, Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes (Jan. 21, 2015), <u>http://www.treasurydirect.gov/foia/foia\_mud.htm.</u> (Last visited March 26, 2014)

<sup>&</sup>lt;sup>19</sup> TREASURYDIRECT, *Treasury Hunt*, at <u>http://www.treasurydirect.gov/indiv/tools/tools\_treasuryhunt.htm.</u> (Last visited March 26, 2014)

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than \$1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over \$100 million.<sup>20</sup>

Unlike many other types of securities, "savings bonds are not transferable and are payable only to the owners named on the bonds," except as specifically provided for in the federal regulations.<sup>21</sup> There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.<sup>22</sup> A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.<sup>23</sup>

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds' investment yield, transfer, redemption, and sales prices),<sup>24</sup> there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.<sup>25</sup>

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, Treasury issued a bulletin (referred to as the "Escheat Decision") explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.<sup>26</sup> In 2000, Treasury published online guidance consistent with the 1952 Escheat Decision.<sup>27</sup> Both articulations of Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that steps into the shoes of the *payor* (Treasury) merely as a custodian would not discharge Treasury of its contractual obligation and liability to bond holders.<sup>28</sup> On the other hand, the Treasury guidance appears to accept a state stepping into the shoes of the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

<sup>&</sup>lt;sup>20</sup> Department of Financial Services Agency Analysis, March 17, 2015. (On file with the Banking and Insurance Committee.) <sup>21</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>&</sup>lt;sup>22</sup> 31 C.F.R. ss. 315.20(b), 353.20(b).

<sup>&</sup>lt;sup>23</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>&</sup>lt;sup>24</sup> 31 U.S.C. s. 3105.

<sup>&</sup>lt;sup>25</sup> Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government's possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.

<sup>&</sup>lt;sup>26</sup> New Jersey v. Treasury, at 390-391.

<sup>&</sup>lt;sup>27</sup> TREASURYDIRECT, EE/E Savings Bonds FAQs,

http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res\_e\_bonds\_eefaq.htm (Last visited March 26, 2014)

<sup>&</sup>lt;sup>28</sup> In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

#### Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,<sup>29</sup> in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of \$861,908 from Treasury for those physical bonds (bonds in possession).<sup>30</sup>

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from Treasury, based on several constitutional grounds.<sup>31</sup> However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with Treasury's policy.<sup>32</sup>

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

#### **Unclaimed Absent Bonds**

Following its receipt of proceeds from Treasury for unclaimed physical bonds, Kansas next petitioned Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, Treasury did not provide other information necessary to search the database (such as the original owners' social security number) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against Treasury in the U.S. Court of Federal Claims,<sup>33</sup> seeking payment for \$151 million in unclaimed absent bonds and for records identifying the original owners.<sup>34</sup> This lawsuit is still pending. The parties recently completed

<sup>&</sup>lt;sup>29</sup> Kan. Stat. Ann. ss. 58-3979 and 3980 (2014).

<sup>&</sup>lt;sup>30</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <u>https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php</u>. (Last visited March 26, 2014)

<sup>&</sup>lt;sup>31</sup> The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

<sup>&</sup>lt;sup>32</sup> *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

<sup>&</sup>lt;sup>33</sup> Ron Estes, Treasurer of the State of Kansas v. United States, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. s. 1491.

<sup>&</sup>lt;sup>34</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <u>https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php</u>. (Last visited March 26, 2014)

supplemental briefing on Treasury's motion to dismiss, but a final ruling has not yet been issued.<sup>35</sup>

#### III. Effect of Proposed Changes:

The bill creates a judicial process for the DFS to file a civil action in a court of competent jurisdiction in Leon County, Florida to determine if title to unclaimed U.S. savings bonds issued to residents of the state shall escheat to the state, this is similar to what was done in the state of Kansas. If the DFS is successful in obtaining title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from Treasury.

The bill stipulates that U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for 5 years after the bond maturity date (typically 30-40 years). This 5-year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If the proceeds from such unclaimed bonds are received by the DFS, the bill requires all proceeds to be deposited in accordance with any other unclaimed property, which requires deposit of proceeds into the Unclaimed Property Trust Fund and allows the DFS to retain \$15 million to pay proceeds and administrative expenses, and requires deposit of remaining funds into the State School Fund.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication,<sup>36</sup> as it must do when parties cannot be found through reasonable and customary due diligence efforts. Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim with the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.<sup>37</sup>

#### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

<sup>&</sup>lt;sup>35</sup> Supplemental briefs in *Estes v. United States* (On file with the Banking and Insurance committee).

<sup>&</sup>lt;sup>36</sup> Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

<sup>&</sup>lt;sup>37</sup> If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

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:

Indeterminate given the pending litigation on the escheatment of such bonds to a state.

C. Government Sector Impact:

Indeterminate given the pending litigation on the escheatment of such bonds to a state.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 717.1382 and 717.1383.

#### IX. Additional Information:

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

None.

B. Amendments:

None.

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

Ву	Senator	Brandes
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1	22-00806A-15 20151138_
1	A bill to be entitled
2	An act relating to unclaimed property; creating s.
3	717.1382, F.S.; providing for escheatment to the state
4	of unclaimed United States savings bonds; providing
5	for judicial determination of escheatment; providing
6	procedures for challenging escheatment; providing for
7	deposit of the proceeds of escheatment; creating s.
8	717.1383, F.S.; providing that a person claiming a
9	United States savings bond may file a claim with the
10	Department of Financial Services; providing
11	limitations on such claim; providing applicability;
12	providing an effective date.
13	
14	Be It Enacted by the Legislature of the State of Florida:
15	
16	Section 1. Section 717.1382, Florida Statutes, is created
17	to read:
18	717.1382 United States savings bond; unclaimed property;
19	escheatment; procedure
20	(1) Notwithstanding any other provision of law, a United
21	States savings bond in the possession of the department or
22	registered to a person with a last known address in the state,
23	including a bond that is lost, stolen, or destroyed, is presumed
24	abandoned and unclaimed 5 years after the bond reaches maturity
25	and no longer earns interest and shall be reported and remitted
26	to the department by the financial institution or other holder
27	in accordance with ss. 717.117(1) and (3) and 717.119, if the
28	department is not in possession of the bond.
29	(2) (a) After a United States savings bond is abandoned and
	Page 1 of 3

 $\textbf{CODING:} \text{ Words } \frac{}{\text{stricken}} \text{ are deletions; words } \underline{\text{underlined}} \text{ are additions.}$ 

	22-00806A-15 20151138_
30	unclaimed in accordance with subsection (1), the department may
31	commence a civil action in a court of competent jurisdiction in
32	Leon County for a determination that the bond shall escheat to
33	the state. Upon determination of escheatment, all property
34	rights to the bond or proceeds from the bond, including all
35	rights, powers, and privileges of survivorship of an owner,
36	coowner, or beneficiary, shall vest solely in the state.
37	(b) Service of process by publication may be made on a
38	party in a civil action pursuant to this section. A notice of
39	action shall state the name of any known owner of the bond, the
40	nature of the action or proceeding in short and simple terms,
41	the name of the court in which the action or proceeding is
42	instituted, and an abbreviated title of the case.
43	(c) The notice of action shall require a person claiming an
44	interest in the bond to file a written defense with the clerk of
45	the court and serve a copy of the defense by the date fixed in
46	the notice. The date must not be less than 28 or more than 60
47	days after the first publication of the notice.
48	(d) The notice of action shall be published once a week for
49	4 consecutive weeks in a newspaper of general circulation
50	published in Leon County. Proof of publication shall be placed
51	in the court file.
52	(e)1. If no person files a claim with the court for the
53	bond and if the department has substantially complied with the
54	provisions of this section, the court shall enter a default
55	judgment that the bond, or proceeds from such bond, has
56	escheated to the state.
57	2. If a person files a claim for one or more bonds and,
58	after notice and hearing, the court determines that the claimant
I	
	Page 2 of 3
	CODING: Words stricken are deletions; words <u>underlined</u> are additions.

22-00806A-15 20151138 59 is not entitled to the bonds claimed by such claimant, the court 60 shall enter a judgment that such bonds, or proceeds from such 61 bonds, have escheated to the state. 62 3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant 63 is entitled to the bonds claimed by such claimant, the court 64 65 shall enter a judgment in favor of the claimant. 66 (3) The department may redeem a United States savings bond 67 escheated to the state pursuant to this section or, in the event 68 that the department is not in possession of the bond, seek to 69 obtain the proceeds from such bond. Proceeds received by the 70 department shall be deposited in accordance with s. 717.123. 71 Section 2. Section 717.1383, Florida Statutes, is created 72 to read: 73 717.1383 United States savings bond; claim for bond.-A 74 person claiming a United States savings bond escheated to the 75 state under s. 717.1382, or for the proceeds from such bond, may 76 file a claim with the department. The department may approve the 77 claim if the person is able to provide sufficient proof of the 78 validity of the person's claim. Once a bond, or the proceeds 79 from such bond, are remitted to a claimant, no action thereafter 80 may be maintained by any other person against the department, 81 the state, or any officer thereof, for or on account of such 82 funds. The person's sole remedy, if any, shall be against the 83 claimant who received the bond or the proceeds from such bond. 84 Section 3. This act applies to any United States savings 85 bond that reaches maturity on, before, or after the effective 86 date of this act. 87 Section 4. This act shall take effect July 1, 2015. Page 3 of 3

# 1138



The Florida Senate

## **Committee Agenda Request**

То:	Senator Lizbeth Benacquisto, Chair Committee on Banking and Insurance			
Subject:	Committee Agenda Request			

**Date:** February 27, 2015

I respectfully request that Senate Bill #1138, relating to Unclaimed Property, be placed on the:

committee agenda at your earliest possible convenience.



next committee agenda.

y Phy

Senator Jeff Brandes Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

	Prepared By	: The Pro	fessional Staff of	the Committee on	Banking and Insurance
BILL:	SB 1088				
INTRODUCER:	R: Senator Brandes				
SUBJECT:	Civil Remed	ies Aga	inst Insurers		
DATE:	March 20, 20	015	REVISED:		
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION
. Billmeier		Knuds	on	BI	Pre-meeting
2				JU	
3.				RC	

#### I. Summary:

SB 1088 provides a 45 day window in which an insurer can act to avoid liability for failing to attempt to settle a claim in good faith. A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage. A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant.

This bill provides that before a third-party bad faith action for failure to settle a liability insurance claim may be filed, the claimant must provide the insurer a written notice of loss. To avoid bad faith liability for failing to attempt to settle a claim in good faith, the insurer must comply with a request for a disclosure statement and, within 45 days after receipt of the written notice of loss, offer to pay the claimant the lesser of the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss or the limits of liability coverage applicable to the claimant's insurance claim. If the insurer complies with these conditions, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

#### II. Present Situation:

#### **Obligations of Insurer to Insured**

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court

against a third party with respect to a claim within the scope of the insurance contract.<sup>1</sup> The Florida Supreme Court explained the difference between indemnity policies and liability policies:

Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.<sup>2</sup>

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.<sup>3</sup> As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.<sup>4</sup>

#### **Common Law and Statutory Bad Faith**

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.<sup>5</sup> The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.<sup>6</sup> This is known as a third-party claim of bad faith.

At common law, the insured cannot raise a bad faith claim against the insurer outside of the third-party claim context.<sup>7</sup> In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155, F.S., provides that any party may bring a bad faith civil action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or

 $^{4}$  Id.

<sup>&</sup>lt;sup>1</sup> See 16 Williston on Contracts s. 49:103 (4<sup>th</sup> Ed.).

<sup>&</sup>lt;sup>2</sup> See State Farm Mutual Automobile Insurance Company v. Laforet, 658 So.2d 55, 58 (Fla. 1995).

<sup>&</sup>lt;sup>3</sup> See State Farm Mutual Automobile Insurance Company v. Laforet, 658 So.2d 55, 58 (Fla. 1995).

<sup>&</sup>lt;sup>5</sup> See Auto. Mut. Indem. Co. v. Shaw, 184 So. 852 (Fla. 1938).

<sup>&</sup>lt;sup>6</sup> See Thompson v. Commercial Union Insurance Company, 250 So.2d 259 (Fla. 1971).

<sup>&</sup>lt;sup>7</sup> *See Laforet*, 658 So.2d at 58-59.

• Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.<sup>8</sup>

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation.<sup>9</sup> The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.<sup>10</sup> Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.<sup>11</sup> Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.<sup>12</sup>

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.<sup>13</sup> If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.<sup>14</sup> Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.<sup>15</sup>

#### **Third-Party Claims of Bad Faith**

A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.<sup>16</sup> The Florida Supreme Court has described an insurer's duty to its insureds:

An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable

<sup>&</sup>lt;sup>8</sup> See s. 624.155(1)(b)1.-3., F.S.

<sup>&</sup>lt;sup>9</sup> See s. 624.155(3)(a), F.S. The notice must be on a form approved by the Department of Financial Services. If the Department returns the notice for lack of specificity, the day period does not begin until a proper notice is filed. The notice form can be found at <u>https://apps.fldfs.com/CivilRemedy/</u> (last accessed on March 29, 2014).

<sup>&</sup>lt;sup>10</sup> See s. 624.155(3)(d), F.S.

<sup>&</sup>lt;sup>11</sup> See Talat Emterprises vv. Aetna Casualty and Surety Company, 753 So.2d 1278, 1284 (Fla. 2000).

<sup>&</sup>lt;sup>12</sup> See Macola v. Government Employees Insurance Company, 953 So.2d 451 (Fla. 2006).

 <sup>&</sup>lt;sup>13</sup> See Powell v. Prudential Property and Casualty Insurance Company, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
 <sup>14</sup> Id.

<sup>&</sup>lt;sup>15</sup> See DeLaune v. Liberty Mutual Insurance Company, 314 So.2d 601,603 (Fla. 4th DCA 1975).

<sup>&</sup>lt;sup>16</sup> See Opperman v. Nationwide Mutual Fire Insurance Company, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Because the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith. The question of failure to act in good faith with due regard for the interests of the insured is for the jury.<sup>17</sup>

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.<sup>18</sup> Whether an insurer acted in bad faith is determined by the totality of the circumstances:

In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.<sup>19</sup>

The focus in a bad faith case is on the conduct of the insurer but the conduct of the claimant is relevant to whether there was a realistic opportunity for settlement.<sup>20</sup> A court, for example, will look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that "[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle limiting acceptance to 10 days made it virtually impossible to make an intelligent acceptance."<sup>21</sup> Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

In *Berges*, dissenting justices expressed concern that there "is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met."<sup>22</sup> It was argued that it is a "common practice for a party contemplating litigation to submit a settlement offer that remains outstanding for only a finite period and that a person injured by a policyholder may set any deadlines he desires—even an

 <sup>&</sup>lt;sup>17</sup> Boston Old Colony Insurance Company v. Gutierrez, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).
 <sup>18</sup> See Berges v. Infinity Insurance Company, 896 So.2d 665, 677 (Fla. 2005)(explaining that "the focus in a bad faith case is

not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured"). <sup>19</sup> See Berges, 896 So.2d at 680 (internal quotations and citations omitted).

<sup>&</sup>lt;sup>20</sup> See Barry v. GEICO General Insurance Company, 938 So.2d 613, 618 (Fla. 4th DCA 2006).

<sup>&</sup>lt;sup>21</sup> *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).

<sup>&</sup>lt;sup>22</sup> Berges, 896 So.2d at 685 (Wells, J., dissenting).

arbitrary or unreasonable one."<sup>23</sup> Justice Wells concluded that set time periods in which all insurers must make decisions on claims and issue payments are needed.<sup>24</sup>

The majority in *Berges* held that courts must look to the totality of the circumstances. "The question of bad faith in this case extends to [the insurer's] entire conduct in the handling of the claim, including the acts or omissions [of the insurer] in failing to ensure payment of the policy limits within the time demands."<sup>25</sup> Another court argued that setting a "minimum amount of time before any finding of bad faith is possible runs counter to the analysis of ordinary care and prudent business practice... Juries are empaneled to apply the appropriate criteria to the particular facts of a given situation and to decide whether the insurer acted prudently."<sup>26</sup>

#### **Disclosure Statements**

Section 627.4137, F.S., requires an insurer to provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, must disclose the name and coverage of each known insurer to the claimant and shall forward such request for information on all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

## III. Effect of Proposed Changes:

This bill provides that, as a condition precedent to a third-party statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or anyone on behalf of the insured or the claimant must provide the insurer a written notice of loss. This bill does not change the requirements for first-party bad faith claims.

If the insurer complies with a request for a disclosure statement as described in s. 627.4137, F.S., and, within 45 days after receipt of the written notice of loss, offers to pay the claimant the lesser of the limits of liability coverage applicable to the claimant's insurance claim or the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability

<sup>&</sup>lt;sup>23</sup> Id. at 692 (Cantero, J., dissenting).

<sup>&</sup>lt;sup>24</sup> Id. at 686 (Wells, J., dissenting).

<sup>&</sup>lt;sup>25</sup> Berges, 896 So.2d at 627.

<sup>&</sup>lt;sup>26</sup> Snowden ex. rel. Estate of Snowden v. Lumbermans Mutual Casualty Company, 358 F.Supp.2d 1125, 1129 (N.D. Fla. 2003).

arising from the incident reported in the written notice loss, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

Current law provides that bad faith is determined based on the totality of the circumstances. This bill would provide that an insurer is not liable for bad faith failure to settle if the insurer complies with the provisions of this bill.

This bill is effective 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 private sector fiscal impact of this bill is indeterminate. This bill will create a 45 day window for insurers to avoid bad faith claims.

#### C. Government Sector Impact:

The government sector fiscal impact is indeterminate. This bill eliminates the requirement that claimants file a civil remedy notice in third-party bad faith cases.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

### VIII. Statutes Affected:

This bill substantially amends section 624.155 of the Florida Statutes.

This bill reenacts section 766.1185 of the Florida Statutes.

#### IX. Additional Information:

## A. Committee Substitute – Statement of Changes:

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

None.

#### B. Amendments:

None.

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

By Senator Brandes

22-00742-15 20151088 1 A bill to be entitled 2 An act relating to civil remedies against insurers; amending s. 624.155, F.S.; requiring an insured, a claimant, or a person acting on behalf of an insured's or a claimant's behalf, to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common law action for a thirdparty bad faith action for failure to settle an ç insurance claim; providing that an insurer is not 10 liable for such claim if certain conditions are met; 11 reenacting s. 766.1185(3), F.S., relating to bad faith 12 actions, to incorporate the amendment made to s. 13 624.155, F.S., in a reference thereto; providing an 14 effective date. 15 16 Be It Enacted by the Legislature of the State of Florida: 17 18 Section 1. Paragraph (a) of subsection (3) of section 19 624.155, Florida Statutes, is amended, and subsection (10) is 20 added to that section, to read: 21 624.155 Civil remedy.-22 (3) (a) Except as provided in subsection (10), as a 23 condition precedent to bringing an action under this section, 24 the department and the authorized insurer must have been given 25 60 days' written notice of the violation. If the department 26 returns a notice for lack of specificity, the 60-day time period 27 does shall not begin until a proper notice is filed. 2.8 (10) As a condition precedent to bringing a third-party 29 statutory or common-law bad faith action for failure to settle a Page 1 of 3

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

22-00742-15 20151088 30 liability insurance claim, the insured, the claimant, or any 31 person on behalf of the insured or the claimant must have 32 provided the insurer with a written notice of loss. An insurer does not violate the duty to attempt in good faith to settle the 33 34 claim and is not liable for a bad faith failure to settle under 35 this section or common law if the insurer: 36 (a) Complies with a request for a disclosure statement as 37 described in s. 627.4137. 38 (b) Offers, within 45 days after receipt of the written 39 notice of loss, to pay the claimant the lesser of the amount 40 that the claimant is willing to accept or the limits of liability coverage applicable to the claimant's insurance claim 41 in exchange for a full release of the insured from any liability 42 43 arising from the incident reported in the written notice of 44 loss. 45 Section 2. For the purpose of incorporating the amendment made by this act to section 624.155, Florida Statutes, in a 46 47 reference thereto, subsection (3) of section 766.1185, Florida 48 Statutes, is reenacted to read: 49 766.1185 Bad faith actions.-In all actions for bad faith against a medical malpractice insurer relating to professional 50 liability insurance coverage for medical negligence, and in 51 52 determining whether the insurer could and should have settled 53 the claim within the policy limits had it acted fairly and 54 honestly towards its insured with due regard for her or his 55 interest, whether under statute or common law: 56 (3) The provisions of s. 624.155 shall be applicable in all 57 cases brought pursuant to that section unless specifically controlled by this section. 58

#### Page 2 of 3

Florida Senate - 2015	SB 1088
22-00742-15 Section 3. This act shall take effect	20151088
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Page 3 of 3	

Florida Senate - 2015 Bill No. SB 516

	773678
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LEGISLATIVE ACTION

Senate

House

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

7

8

9

1

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

627.42392 Coverage for emergency services.-

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

(a) "Coverage for emergency services" means the coverage

10 provided by a health insurance policy for emergency services.

Florida Senate - 2015 Bill No. SB 516

773678

11	(b) "Emergency services" means emergency services and care,
12	as defined in s. 641.47, which are provided within the emergency
13	department of a hospital with respect to an emergency medical
14	condition as defined in s. 641.47.
15	(c) "Participating provider" means a preferred provider as
16	defined in s. 627.6471 or an exclusive provider as defined in s.
17	<u>627.6472.</u>
18	(2) Coverage for emergency services:
19	(a) May not require a prior authorization determination.
20	(b) Must be provided regardless of whether the service is
21	furnished by a participating or nonparticipating provider.
22	(c) May impose a requirement for a coinsurance amount, a
23	copayment, or a limitation of benefits for a nonparticipating
24	provider only if the same requirement applies to a participating
25	provider.
26	(3) An insurer must reimburse a nonparticipating provider
27	of emergency services the greater of:
28	(a) The amount negotiated with a nonparticipating provider,
29	reduced only by a coinsurance amount or copayment that applies
30	to a participating provider.
31	(b) The usual and customary reimbursement amount received
32	by a participating provider for the same service in the same
33	geographic area of this state, reduced only by a coinsurance
34	amount or copayment that applies to a participating provider.
35	Evidence of the usual and customary reimbursement amount may
36	include the average amount reimbursed to the nonparticipating
37	provider for the same service in the same geographic region of
38	this state from other insurers with which such provider
39	participates.

Florida Senate - 2015 Bill No. SB 516

773678

40	(c) The amount that would be paid under Medicare for the
41	service, reduced only by a coinsurance amount or copayment that
42	applies to a participating provider.
43	
44	A nonparticipating provider of emergency services may be
45	reimbursed only up to the amount of reimbursement required to be
46	paid by the insurer under this subsection and may not collect or
47	attempt to collect, directly or indirectly, from the insured or
48	insurer any excess amount.
49	(4) A provider of emergency services or a representative of
50	such provider, regardless of whether the provider is a
51	participating or nonparticipating provider, may not collect or
52	attempt to collect money from, maintain any action at law
53	against, or report to a credit agency an insured for payment of
54	services for which the insurer is liable, if the provider in
55	good faith knows or should know that the insurer is liable. This
56	prohibition applies during the pendency of a claim for payment
57	made by the provider to the insurer for payment of the services
58	and any legal proceeding or dispute resolution process to
59	determine whether the insurer is liable for the services if the
60	provider is informed that such proceeding is taking place. It is
61	presumed that a provider does not know and should not know that
62	an insurer is liable unless:
63	(a) The provider is informed by the insurer that the
64	insurer accepts liability;
65	(b) A court of competent jurisdiction determines that the
66	insurer is liable; or
67	(c) The office or Agency for Health Care Administration
68	makes a final determination that the insurer is required to pay

597-02991-15


70(5) An insurer, the office, and the department shall report71any suspected violation of this section by a participating or72nonparticipating provider to the Department of Health and by a73facility to the Agency for Health Care Administration. Based on74the report, the Department of Health or the Agency for Health75Care Administration shall take action as authorized by law.76Section 2. This act shall take effect October 1, 2015.77	69	for such services.
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COMMITTEE AMENDMENT

Florida Senate - 2015 Bill No. SB 516



98 collect money from, maintain an action at law against, 99 or report to a credit agency an insured if the 100 provider knows or should know that the insured is liable; providing other circumstances under which such 101 102 prohibition applies; requiring an insurer, the Office 103 of Insurance Regulation, and the Department of 104 Financial Services to report suspected violations of 105 the act by a provider to the Department of Health or 106 by a facility to the Agency for Healthcare 107 Administration; requiring the Department of Health and 108 Agency for Healthcare Administration to take action as 109 authorized by law based on the reports; providing an 110 effective date.

Page 5 of 5

(		_	S AND FIS		ST STATEMENT s of the latest date listed below.)
	Prepared By:	The Profe	essional Staff of	the Committee on	Banking and Insurance
BILL:	SB 516				
INTRODUCER:	Senators Bea	n and Ga	rcia		
SUBJECT:	Health Insura	ance Cov	erage for Em	ergency Services	
DATE:	March 30, 20	015	REVISED:		
ANAL	YST	STAFF	DIRECTOR	REFERENCE	ACTION
. Johnson		Knudson		BI	Pre-meeting
•				HP	
•				AP	

# I. Summary:

SB 516 establishes a payment schedule for emergency services and care provided by out-ofnetwork or non-participating providers to insureds of a preferred provider organization (PPO) or an exclusive provider organization (EPO) and prohibits those providers from collecting or attempting to collect any additional amount or balance billing. Plans must reimburse nonparticipating providers the greater of the amount negotiated with the provider; the amount generally used by the insurer to determine the reimbursement amount (such as usual and customary), or the Medicare rate.

SB 516 requires PPOs and EPOs to provide coverage for emergency care without prior authorization and regardless of whether the provider is in the network. Applicable cost sharing must be the same for network or non-network providers for these services. This is consistent with federal law. The bill defines emergency services and care to include emergency medical transportation services.

Currently, if a health maintenance organization is liable for services rendered to a subscriber by a provider, regardless if the provider is a contracted provider, the HMO is liable for payment of fees to the provider and the subscriber is not liable for payment to the provider. However, there is not a similar statutory prohibition regarding EPOs and PPOs.

#### II. Present Situation:

#### Access to Emergency Services and Care

#### Hospital Care

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. The EMTALA imposes specific obligations on hospitals participating in the Medicare program which offer

emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient, or if the patient requests, the hospital must transfer the patient to another appropriate facility. A hospital that violates EMTALA is subject to civil penalty; termination of its Medicare agreement; or civil suit by a patient who suffers personal harm. The EMTALA does not provide for civil action against a hospital's physicians.

Florida law imposes a similar duty.<sup>1</sup> The law requires the Agency for Health Care Administration (AHCA) to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care. Hospitals must provide all listed services when requested, whether by a patient, an emergency medical services provider, or another hospital, regardless of the patient's ability to pay. If the hospital is at capacity or does not provide the requested emergency service, the hospital may transfer the patient to the nearest facility with appropriate available services. Each hospital must ensure the services listed can be provided at all times either directly or through another hospital. A hospital is expressly prohibited from basing treatment and care on a patient's insurance status, economic status, or ability to pay. A hospital that violates Florida's access to care statute is subject to administrative penalties; denial, revocation, or suspension of its license; or civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to civil suit by a patient who suffers personal harm; and may be found guilty of a second degree misdemeanor for a knowing or intentional violation. Physicians who violate the act are also subject to disciplinary action against their license; or civil action by another hospital or physician suffering financial loss.

#### **Prehospital Care**

The Emergency Medical Transportation Services Act<sup>2</sup> similarly regulates the services provided by emergency medical technicians, paramedics, and air and ground ambulances. The act establishes minimum standards for emergency medical services personnel, vehicles, services, and medical direction, and provides for monitoring of the quality of patient care. The standards are administered and enforced by the Department of Health. Ambulance services operate pursuant to a license issued by the department and a certificate of public convenience and necessity issued from each county in which the provider operates.<sup>3</sup> A licensee may not deny a person needed prehospital treatment or transport for an emergency medical condition.<sup>4</sup> A violation may result in denial, suspension, or revocation of a license; reprimand; or fine.<sup>5</sup>

In general, the medical director of an ambulance provider is responsible for issuing standing orders and protocols to the ambulance service provider to ensure that the patient is transported to a facility that offers a type and level of care appropriate to the patient's medical condition, with

<sup>&</sup>lt;sup>1</sup> See section 395.1041, F.S.

<sup>&</sup>lt;sup>2</sup> Part III of chapter 401, F.S. (ss. 401.2101 – 401.465, F.S.)

<sup>&</sup>lt;sup>3</sup> Section 401.25(2)(d), F.S.

<sup>&</sup>lt;sup>4</sup> Section 401.45, F.S.

<sup>&</sup>lt;sup>5</sup> Section 401.411, F.S.

separate protocols required for stroke patients.<sup>6</sup> An exception to the general requirement, trauma alerts patients are required by statute to be transported to an approved trauma center.<sup>7</sup>

#### Federal Patient Protection and Affordable Care Act (PPACA)

On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA. The PPACA provided fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, and other requirements.

#### Essential Health Benefits

The PPACA requires coverage offered in the individual and small group markets to provide the following categories of services<sup>8</sup> (essential health benefits):

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance abuse disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; and
- Pediatric services, including oral and vision care.<sup>9</sup>

# Emergency Room Coverage<sup>10</sup>

On June 28, 2010, the Department of Health and Human Services issued final regulations relating to coverage for emergency services. Such coverage for emergency services is not subject to prior authorization, regardless of whether the provider is a network or participating provider. Services provided by out-of-network providers must be provided with cost sharing that is no greater than that which would apply for a network provider and without regard to any other restriction other than an exclusion or coordination of benefits, an affiliation or waiting period,

<sup>&</sup>lt;sup>6</sup> Section 395.3041(3), F.S.

<sup>&</sup>lt;sup>7</sup> Section 395.4045, F.S.

<sup>&</sup>lt;sup>8</sup> 42 U.S.C. 300gg-6.

<sup>&</sup>lt;sup>9</sup>These provisions do not apply to grandfathered plans, as defined in 42 U.SC. s. 18011. Pursuant to s. 627.402, F.S., a "grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011, subject to the conditions for maintaining status as a grandfathered health plan specified in regulations adopted by the federal Department of Health and Human Services in 45 C.F.R. s. 147.140. "A non-grandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6561(5)(b)-(e), F.S.

<sup>&</sup>lt;sup>10</sup> 42 U.S.C. s. 300gg-19A.

and cost-sharing. Regulations specify minimum reimbursement that plans must pay a nonnetwork provider for emergency services.<sup>11</sup> Plans are required to pay out-of-network providers a reasonable rate, which is defined to be the greatest of the following:

- The amount negotiated with in-network providers for the emergency service furnished (if the plan has more than one negotiated amount with providers for a particular service, the basis for payment would be the median amount);
- The amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services (such as the usual, customary, and reasonable charges) but substituting the in-network cost-sharing provisions for the out-of-network cost-sharing; or
- The amount that would be paid under Medicare for the emergency services.

Subsequently, on September 20, 2010, the Centers for Medicare and Medicaid Services issued guidance relating to coverage for emergency services.<sup>12</sup> If a state law prohibits balance billing, plans and issuers are not required to satisfy the payment minimums set forth in the regulations. Similarly, if a plan or issuer is contractually responsible for any amounts balance billed by an out-of-network emergency services provider, the plan or issuer is not required to satisfy the payment minimums. In both situations, however, patients must be provided with adequate and prominent notice of their lack of financial responsibility with respect to such amounts, to prevent inadvertent payment by the patient. Nonetheless, even if state law prohibits balance billing, or if the plan or issuer is contractually responsible for amounts balance billed, the plan or issuer may not impose any copayment or coinsurance requirement that is higher than the copayment or coinsurance requirement that is higher than the copayment or coinsurance requirement that set in network.<sup>13</sup>

# **Office of Insurance Regulation**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.<sup>14</sup> The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of chapter 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA pursuant to part III of chapter 641, F.S.<sup>15</sup>

Generally, an HMO member must use the HMO's network of health care providers in order for the HMO to provide payment of benefits. Unlike other health plan types, care is covered only if a subscriber sees a provider within the HMO's network, except in the case of an emergency. Florida law requires HMOs to provide coverage without prior authorization for emergency care, based on a determination by a hospital physician or other personnel, provided by either a contract or non-contract provider.<sup>16</sup> If a HMO is liable for services rendered to a subscriber by a provider, contracted or non-contracted, the HMO is liable for payment of fees to the provider and the

<sup>&</sup>lt;sup>11</sup> 45 C.F.R. s. 147.138(b).

<sup>&</sup>lt;sup>12</sup> See http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\_implementation\_faqs.html#Out-Of-Network Emergency Services (last visited March 28, 2015).

<sup>&</sup>lt;sup>13</sup> Id.

<sup>&</sup>lt;sup>14</sup> Section 20.121(3)(a), F.S.

<sup>&</sup>lt;sup>15</sup> Sections 641.21(1) and 641.48, F.S.

<sup>&</sup>lt;sup>16</sup> Section 641.513, F.S.

subscriber is not liable for payment of fees to the provider.<sup>17</sup> The use of a health care provider outside the HMO's network, except for emergency care, generally results in the HMO limiting or denying the payment of benefits for non-network services rendered to the member.<sup>18</sup> Further, a provider, regardless of whether contracted or not with the HMO, may not collect or attempt to collect money from a subscriber of an HMO for payment of services for which the HMO is liable, if the provider in good faith knows or should know that the HMO is liable.<sup>19</sup>

A preferred provider organization (PPO) or network is a group of licensed health care providers the insurer has directly or indirectly contracted for alternative or reduced rates of payment.<sup>20</sup> An exclusive provider is a provider of health care, or a group of providers of health care, that has entered into a written agreement with an insurer to provide benefits under a health insurance policy.<sup>21</sup> In an exclusive provider organization (EPO), an insurance company contracts with hospitals, physicians, and other medical facilities. Insureds of an EPO must use the contracted hospitals or providers to receive covered benefits from this type of plan. Providers within an EPO or PPO network are prohibited from billing or otherwise seeking reimbursement from or recourse against any policyholder. Insurers issuing exclusive provider contracts must cover services provided by out-of-network providers if the services are for symptoms requiring emergency care and a network provider is not reasonably accessible.

Insurers and HMOs may require higher copayments for urgent care or primary care provided in an emergency department and higher copayments for use of out-of-network emergency departments. <sup>22</sup> The HMOs must pay non-contract providers specified minimum reimbursement for emergency services.<sup>23</sup>

#### **Balance Billing**

At some point, many insureds will end up in an emergency room of a hospital. The hospital may be a network provider; however, the physicians practicing at that network hospital may or may not be participating in the same network. In many instances, physicians practicing within a hospital are not employees of the hospital and do not participate in the same insurance plans or HMOs as the hospital.

Generally, insureds of PPO and EPO plans may access specialists within a network without a prior referral or authorization from the insurer. However, if an insured obtains services from an out-of-network provider, and that provider does not reach an agreement with the insurer on a reimbursement amount for the service, the provider can balance bill the patient for the difference between the billed charges of the provider and the amount the insurer paid on the claim. There is

<sup>&</sup>lt;sup>17</sup> Section 641.3154(1), F.S.

<sup>&</sup>lt;sup>18</sup> Section 641.31(38), F.S., authorizes an HMO to offer a point-of-service benefit. The benefit, offered pursuant to a rider, enables a subscriber to select, at the time of service and without referral, a noncontract provider for a covered service. The HMO may require the subscriber to pay a reasonable co-payment for each visit for services provided by a noncontract provider.

<sup>&</sup>lt;sup>19</sup> Section 641.3154(4), F.S.

<sup>&</sup>lt;sup>20</sup> Section 627.6471, F.S.

<sup>&</sup>lt;sup>21</sup> Section 627.6472, F.S.

<sup>&</sup>lt;sup>22</sup> Sections 627.6405 and 641.31(12), F.S.

<sup>&</sup>lt;sup>23</sup> Section 641.513, F.S.

no prohibition against a non-network provider balance billing an insured covered by a health insurance policy under chapter 627, F.S.

If an HMO is liable for services rendered, the provider may not balance bill for covered services provided to a subscriber whether or not a contract exists between the provider and the HMO.<sup>24</sup> However, the statute further qualifies the prohibition by saying that an HMO is liable for services rendered if the provider obtains authorization from the HMO prior to providing services. Thus, a provider can balance bill if authorization is denied or if the provider does not seek prior authorization.<sup>25</sup>

#### Statewide Provider and Health Plan Claim Dispute Resolution Program

The Statewide Provider and Health Plan Claim Dispute Resolution Program was established within the Agency for Health Care Administration (agency) by the 2000 Florida Legislature to provide assistance to contracted and non-network providers and HMOs, insurers, prepaid health clinics, EPOs, and Medicaid prepaid health plans for resolution of claim disputes that are not resolved by the provider and the plan.<sup>26</sup>

Section 408.7057, F.S., requires the agency to contract with a resolution organization to timely review and consider claim disputes and to submit its recommendation to the agency. The agency's responsibility is to issue a final order adopting the recommendation of the resolution organization. The agency entered into a contract with MAXIMUS to review claim disputes and MAXIMUS has been reviewing claim disputes since May 1, 2001. The cost of the program is borne by users of the dispute program. The entity that does not prevail in the agency's final order must pay the review cost. In cases where both parties prevail in part, the review cost must be shared. The review costs are determined by MAXIMUS and depend largely on the complexity of the cases submitted.

*Eligible Claims.*<sup>27</sup> The following claim disputes can be submitted by physicians, hospitals, institutions, other licensed health care providers, HMOs, PHCs, EPOs, PHPs, major medical expense health insurance policies offered by a group or an individual health insurer, and PPOs:

- Claim disputes for services rendered after October 1, 2000.
- Claim disputes related to payment amounts only (provider disputes payment amounts received or HMO disputes payback amounts).
- Hospitals and physicians are required to aggregate claims (for one or more patients for same insurer) by type of service to meet certain thresholds:

- Hospital Inpatient Claims (contracted providers)	\$25,000
- Hospital Inpatient Claims (non-networkd providers)	\$10,000

- Hospital Outpatient Claims (contracted providers) \$10,000

<sup>&</sup>lt;sup>24</sup>Sections 641.315(1) and 641.3154(1), F.S.

<sup>&</sup>lt;sup>25</sup> See also FLORIDA MEDICAL ASSOCIATION, Balance Billing, <u>http://www.flmedical.org/LRC\_Balance\_billing.aspx</u> (last visited March 28, 2015).

<sup>&</sup>lt;sup>26</sup> Chapter 2000-252, Laws of Florida.

<sup>&</sup>lt;sup>27</sup> Section 408.7057, F.S., requires the agency to submit an annual report to the Governor and the Legislature on the status of the program. *See* Agency for Health Care Administration, Statewide Provider and Health Plan Claim Dispute Resolution Program, Annual Report, February 2015 (on file with Banking and Insurance Committee).

- Hospital Outpatient Claims (non-contracted)	\$ 3,000
- Physicians	\$ 500
- Rural Hospitals	None
- Other Providers	None

The following types of claims are ineligible for the program:

- Claims for less than minimum amounts listed above for each type of service.
- Claim disputes that are the basis for an action pending in State/Federal court.
- Claim disputes that are subject to an internal binding managed care organization's resolution process for contracts entered into prior to October 1, 2000.
- Claims solely related to late payment and/or late processing.
- Interest payment disputes.
- Medicare claim disputes that are part of Medicare managed care internal grievance or that qualify for Medicare reconsideration appeal.
- Medicaid claim disputes that are part of a Medicaid fair hearing.
- Claims related to health plans not regulated by the state of Florida.
- Claims filed more than 12 months after final determination by health plan or provider.

*Claim Disputes Caseload.* During 2014, only 25 claim disputes were filed for consideration. Nine of the 25 claim disputes were accepted as eligible claims for review. At year end, one case was settled, four cases were under review, and the plans opted out in the remaining four cases.

# III. Effect of Proposed Changes:

Section 1 creates section 627.64194, F.S., relating to coverage for emergency services.

The section defines the term, "coverage for emergency services," to mean coverage provided by a health insurance policy for "emergency services and care" as that term is defined in s. 641.47, F.S., or emergency medical transportation services, which include transport by an ambulance, emergency medical services vehicle, or air ambulance, as those terms are defined in s. 401.23, F.S. The bill defines the term, "participating provider" to mean a "preferred provider," as defined in s. 627.6471, F.S., and an "exclusive provider," as defined in s. 627.6472, F.S.

The bill provides that coverage for emergency services:

- May not require a prior authorization determination.
- Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider.
- May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

The bill establishes a payment methodology for emergency services and care provided by noncontract providers to insureds of a PPO or EPO plan and prohibits those providers from collecting or attempting to collect any additional amount. The bill requires that an insurer must reimburse a nonparticipating provider the greater of the following:

- The amount negotiated with a participating provider or a nonparticipating provider for the service, excluding any coinsurance amount or copayment imposed by a participating provider on the participant, beneficiary, or enrollee.
- The amount calculated under the methodology generally used by the insurer to determine the reimbursement amount to a nonparticipating provider for the service, such as the usual, customary, and reasonable amount, reduced only by a coinsurance amount or copayment that applies to a participating provider.
- The amount that would be paid under Medicare for the service, reduced only by a coinsurance amount or copayment that applies to a participating provider.

The bill prohibits these providers from balance billing, thereby applying the same prohibition to PPOs and EPOs as currently applies to HMOs.

Section 2 provides that the bill takes effect October 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:

Patients covered by an EPO or PPO will not be subject to balance billing for emergency services provided by non-network providers.

Non-network providers rendering emergency services to a patient insured under a PPO or EPO may experience a reduction in revenues due to the prohibition on balance billing.

C. Government Sector Impact:

None.

# VI. Technical Deficiencies:

None.

# VII. Related Issues:

None.

# VIII. Statutes Affected:

This bill creates section 627.64194 of the Florida Statutes.

# IX. Additional Information:

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

None.

#### B. Amendments:

None.

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

SB 516

By Senators Bean and Garcia

4-00341C-15 2015516 1 A bill to be entitled 2 An act relating to health insurance coverage for emergency services; creating s. 627.64194, F.S.; 3 defining terms; prohibiting coverage for emergency services from requiring a prior authorization determination; requiring such coverage to be provided regardless of whether the service is furnished by a participating or nonparticipating provider; specifying coinsurance, copayment, limitation of benefits, and ç 10 reimbursement requirements for nonparticipating 11 providers; prohibiting a nonparticipating provider 12 from collecting or attempting to collect an amount in 13 excess of specified amounts; providing an effective 14 date. 15 16 Be It Enacted by the Legislature of the State of Florida: 17 18 Section 1. Section 627.64194, Florida Statutes, is created 19 to read: 20 627.64194 Coverage for emergency services.-21 (1) As used in this section, the term: 22 (a) "Coverage for emergency services" means the coverage 23 provided by a health insurance policy for "emergency services 24 and care" as that term is defined in s. 641.47 or emergency 25 medical transportation services, which include transport by an 26 ambulance, emergency medical services vehicle, or air ambulance, 27 as those terms are defined in s. 401.23. 28 (b) "Participating provider" means a "preferred provider" 29 as defined in s. 627.6471 and an "exclusive provider" as defined Page 1 of 2

<ul> <li>4-00341C-15 2015516</li></ul>		
<ul> <li>(2) Coverage for emergency services: <ul> <li>(a) May not require a prior authorization determination.</li> <li>(b) Must be provided regardless of whether the service is</li> <li>furnished by a participating or nonparticipating provider.</li> <li>(c) May impose a coinsurance amount, copayment, or</li> <li>limitation of benefits requirement for a nonparticipating</li> <li>provider only if the same requirement applies to a participating</li> <li>provider.</li> <li>(d) Must reimburse a nonparticipating provider the greater</li> <li>of the following: <ul> <li>1. The amount negotiated with a participating provider or a</li> <li>nonparticipating provider for the service, excluding any</li> <li>coinsurance amount or copayment imposed by a participating</li> <li>provider on the participant, beneficiary, or enrollee.</li> <li>2. The amount calculated under the methodology generally</li> <li>used by the insurer to determine the reimbursement amount to a</li> <li>nonparticipating provider for the service, such as the usual,</li> <li>customary, and reasonable amount, reduced only by a coinsurance</li> <li>amount or copayment that applies to a participating provider.</li> <li>3. The amount that would be paid under Medicare for the</li> <li>service, reduced only by a coinsurance amount or copayment that</li> <li>applies to a participating provider.</li> <li>(3) A nonparticipating provider may not be reimbursed an</li> <li>amount greater than that provided under paragraph (2) (d) and may</li> <li>not collect or attempt to collect, directly or indirectly, any</li> </ul> </li> </ul></li></ul>	1	
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<ul> <li>(b) Must be provided regardless of whether the service is</li> <li>furnished by a participating or nonparticipating provider.</li> <li>(c) May impose a coinsurance amount, copayment, or</li> <li>limitation of benefits requirement for a nonparticipating</li> <li>provider only if the same requirement applies to a participating</li> <li>grovider.</li> <li>(d) Must reimburse a nonparticipating provider the greater</li> <li>of the following:</li> <li>1. The amount negotiated with a participating provider or a</li> <li>nonparticipating provider for the service, excluding any</li> <li>coinsurance amount or copayment imposed by a participating</li> <li>provider on the participant, beneficiary, or enrollee.</li> <li>2. The amount calculated under the methodology generally</li> <li>used by the insurer to determine the reimbursement amount to a</li> <li>nonparticipating provider for the service, such as the usual,</li> <li>customary, and reasonable amount, reduced only by a coinsurance</li> <li>amount or copayment that applies to a participating provider.</li> <li>3. The amount that would be paid under Medicare for the</li> <li>service, reduced only by a coinsurance amount or copayment that</li> <li>applies to a participating provider.</li> <li>(3) A nonparticipating provider may not be reimbursed an</li> <li>amount greater than that provided under paragraph (2) (d) and may</li> <li>not collect or attempt to collect, directly or indirectly, any</li> <li>excess amount.</li> </ul>	31	(2) Coverage for emergency services:
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<ul> <li>3. The amount that would be paid under Medicare for the</li> <li>service, reduced only by a coinsurance amount or copayment that</li> <li>applies to a participating provider.</li> <li>(3) A nonparticipating provider may not be reimbursed an</li> <li>amount greater than that provided under paragraph (2) (d) and may</li> <li>not collect or attempt to collect, directly or indirectly, any</li> <li>excess amount.</li> </ul>	48	customary, and reasonable amount, reduced only by a coinsurance
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55 not collect or attempt to collect, directly or indirectly, any 66 excess amount.	53	(3) A nonparticipating provider may not be reimbursed an
56 excess amount.	54	amount greater than that provided under paragraph (2)(d) and may
	55	not collect or attempt to collect, directly or indirectly, any
57 Section 2. This act shall take effect October 1, 2015.	56	excess amount.
	57	Section 2. This act shall take effect October 1, 2015.
Page 2 of 2		Page 2 of 2
CODING: Words stricken are deletions; words underlined are additions	c	5

LEGISLATIVE ACTION

Senate

House

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

Senate Amendment (with title amendment)

Before line 27

insert:

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Section 1. Paragraph (m) is added to subsection (3) of section 627.311, Florida Statutes, to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.-

9 (3) The office may, after consultation with insurers10 licensed to write automobile insurance in this state, approve a



11 joint underwriting plan for purposes of equitable apportionment 12 or sharing among insurers of automobile liability insurance and 13 other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write 14 automobile insurance in this state shall subscribe to the plan 15 16 and participate therein. The plan shall be subject to continuous 17 review by the office which may at any time disapprove the entire 18 plan or any part thereof if it determines that conditions have 19 changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office 20 21 shall be subject to the provisions of chapter 120. The Florida 22 Automobile Joint Underwriting Association is created under the 23 plan. The plan and the association:

(m) May cancel personal lines or commercial policies issued by the plan within the first 60 days after the effective date of the policy or binder for nonpayment of premium if the reason for 27 cancellation is the issuance of a check for the premium which is 28 dishonored for any reason or any other type of premium payment which is rejected or deemed invalid. An insured may not cancel a policy or binder within the first 90 days, or within a lesser 31 period as required by the plan, after the effective date of the 32 policy or binder, except: 33 1. Upon total destruction of the insured motor vehicle; 2. Upon transfer of ownership of the insured motor vehicle; 35 or 3. After purchase of another policy or binder covering the 37 motor vehicle that was covered under the policy being canceled. 38 39 

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40	And the title is amended as follows:
41	Delete line 3
42	and insert:
43	s. 627.311, F.S.; authorizing a joint underwriting
44	plan and the Florida Automobile Joint Underwriting
45	Association to cancel certain insurance policies
46	within a specified period under certain circumstances;
47	prohibiting an insured from canceling certain
48	insurance policies within a specified period;
49	providing exceptions; amending s. 627.727. F.S.;
50	authorizing insurers to

Page 3 of 3



LEGISLATIVE ACTION

Senate

House

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

Senate Amendment (with title amendment)

Delete lines 68 - 81

and insert:

by the office. The form <u>must</u> shall fully advise the <u>named</u> <u>insured</u> applicant of the nature of the coverage and <u>must</u> shall state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form shall be in 12-point bold type and shall state: "You are electing not to purchase certain

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8 9 COMMITTEE AMENDMENT

Florida Senate - 2015 Bill No. SB 1250



11	valuable coverage which protects you and your family or you are
12	purchasing uninsured motorist limits less than your bodily
13	injury liability limits when you sign this form. Please read
14	carefully." If this form is signed by a named insured, it will
15	be conclusively presumed that there was an informed, knowing
16	rejection of coverage or election of lower limits on behalf of
17	all insureds. The form may be provided electronically to and may
18	be signed electronically by the named insured. The requirement
19	for 12-point bold type does not
20	
21	======================================
22	And the title is amended as follows:
23	Delete lines 6 - 7
24	and insert:
25	coverage to a named insured; authorizing the named
26	insured to sign the form electronically; amending s.

Page 2 of 2



LEGISLATIVE ACTION

Senate

House

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

Senate Amendment (with title amendment)

Delete lines 183 - 192

and insert:

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9 10 schedule or payment limitation in effect on March 1 of the <u>service</u> 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 <u>to services</u>, supplies, or care rendered during throughout the remainder of that service year,



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. For purposes of this subparagraph, the term
16	"service year" means the period from March 1 through the end of
17	February of the following year.
18	
19	======================================
20	And the title is amended as follows:
21	Delete line 11
22	and insert:
23	injury protection insurance coverage; defining the
24	term "service year"; deleting an

Page 2 of 2

(			•	Ū.	as of the latest date listed below.) Banking and Insurance
BILL: SB 1250					
INTRODUCER:	Senator Mo	ntford			
SUBJECT:	Motor Vehi	cle Insu	rance		
DATE:	March 30, 2	015	REVISED:		
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION
. Matiyow		Knud	son	BI	Pre-meeting
				TR	
				FP	

# I. Summary:

SB 1250 allows insurers to electronically provide and receive the form necessary for an applicant for motor vehicle insurance to reject uninsured motorist (UM) coverage or select UM coverage in with lower limits than bodily injury (BI) coverage.

The bill amends a provision in the personal injury protection (PIP) statute to resolve an ambiguity relating to the applicability of medical fee schedules.

The bill also exempts new leased motor vehicles from the preinsurance inspection requirements for private passenger motor vehicles, and allows insures the option of requiring such inspections. The bill further clarifies that an insurer cannot cancel coverage for physical damage to a motor vehicle for failure to provide required documentation related to the preinsurance inspection requirement, but can withhold payment, until such documents are received.

# II. Present Situation:

# **Electronic Delivery/Signature of Uninsured Motorist Insurance Waivers**

Uninsured Motorist (UM) coverage protects insureds against injuries caused by owners or operators of uninsured or underinsured motor vehicles. The law requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy.<sup>1</sup>

Conventional UM insurance is "stackable." This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household, whether or not those residents or vehicles are covered by their own UM policies.

<sup>&</sup>lt;sup>1</sup> Section 627.727(1), F.S.

Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may "stack" the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows an insured individual to waive this insurance, select a lower limit, or select "non-stacking" UM coverage if the named insured signs a policy waiver form approved by the Office of Insurance Regulation (OIR). The approved form must include a heading in 12-point bold type stating, "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully."<sup>2</sup>

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>3</sup> Insurance is specifically included in E-SIGN.<sup>4</sup> 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. 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 a transaction by electronic means.

#### **Personal Injury Protection Insurance**

Florida's Motor Vehicle No-Fault Law (the "No-Fault Law")<sup>5</sup> requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance, \$10,000 per person and

<sup>&</sup>lt;sup>2</sup> Id.

<sup>&</sup>lt;sup>3</sup> 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 effective October 1, 2000.

<sup>&</sup>lt;sup>4</sup> Id.

<sup>&</sup>lt;sup>5</sup> Sections 627.730-627.7405, F.S.

PIP insurance benefits are payable as follows.

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
  - 1. Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
  - 2. Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
    - A licensed hospital or ambulatory surgical center.
    - An entity wholly owned<sup>8</sup> by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members.
    - An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals.
    - A licensed physical therapist, based upon a referral by a provider listed in 2).
    - A licensed health care clinic that meets specified criteria.
  - 3. Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

Medical benefits do not include massages or acupuncture, regardless of the provider that performs the service. Massage therapists and acupuncturists are not eligible for reimbursement under PIP.

Medical providers and entities may charge the insurer and injured party only a reasonable amount for services and care rendered. Insurers that provide reimbursement under the schedule of charges may use all Medicare coding policies and CMS payment methodologies, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care, if such coding policy or payment methodology does not constitute a utilization limit. Effective July 1, 2012, insurers that want to utilize the PIP schedule of maximum charges must amend their forms to include the schedule.

<sup>&</sup>lt;sup>6</sup> Section 627.7275, F.S.

<sup>&</sup>lt;sup>7</sup> Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur.

<sup>&</sup>lt;sup>8</sup>As defined in the bill, "entity wholly owned" means a proprietorship, group practice, partnership, or corporation that provides health care services rendered by licensed health care practitioners and in which licensed health care practitioners are the business owners of all aspects of the business entity....

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,<sup>9</sup> amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

[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 [italics added for emphasis]...."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1 applied through the calendar year (through December 31) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,<sup>10</sup> stating that the plain language of the section requires the fee schedule be in place on March 1 to apply throughout the following 365 days, or until the following March 1.

#### **Preinsurance Inspection of Private Passenger Motor Vehicles**

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. It also provides various exemptions from the required preinsurance inspection, including for new, unused motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title 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. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed \$5.

# III. Effect of Proposed Changes:

**Section 1** amends s. 627.727, F.S., to allow electronic presentation and signature of the required uninsured motorist waiver form. If the form is presented electronically, the required header statement must be greater in size than the surrounding text, rather than in 12-point bold.<sup>11</sup> The OIR has the authority to approve the form, including the electronic version, and has the obligation to ensure that the consumer has ready and reasonable access to the required notification based on the display characteristics of the electronic form being approved.

<sup>9</sup> Ch. 2012-151, L.O.F.

<sup>&</sup>lt;sup>10</sup> Available at <u>http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx</u> (last accessed: March 26, 2015).

<sup>&</sup>lt;sup>11</sup> The specified point size of type is a measure of physical size on a printed page. It is related to typeface printing and the characteristics of type set text. It does not necessarily identify the physical size of the character itself. Rather, it describes a maximum height parameter within the complete font type collection. One point in physical type face is 1/72 of an inch, thus 12-point font is 12/72 of an inch. Point size does not directly translate to graphical display size in electronics. Electronic display size is measured in picture elements, popularly known as pixels. Different size displays contain different numbers of pixels. Accordingly, specifying the point size of electronic text presents challenges that can require a high degree of technical precision. See <a href="http://www.thomasphinney.com/2011/03/point-size/">http://www.thomasphinney.com/2011/03/point-size/</a>. (Last Visited March 26, 2015.)

**Section 2** amends s. 627.736(5)(a)2., F.S., clarifying the medical fee schedule provisions of the No-Fault Law by defining a "service year" for rendered services, supplies, or care. For this purpose, a "service year" is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

**Section 3** amends s. 627.744, F.S., adding an exemption from preinsurance inspection for new, unused "leased" motor vehicles to the existing exemption for "purchased" vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer's invoice. Failure of the insurer to request the documentation. Finally, the condition on claim payment pending receipt of documentation. Finally, the carrier exercised its option to require the documentation.

Section 4 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:

There could be a cost savings to applicants and insurers that opt to use electronic notifications.

Applicants will save costs when not required by an insurer to pay for and provide a preinsurance inspection.

#### 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: 627.727, 627.736 and 627.744.

#### IX. Additional Information:

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

None.

B. Amendments:

None.

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

SB 1250

SB 1250

By Senator Montford

3-00627A-15 20151250 1 A bill to be entitled 2 An act relating to motor vehicle insurance; amending s. 627.727, F.S.; authorizing insurers to electronically provide a form to reject, or select lower coverage amounts of, uninsured motorist vehicle coverage to an insurance applicant; authorizing the applicant to sign the form electronically; amending s. 627.736, F.S.; revising the period during which the ç applicable fee schedule or payment limitation under 10 Medicare applies with respect to certain personal 11 injury protection insurance coverage; deleting an 12 obsolete date; amending s. 627.744, F.S.; revising the 13 exemption from the preinsurance inspection 14 requirements for private passenger motor vehicles to 15 include certain leased vehicles; revising the list of 16 documents that an insurer may require for purposes of 17 the exemption; prohibiting the physical damage 18 coverage on a motor vehicle from being suspended 19 during the term of a policy due to the insurer's 20 option not to require certain documents; authorizing a 21 payment of a claim to be conditioned if the insurer 22 requires a document under certain circumstances; 23 providing an effective date. 24 25 Be It Enacted by the Legislature of the State of Florida: 26 27 Section 1. Subsection (1) of section 627.727, Florida 28 Statutes, is amended to read: 29 627.727 Motor vehicle insurance; uninsured and underinsured Page 1 of 9

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

3-00627A-15 20151250 30 vehicle coverage; insolvent insurer protection.-31 (1) A No motor vehicle liability insurance policy that 32 which provides bodily injury liability coverage may not shall be 33 delivered or issued for delivery in this state with respect to a 34 any specifically insured or identified motor vehicle registered 35 or principally garaged in this state unless uninsured motor 36 vehicle coverage is provided therein or supplemental thereto for 37 the protection of persons insured by the policy thereunder who 38 are legally entitled to recover damages from owners or operators 39 of uninsured motor vehicles because of bodily injury, sickness, 40 or disease, including death, resulting therefrom. However, the 41 coverage required under this section is not applicable if when, or to the extent that, an insured named in the policy makes a 42 43 written rejection of the coverage on behalf of all insureds under the policy. If When a motor vehicle is leased for a period 44 of 1 year or longer and the lessor of the such vehicle, by the 45 terms of the lease contract, provides liability coverage on the 46 leased vehicle, the lessee of the such vehicle has shall have 47 48 the sole privilege to reject uninsured motorist coverage or to 49 select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer 50 51 pursuant to s. 324.171. Unless an insured, or lessee having the 52 privilege of rejecting uninsured motorist coverage, requests 53 such coverage or requests higher uninsured motorist limits in 54 writing, the coverage or the such higher uninsured motorist 55 limits are need not required to be provided in or supplemental 56 to any other policy that which renews, extends, changes, 57 supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected 58 Page 2 of 9

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SB 1250

20151250 3-00627A-15 20151250 the coverage. If When an insured or lessee has initially 88 provide for a means to allow the insured to request such selected limits of uninsured motorist coverage lower than her or 89 coverage, and must shall be given in a manner approved by the his bodily injury liability limits, higher limits of uninsured 90 office. Receipt of this notice does not constitute an motorist coverage are need not required to be provided in or 91 affirmative waiver of the insured's right to uninsured motorist coverage where the insured has not signed a selection or supplemental to any other policy that which renews, extends, 92 changes, supersedes, or replaces an existing policy with the rejection form. The coverage described under this section must 93 same bodily injury liability limits unless an insured requests 94 shall be over and above, but may shall not duplicate, the higher uninsured motorist coverage in writing. The rejection or 95 benefits available to an insured under any workers' compensation selection of lower limits must shall be made on a form approved 96 law, personal injury protection benefits, disability benefits by the office. The form must shall fully advise the applicant of 97 law, or similar law; under any automobile medical expense the nature of the coverage and must shall state that the 98 coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or coverage is equal to bodily injury liability limits unless lower 99 limits are requested or the coverage is rejected. The heading of any other person or organization jointly or severally liable 100 the form shall be in 12-point bold type and shall state: "You 101 together with such owner or operator for the accident; and such are electing not to purchase certain valuable coverage which 102 coverage must shall cover the difference, if any, between the protects you and your family or you are purchasing uninsured 103 sum of such benefits and the damages sustained, up to the motorist limits less than your bodily injury liability limits maximum amount of such coverage provided under this section. The 104 when you sign this form. Please read carefully." If this form is amount of coverage available under this section may shall not be 105 signed by a named insured, it will be conclusively presumed that 106 reduced by a setoff against any coverage, including liability there was an informed, knowing rejection of coverage or election 107 insurance. Such coverage may shall not inure directly or of lower limits on behalf of all insureds. The form may be 108 indirectly to the benefit of a any workers' compensation or provided electronically to and may be signed electronically by 109 disability benefits carrier or a any person or organization the applicant. The requirement for 12-point bold type does not 110 qualifying as a self-insurer under a any workers' compensation apply to a form that is provided electronically; however, the 111 or disability benefits law or similar law. 112 type for the heading of the form must be larger than the type Section 2. Paragraph (a) of subsection (5) of section used for the surrounding text. The insurer must shall notify the 113 627.736, Florida Statutes, is amended to read: named insured at least annually of her or his options as to the 114 627.736 Required personal injury protection benefits; coverage required by this section. Such notice must shall be 115 exclusions; priority; claims.part of, and attached to, the notice of premium, must shall 116 (5) CHARGES FOR TREATMENT OF INJURED PERSONS .-Page 3 of 9 Page 4 of 9 CODING: Words stricken are deletions; words underlined are additions.

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3-00627A-15 20151250 146 and customary charges. 147 c. For emergency services and care as defined by s. 395.002 148 provided in a facility licensed under chapter 395 rendered by a 149 physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary 150 151 charges in the community. 152 d. For hospital inpatient services, other than emergency 153 services and care, 200 percent of the Medicare Part A 154 prospective payment applicable to the specific hospital 155 providing the inpatient services. 156 e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory 157 Payment Classification for the specific hospital providing the 158 159 outpatient services. 160 f. For all other medical services, supplies, and care, 200 percent of the allowable amount under: 161 162 (I) The participating physicians fee schedule of Medicare 163 Part B, except as provided in sub-sub-subparagraphs (II) and 164 (III). 165 (II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical 166 167 laboratories. 168 (III) The Durable Medical Equipment Prosthetics/Orthotics 169 and Supplies fee schedule of Medicare Part B, in the case of 170 durable medical equipment. 171 172 However, if such services, supplies, or care is not reimbursable 173 under Medicare Part B, as provided in this sub-subparagraph, the 174 insurer may limit reimbursement to 80 percent of the maximum Page 6 of 9 CODING: Words stricken are deletions; words underlined are additions.

118 institution lawfully rendering treatment to an injured person 119 for a bodily injury covered by personal injury protection 120 insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and 121 122 supplies rendered, and the insurer providing such coverage may 123 pay for such charges directly to such person or institution 124 lawfully rendering such treatment if the insured receiving such 125 treatment or his or her guardian has countersigned the properly 126 completed invoice, bill, or claim form approved by the office 127 upon which such charges are to be paid for as having actually 128 been rendered, to the best knowledge of the insured or his or 129 her quardian. However, such a charge may not exceed the amount 130 the person or institution customarily charges for like services 131 or supplies. In determining whether a charge for a particular 132 service, treatment, or otherwise is reasonable, consideration 133 may be given to evidence of usual and customary charges and 134 payments accepted by the provider involved in the dispute, 135 reimbursement levels in the community and various federal and 136 state medical fee schedules applicable to motor vehicle and 137 other insurance coverages, and other information relevant to the 138 reasonableness of the reimbursement for the service, treatment, 139 or supply. 140 1. The insurer may limit reimbursement to 80 percent of the 141 following schedule of maximum charges: 142 a. For emergency transport and treatment by providers 143 licensed under chapter 401, 200 percent of Medicare. 144 b. For emergency services and care provided by a hospital 145 licensed under chapter 395, 75 percent of the hospital's usual

(a) A physician, hospital, clinic, or other person or

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reimbursable allowance under workers' compensation, as	204	For the for the former and the forme
determined under s. 440.13 and rules adopted thereunder which	205	
are in effect at the time such services, supplies, or care is	206	
provided. Services, supplies, or care that is not reimbursable	207	services, supplies, or care if the coding policy or payment
under Medicare or workers' compensation is not required to be	208	methodology does not constitute a utilization limit.
reimbursed by the insurer.	209	4. If an insurer limits payment as authorized by
2. For purposes of subparagraph 1., the applicable fee	210	subparagraph 1., the person providing such services, supplies,
schedule or payment limitation under Medicare is the fee	211	or care may not bill or attempt to collect from the insured any
schedule or payment limitation in effect on March 1 of the year	212	amount in excess of such limits, except for amounts that are not
in which the services, supplies, or care is rendered and for the	213	covered by the insured's personal injury protection coverage due
area in which such services, supplies, or care is rendered, and	214	to the coinsurance amount or maximum policy limits.
the applicable fee schedule or payment limitation applies from	215	5. Effective July 1, 2012, An insurer may limit payment as
March 1 until the last day of February throughout the remainder	216	authorized by this paragraph only if the insurance policy
of the following that year, notwithstanding any subsequent	217	includes a notice at the time of issuance or renewal that the
change made to the fee schedule or payment limitation, except	218	insurer may limit payment pursuant to the schedule of charges
that it may not be less than the allowable amount under the	219	specified in this paragraph. A policy form approved by the
applicable schedule of Medicare Part B for 2007 for medical	220	office satisfies this requirement. If a provider submits a
services, supplies, and care subject to Medicare Part B.	221	charge for an amount less than the amount allowed under
3. Subparagraph 1. does not allow the insurer to apply any	222	subparagraph 1., the insurer may pay the amount of the charge
limitation on the number of treatments or other utilization	223	submitted.
limits that apply under Medicare or workers' compensation. An	224	Section 3. Paragraphs (a) and (b) of subsection (2) of
insurer that applies the allowable payment limitations of	225	section 627.744, Florida Statutes, are amended to read:
subparagraph 1. must reimburse a provider who lawfully provided	226	627.744 Required preinsurance inspection of private
care or treatment under the scope of his or her license,	227	passenger motor vehicles
regardless of whether such provider is entitled to reimbursement	228	(2) This section does not apply:
under Medicare due to restrictions or limitations on the types	229	(a) To a policy for a policyholder who has been insured for
or discipline of health care providers who may be reimbursed for	230	2 years or longer, without interruption, under a private
particular procedures or procedure codes. However, subparagraph	231	passenger motor vehicle policy that which provides physical
1. does not prohibit an insurer from using the Medicare coding	232	damage coverage for any vehicle, if the agent of the insurer
Page 7 of 9		Page 8 of 9

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233	verifies the previous coverage.
234	(b) To a new, unused motor vehicle purchased or leased from
235	a licensed motor vehicle dealer or leasing company $_{\cdot, \tau}$ if The
236	insurer may require is provided with:
237	1. A bill of sale <u>,</u> <del>or</del> buyer's order <u>, or lease agreement</u>
238	$\underline{ ext{that}}$ which contains a full description of the motor vehicle $_{ au}$
239	including all options and accessories; or
240	2. A copy of the title or registration that which
241	establishes transfer of ownership from the dealer or leasing
242	company to the customer and a copy of the window sticker $\frac{1}{2}$ or the
243	dealer invoice showing the itemized options and equipment and
244	the total retail price of the vehicle.
245	
246	For the purposes of this paragraph, the physical damage coverage
247	on the motor vehicle may not be suspended during the term of the
248	policy due to the applicant's failure to provide or the
249	$\underline{\text{insurer's option not to require}}$ the required documents. However,
250	if the insurer requires a document under this paragraph at the
251	time the policy is issued, payment of a claim may be is
252	conditioned upon the receipt by the insurer of the required
253	documents, and no physical damage loss occurring after the
254	effective date of the coverage is payable until the documents
255	are provided to the insurer.
256	Section 4. This act shall take effect July 1, 2015.
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LEGISLATIVE ACTION

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Senate

House

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

Senate Amendment

Delete lines 1198 - 1201

and insert:

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733.2123, 733.3101, and 733.504, Florida Statutes, apply to proceedings commenced on or after July 1, 2015. The law in

effect before July 1, 2015, applies to proceedings commenced

before that date.

	Prepared By	: The Pro	ofessional Staff of	f the Committee on	Banking and	Insurance
BILL:	CS/SB 872					
INTRODUCER:	Judiciary Committee and Senator Hukill					
SUBJECT:	Estates					
DATE:	E: March 30, 2015 REVISED		REVISED:			
ANALYST		STAF	F DIRECTOR	REFERENCE		ACTION
. Davis		Cibula	a	JU	Fav/CS	
. Billmeier		Knudson		BI	Pre-meeting	
				RC		

# Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

# I. Summary:

CS/SB 872 amends the Florida Probate Code and the Florida Trust Code to revise provisions governing the areas of attorney fees and costs, lawyers and certain persons related to lawyers serving as fiduciaries, personal representatives and notices of administration, and the apportionment of estate taxes. The bill:

- Authorizes a court to assess attorney fees and costs against one or more persons' part of an estate or trust in proportions it finds just and proper in estate and trust proceedings and to direct payment for assessments against a portion of an estate from a trust under certain circumstances.
- Provides factors that a court may consider when assessing costs and attorney fees against a person's share of an estate or trust in estate and trust proceedings.
- Prohibits compensation to an attorney or certain persons appointed by a client to service as a fiduciary unless special circumstances exist or a written disclosure is executed by the client before the execution of the document.
- Revises requirements regarding the time to make objections to the validity of a will, qualifications of a personal representative, the venue, or jurisdiction of a court in estate proceedings.
- Requires that personal representatives who are not qualified at the time of appointment resign or be removed by the court and have their letters of administration revoked.
- Extends personal liability for attorney fees and costs in a removal proceeding to personal representatives who do not know but should have known of facts requiring them to

immediately resign or provide notice of ineligibility to serve as personal representative to interested persons.

• Substantially revises current law regarding the allocation and apportionment of estate taxes to update the statute for consistency with changes in federal estate tax laws, codify case law governing estate tax apportionment, and address gaps in the current statutory apportionment framework.

# II. Present Situation:

The Florida Probate Code and the Florida Trust Code govern the administration of estates and trusts under Florida law.<sup>1</sup> The codes establish the procedures for collecting and distributing the assets to the beneficiaries of wills and trusts. This bill amends statutes in the codes that involve:

- Attorney fees and costs;
- Lawyers serving as fiduciaries;
- Personal representatives and notices of administration; and
- The apportionment of estates taxes.

#### Assessing Attorney Fees and Costs for Estates and Trusts

The probate<sup>2</sup> and trust<sup>3</sup> codes provide that an attorney who has rendered services to an estate or trust may be awarded reasonable compensation from the estate or trust for those services. The statutes further provide that the court, in its discretion, may direct from what part of the estate<sup>4</sup> or trust<sup>5</sup> those fees, as well as costs,<sup>6</sup> may be paid.

Case law interpreting the assessment of attorney fees and costs under the Probate Code, however, is in conflict. The Fourth District Court of Appeal has interpreted the statute to mean that the trial court must find bad faith, wrongdoing, or frivolousness to assess attorney fees and costs against a part of the estate.<sup>7</sup> The Fifth District Court of Appeal, however, does not require a finding of frivolousness to assess attorney fees and costs against a portion of the estate.<sup>8</sup> In a Florida Supreme Court case involving an unsuccessful will dispute and the assessment of fees and costs against a portion of an estate, the Court noted that the trial court has "discretion to direct that the resulting costs and attorney fees be charged against the contestant's bequest under the will."<sup>9</sup>

The Real Property, Probate, and Trust Law Section of The Florida Bar has noted that the lack of detailed statutory factors for courts to consider when exercising discretion to assess attorney fees and costs has created inconsistent results in the application of the law. The section has noted that

<sup>&</sup>lt;sup>1</sup> The Florida Probate Code is contained in chs. 731 through 735, F.S., and the Florida Trust Code is contained in ch. 736, Florida Statutes.

<sup>&</sup>lt;sup>2</sup> Section 733.106(3), F.S.

<sup>&</sup>lt;sup>3</sup> Section 736.1005(1), F.S.

<sup>&</sup>lt;sup>4</sup> Section 733.106(4), F.S.

<sup>&</sup>lt;sup>5</sup> Section 736.1005(2), F.S.

<sup>&</sup>lt;sup>6</sup> Section 733.106(4), F.S. authorizes the court, in probate, to direct from what portion of the probate estate the costs are to be paid. Section 736.1006(2), F.S., authorizes the court, in its discretion, to direct from what part of the trust the costs shall be paid.

<sup>&</sup>lt;sup>7</sup> Levin v. Levin, 67 So.3d 429 (Fla. 4th DCA 2011).

<sup>&</sup>lt;sup>8</sup> Williams v. King, 711 So.2d 1285 (Fla. 5th DCA 1998).

<sup>&</sup>lt;sup>9</sup> Carman v. Gilbert, 641 So.2d 1323, 1326 (Fla. 1994).

a detailed but flexible standard would provide courts direction and would result in a more consistent application of the law. $^{10}$ 

# Lawyers Serving as Fiduciaries

The law currently provides that a personal representative who is a member of The Florida Bar and provides legal services administering an estate is allowed a fee for the personal representative services and a fee for his or her legal services.<sup>11</sup> While there is no statutory or ethical prohibition against lawyers preparing documents that appoint themselves as fiduciaries, it is important for lawyers to document any disclosure made to a client so as to avoid future allegations that they overreached or were involved in improper conduct.<sup>12</sup>

# Personal Representatives and Notice of Administration

# Personal Representatives

A personal representative is a person or business entity<sup>13</sup> appointed by a circuit court to administer a decedent's estate. If an individual serves as a personal representative, he or she must be at least 18 years old, have full capacity,<sup>14</sup> and be a resident of Florida<sup>15</sup> at the time of the death of the person whose estate he or she is administering.<sup>16</sup> A person is not qualified to serve as a personal representative if he or she is under 18 years of age, has been convicted of a felony or is mentally or physically unable to perform the duties of a personal representative.<sup>17</sup>

# Notice of Administration and Filing of Objections

Section 733.212, F.S., establishes, among other things, a list of people upon whom the personal representative must serve a copy of the notice of administration and specific information that the notice of administration must contain. Section 733.212(2)(c), F.S., specifies a 3 month time frame for filing objections to the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court.

Apart from detailing what the notice of administration must contain, s. 733.212(3), F.S., is directed to a person on whom the notice is served and who wants to file an objection. It provides that any interested person upon whom a notice of administration is served must object by filing a

<sup>&</sup>lt;sup>10</sup> The Real Property, Probate, & Trust Law Section of The Florida Bar, *Legislative White Paper: Proposed F.S.* 733.106(4), 736.1005(2), and 736.1006(2) (2015) (on file with the Senate Committee on Judiciary).

<sup>&</sup>lt;sup>11</sup> Section 733.617(6), F.S.

<sup>&</sup>lt;sup>12</sup> The Real Property, Probate, & Trust Law Section of The Florida Bar, *White paper: Proposed Legislation Regarding Lawyers Serving as Fiduciaries* (2015) (on file with the Senate Committee on Judiciary).

<sup>&</sup>lt;sup>13</sup> See s. 733.305, F.S., for a list of business entities authorized to serve. Generally, those entities are certain trust companies and banking and savings institutions.

<sup>&</sup>lt;sup>14</sup> Section 733.302, F.S., states that the person is "sui juris." Black's Law Dictionary defines "sui juris" as being independent, of full age and capacity, and possessing full social and civil rights.

<sup>&</sup>lt;sup>15</sup> A non-resident of the state may qualify if he or she is a legally adopted child or adoptive parent of the decedent, related by lineal consanguinity, one of certain enumerated relatives of the decedent, or the spouse of a person otherwise qualified to be the personal representative. Section 733.304, F.S.

<sup>&</sup>lt;sup>16</sup> Section 733.302, F.S.

<sup>&</sup>lt;sup>17</sup> Section 733.303, F.S.

petition on or before the date that is 3 months after he or she is served with a copy of the notice of administration or be forever barred from asserting an objection to:

- The validity of the will;
- The qualifications of the personal representative;
- The venue; or
- The jurisdiction of the court.

In the recent case of *Hill v. Davis*,<sup>18</sup> the Florida Supreme Court addressed whether an objection to the qualifications of a personal representative is barred by the 3 month deadline. The Court held that s. 733.212(3), F.S., bars an objection that the personal representative<sup>19</sup> was never qualified to serve in that capacity if the objection was not timely filed. The Court, however, created an exception to the 3 month deadline "except where fraud, misrepresentation, or misconduct with regard to the qualifications is not apparent on the face of the petition or discovered within the statutory time frame."<sup>20</sup> Some attorneys believe that this exception created by the Supreme Court could, as written, be expanded to apply to objections to the validity of a will, jurisdiction, or venue unless clarifying language is added to limit the 3 month exception.<sup>21</sup>

# **Apportionment of Estate Taxes**

Just as Florida's intestate successions laws function as a default mechanism to distribute property that was not properly devised in a will, s. 733.817, F.S., provides default rules for determining the apportionment of an estate tax among the various interests when the decedent has not otherwise specified. Section 733.817, F.S., governs:

- The apportionment of estate taxes if a decedent has not effectively provided for the apportionment of those taxes; and
- The collection of the tax.

The estate tax apportionment statute has not been substantially revised in many years and has not been updated to address federal estate tax laws enacted after the statute was last amended. Additionally, there are tax issues not currently covered in the existing statute. Under current federal law, the estate tax only applies to an estate valued in excess of \$5,430,000.<sup>22</sup> Florida does not have a state level estate tax. However, when estate taxes are due to the federal government or to another state from a Florida decedent, s. 733.817, F.S., determines how much tax is attributable to each interest affected by the tax. The statute also determines who is charged with payment of the tax attributable to various interests affected by the tax, determines whether a decedent has effectively directed against statutory apportionment and resolves conflicting apportionment provisions in governing instruments.

<sup>&</sup>lt;sup>18</sup> Hill v. Davis, 70 So.3d 572 (Fla. 2011).

<sup>&</sup>lt;sup>19</sup> Section 733.3101, F.S., states that any time a personal representative knows or should have known that he or she is not qualified, the personal representative shall promptly file and serve a notice setting forth the reasons. Whoever fails to comply with that requirement shall be personally liable for costs, including attorney fees incurred in a removal proceeding, if he or she is removed.

<sup>&</sup>lt;sup>20</sup> *Id.*, at 573.

 <sup>&</sup>lt;sup>21</sup> The Real Property, Probate, & Trust Law Section of The Florida Bar, *Legislative White Paper: Regarding Objections to Probate and Qualifications of Personal Representatives* (2015) (on file with the Senate Committee on Judiciary).
 <sup>22</sup> This amount applies to the 2015 tax year. The value is adjusted annually for inflation. 26 U.S.C. s. 2010(c)(3) and Rev. Proc. 2014-61, 2014-47 I.R.B. 860.

#### Estate Tax

According to the Internal Revenue Service, an estate tax is a tax on your right to transfer property at your death. The tax is generally computed by assessing the fair market value of all properties owned or controlled by the decedent at his or her death, which is the "gross estate," and then subtracting certain allowable deductions, which is the "taxable estate." The value of lifetime taxable gifts is added to this amount and the tax is computed. The tax is then reduced by the available unified credit.<sup>23</sup>

#### Background Information on the Apportionment of Estate Taxes, s. 733.817, F.S.

The statute generally provides for a modified equitable apportionment system. Property interests generally bear their share of the taxes with the exception that there are special provisions for property passing under a will or trust and for protected homestead. Residuary interests passing under a will or trust are first charged with taxes on non-residuary interests, then with taxes on residuary interests themselves, with the non-residuary interests bearing their pro rata share of any remaining taxes. The decedent's probate estate and revocable trust are generally charged with the estate tax on protected homestead. Property qualifying for the marital and charitable deduction does not bear any part of the tax unless it is charged with the payment of tax on other property as a part of the residuary under the will or trust. The default apportionment provisions apply only if the decedent does not direct otherwise. The statute provides rules for determining whether a decedent has overridden the default rules.<sup>24</sup>

# III. Effect of Proposed Changes:

#### Assessing Attorney Fees and Costs for Estates and Trusts (Sections 1, 9, and 10)

The bill amends the following three statutes relating to the assessment of attorney fees and costs against a person's part of an estate or trust.

# Section 733.106 F.S. – Costs and Attorney Fees in Probate Matters (Section 1)

The bill amends this section to provide that if costs and attorney fees are to be paid from the estate under any of four statutes<sup>25</sup> permitting the payment of attorney fees, the court has discretion to direct from which part of the estate the fees shall be paid. If the court directs an assessment against a person's part of an estate and the part is insufficient to completely pay the assessment, the court may direct that the payment be made from the person's part of a trust, if any, if a pour-over will<sup>26</sup> is involved and the matter is interrelated with the trust.

The court is also authorized to direct that all or any part of the costs and attorney fees to be paid from an estate may be assessed against one or more persons' part of the estate in the proportions that the court finds to be fair and just.

<sup>&</sup>lt;sup>23</sup> <u>http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-Tax</u>. Last visited March 7, 2015.

<sup>&</sup>lt;sup>24</sup> Email from Pamela O. Price, Attorney, Florida Real Property, Probate, & Tax Law Section of The Florida Bar (March 6, 2015) (on file with the Senate Committee on Judiciary).

<sup>&</sup>lt;sup>25</sup> Those sections are ss. 733.106, 733.6171, 736.1005, or 736.1006, F.S.

<sup>&</sup>lt;sup>26</sup> A pour-over will is defined as "a will giving money or property to an existing trust." BLACK'S LAW DICTIONARY (7th ed. 1999).
In exercising its discretion to assess attorney fees and costs, the court may consider:

- The relative impact an assessment will have on the estimated value of each person's part of the estate;
- The amount of costs and attorney fees to be assessed against someone's part of the estate;
- The extent to which a person whose part of the estate is to be assessed actively participated in the proceeding;
- The potential benefit or harm to a person's part of the estate;
- The relative strength or weakness of the merits of the claims, defenses, or objections, if any, that were asserted by someone whose part of the estate is to be assessed;
- Whether the person to be assessed was a prevailing party with regard to any claims, defenses, or objections;
- Whether the person whose part is to be assessed unjustly caused an increase in the costs and attorney fees that were incurred by the personal representative or another interested person in the proceeding; and
- Any other relevant fact, circumstance, or equity.

In an effort to resolve the varying statutory interpretations between the different district courts of appeal, the statute is amended to provide that a court does not need to find that the person whose part is to be assessed engaged in bad faith, wrongdoing, or frivolousness.

## Section 736.1005, F.S. - Attorney Fees for Services to the Trust (Section 9)

The bill amends this section to provide that if attorney fees are to be paid under any of three statutes,<sup>27</sup> the court, in its discretion, may direct from what part of the trust the fees shall be paid.

The court is also authorized, to direct that all or any part of the attorney fees to be paid from a trust may be assessed against one or more persons' part of the trust in the proportions that the court finds to be just and fair.

The statute then tracks, in almost identical amendatory language as that set out above for s. 733.106, F.S., the factors the court may consider in its discretion when assessing attorney fees for services to the trust. The court may also assess a person's part of the trust without finding that he or she engaged in bad faith, wrongdoing, or frivolousness.

## Section 736.1006, F.S. – Costs in Trust Proceedings (Section 10)

The bill amends this section to provide that, if costs are to be paid from certain trusts,<sup>28</sup> all or part of the costs may be assessed against one or more persons' part of the trust in the proportions the court finds to be just and proper. The statute then provides that the court, in its discretion, may consider the newly enumerated factors in s. 736.1005(2), F.S.

<sup>&</sup>lt;sup>27</sup> Sections 736.1005(1), 726.1007(5)(a), or 733.106(4)(a), F.S.

 $<sup>^{28}</sup>$  The bill cross-references trust proceedings under this statute or under "s. 736.106(4)(a), F.S.," but the second reference is a technical error because that statute does not exist. The reference needs to be corrected to read "s. 733.106(4)(a), F.S."

### Lawyers Serving as Fiduciaries (Sections 6 and 8)

This bill amends s. 733.617, F.S., relating to the compensation of personal representatives, and s. 736.0708, F.S., relating to the compensation of trustees. The bill provides that an attorney, or person related to the attorney, is not entitled to receive compensation for serving as a fiduciary if the attorney prepared or supervised the execution of a will or trust unless the attorney or person appointed is related to the client or the attorney discloses to the client in writing before the will or trust is signed that:

- Subject to certain limited exceptions, most family members, persons who are residents of Florida, including friends, and corporate fiduciaries are eligible to serve as a fiduciary;
- Any person, including an attorney, who serves as a fiduciary is entitled to receive reasonable compensation for his or her personal representative services; and
- Compensation payable to the fiduciary is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services.

The client must execute a written statement acknowledging that the disclosures were made before the execution of the will or trust. The written acknowledgement must be a separate writing from the will or trust but may be annexed to the will or trust. It may be executed before or after the execution of the will or trust.

An attorney is deemed to have prepared or supervised the execution of a will or trust if the preparation or the supervision of the execution of the will or trust was performed by an employee or attorney employed by the same firm as the attorney when the will was executed.

The bill defines the term "related" and copies the language found in s. 732.806, F.S., relating to "Gifts to lawyers and other disqualified persons." An employee or attorney employed by the same firm as the attorney when the will or trust instrument is executed is deemed to be related to the attorney.

This statute applies to all appointments, including nominations as a successor or alternate fiduciary, and to all powers to appoint that the attorney may exercise if they are used to appoint the attorney.

The failure to obtain a written acknowledgement for the testator or settlor does not disqualify a personal representative or trustee from serving or affect the validity of the will or trust document. Accordingly, an attorney may serve without the signed acknowledgment, but he or she will not be compensated by the fiduciary.

The statute provides a written acknowledgement form that is deemed to comply with the disclosure requirements. The changes to the law relating to serving as a fiduciary apply to each nomination or appointment made pursuant to a will or trust which is executed or amended on or after October 1, 2015, by a resident of Florida.

## Personal Representatives and Notices of Administration (Sections 2, 3, 4, and 5)

The bill amends ss. 733.212(2)(c), 733.212(3), and 733.2123, F.S., to remove the 3 month limitation period for objections to be raised about the qualifications of a personal representative

after service of a notice of administration.<sup>29</sup>

The bill amends s. 733.212(3), F.S., to remove objections to the qualifications of a personal representative from the provisions of the notice of administration. The section is also amended to permit an extension of time for filing an objection to the validity of the will, the venue, or the jurisdiction of the court for estoppel based solely on a misstatement by the personal representative regarding the time period within which an objection must be filed. The amendatory language clarifies that the time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. The subsection is also amended to create the outermost boundary by which an objection must be filed. That limit is the earlier of the entry of an order of final discharge of the personal representative or 1 year after service of the notice of administration.

The bill amends s. 733.2123, F.S., to remove "qualifications of the personal representative" from the list of objections that must be filed within the limitations period of the statue. As such, an interested person is not barred by limitations for failing to object to the qualifications of a personal representative within the time frame of this section.

Section 733.3101, F.S., is amended to now require a personal representative to resign immediately if the personal representative knows that he or she was not qualified to act at the time of appointment. If a personal representative becomes unqualified to serve during the administration of the estate, then he or she must send a notice to interested persons stating the reasons and that any interested person may petition to remove him or her from serving as the personal representative. An interested person on whom the notice is served may file a petition requesting removal within 30 days after the date that the notice is served.

As under current law, the personal representative who fails to comply with this section is personally liable for costs and attorney fees incurred in a removal proceeding if the personal representative is removed. The bill extends the liability to include a personal representative who does not know, but should have known of facts that would have required him or her to resign or file and serve notice of the disqualification. Language is added to s. 733.3101, F.S., to clarify that the term "qualified" means that the personal representative is qualified under ss. 733.302 and 733.303, F.S., rather than a more general meaning that might involve other grounds for removing the personal representative.

The bill amends s. 733.504, F.S., to require a court to remove a personal representative if he or she was not qualified to act at the time he or she was appointed. Language is added to clarify that a court may remove a personal representative who was qualified to act when appointed, but is not later entitled to serve.

### **Estate Taxes (Section 7)**

Section 733.817, F.S., provides a framework for determining how the estate tax is apportioned to various interests which pass as a result of a decedent's death and for the orderly collection of the

<sup>&</sup>lt;sup>29</sup> See discussion at footnote 21 above.

estate tax. This bill is a substantial rewording of s. 733.817, F.S. The changes are made to update, clarify, and improve the section by making it compatible with the Internal Revenue Code, address tax issues not dealt with in the current statute, codify existing case law, and amend the default rules so that they reflect what would have been the intent of most decedents. The changes are made by reorganizing the statute, adding titles for better understanding, and making other clarifying changes.

### Allocation of Estate Taxes on Gifts Made Just Prior to Death

Section 733.817(3), F.S., provides that, in determining the amount of tax attributable to an interest in property, only interests included in the measure of the particular tax<sup>30</sup> are considered. The tax is determined by the proportion that the value of each interest included in the measure of the tax bears to the total value of all interests included in the measure of the tax. The decedent's gross estate for estate tax purposes includes gift taxes paid on gifts made within 3 years after death<sup>31</sup> and, if the decedent dies within 5 years of a gift to a qualified tuition program (commonly known as a "529 Plan") that exceeds the gift tax annual exclusion,<sup>32</sup> his or her gross estate also includes the portion of such contributions properly allocable to periods after the date of death.<sup>33</sup>

Presently, s. 733.817(5)(a)-(c), F.S., do not apportion the estate tax on those gift taxes, and the gift taxes are not otherwise excluded from the measure of the tax. A majority of decedents do not intend that the recipients of their gift bear the burden of the estate tax as such gifts often consist of contributions to 529 Plans for minors or college aged relatives.

The bill amends s. 733.817(1)(e), F.S., the definition of "included in the measure of the tax," to exclude gift taxes paid within 3 years after the decedent's death and gifts to a 529 Plan. Recipients of the gift will not be allocated the estate tax upon such gifts even though the gift taxes remain a part of the amount upon which the estate tax is calculated. The effect is that the allocation of tax on all other interests remaining in the measure of the federal estate tax will be increased. The exclusion of the gift taxes and 529 Plan amounts from the measure of the tax applies only to the estates of decedents dying on or after July 1, 2015.

### Apportionment of Estate Taxes

*Statutory Apportionment – Property Passing Under a Will or Trust.* In the absence of an effective direction by the decedent in a governing instrument, estate taxes are apportioned pursuant to s. 733.817(5), F.S.

 $<sup>^{30}</sup>$  "Included in the measure of the tax" means that for each separate tax that an interest may incur, only interests included in the measure of that particular tax are considered. It does not include any interest, whether passing under the will or not, to the extent the interest is initially deductible from the gross estate, without regard to any subsequent reduction of the deduction by reason of the charge of any part of the applicable tax to the interest or interests or amounts that are not included in the gross estate but are included in the amount upon which the applicable tax is computed, such as adjusted taxable gifts with respect to the federal estate tax. If an election is required for deductibility, an interest is not "initially deductible" unless the election for deductibility is allowed. Section 733.817(1)(d), F.S.

<sup>&</sup>lt;sup>31</sup> 26 U.S.C s. 2035(b).

<sup>&</sup>lt;sup>32</sup> Section 529 of the Internal Revenue Code allows a donor to gift an amount in excess of the annual gift tax exclusion to a qualified tuition program on behalf of any designated beneficiary which may then be treated as having been made over a 5 year period.

<sup>&</sup>lt;sup>33</sup> 26 U.S.C. s. 529(c)(4)(C).

For property passing under a will or trust, the net tax attributable to nonresiduary devises or interests is charged to and paid from the residuary estate or portion whether or not all interests in the residuary estate or portion are included in the measure of the tax. If the residuary estate or portion is insufficient to pay the net tax attributable to all nonresiduary devises or interests, the balance of the net tax attributable to nonresiduary devises or interests is apportioned among the recipients of the nonresiduary devises or interests in the proportion that the value of each nonresiduary devises or interests included in the measure of the tax. The net tax attributable to residuary devises or interests or the total of all nonresiduary devises or interests are apportioned among the recipients of the residuary devises or interests are apportioned among the recipients of the residuary devises or interests are apportioned among the recipients of the residuary devises or interests included in the measure of the tax. The net tax attributable to residuary devises or interests are apportioned among the recipients of the residuary devises or interests included in the measure of the tax bears to the total of each residuary devises or interests included in the measure of the tax. The net measure devises or interests included in the measure of the tax attributable to residuary devises or interests are apportioned among the recipients of the residuary devises or interests included in the measure of the tax bears to the total of all residuary devises or interests included in the measure of the tax. <sup>34</sup> The provisions are silent, however, with respect to which devises or interests would be charged with the tax if the residuary is insufficient.

The bill moves the allocation to subsection (3) and provides that if the residuary estate or portion of a will or trust is insufficient to pay the net tax attributable to all residuary devises or interests, the tax must be apportioned among the recipients of the nonresiduary devises or interests in the proportion that the value of each nonresiduary devise or interests included in the measure of the tax bears to the total of all nonresiduary devises or interests included in the measure of the tax.

#### Statutory Apportionment -- Protected Homestead

Section 733.817(5)(c), F.S., provides that the net tax attributable to an interest in protected homestead<sup>35</sup> property is apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order of priority:<sup>36</sup>

- Class I: Recipients of interests not disposed of by the decedent's will or revocable trust that are included in the measure of the federal estate tax. This includes recipients of exempt property, the family allowance, elective share, pretermitted shares, and property passing by intestacy.
- Class II: Recipients of residuary devises and residuary interests that are included in the measure of the federal estate tax.
- Class III: Recipients of nonresiduary devises and nonresiduary interests that are included in the measure of the federal estate tax.

Property that is not included in the measure of the tax, such as property qualifying for the marital or charitable deduction, does not bear the burden of the payment of tax on protected homestead. Under current law, the purposes of the Probate Code provisions for exempt property, family allowance, and elective share are defeated by charging those interests with the estate tax on the protected homestead. Further, although s. 733.817(2), F.S., provides that protected homestead is exempt from tax, the statute does not specify an additional source of payment if the property designated pursuant to s. 733.817(5)(c), F.S., is insufficient.

<sup>&</sup>lt;sup>34</sup> Section 733.817(5)(a) and (b), F.S.

 $<sup>^{35}</sup>$  "Protected homestead" means the property described in s. 4(a)(1), Article X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Article X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead. Section 731.201(33), F.S.

<sup>&</sup>lt;sup>36</sup> Section 733.817(5)(c), F.S.

For estates of decedents dying on or after July 1, 2015, the bill provides that the tax on exempt property and the family allowance is to be apportioned against other estate and revocable trust property in the same manner as the tax on protected homestead. Elective share property is no longer charged with the payment of estate tax on protected homestead (and now exempt property and family allowance). However, any property passing to the spouse which is in excess of the elective share is not excused from payment of the tax to the extent the excess property is included in Class I, II or III. Under the bill, the classes charged with payment of tax on protected homestead, family allowance and exempt property, in order of priority, are:

- Class I: Recipients of property passing by intestacy.
- Class II: Recipients of residuary devises, residuary interests, and pretermitted shares.
- Class III: Recipients of nonresiduary devises and nonresiduary interests.

If the assets in Classes I, II, and III are exhausted, the remaining tax is apportioned proportionately to the protected homestead, exempt property and family allowance. However, the tax may not be apportioned against the elective share. If the balance of the net tax attributable to protected homestead, exempt property, or the family allowance is not apportioned as provided above, it is to be apportioned according to the proportion that the value of each bears to the total value of taxable interests.

### Apportionment at the Direction of a Decedent

Section 733.817(5)(h), F.S., provides that a decedent may direct against statutory apportionment through the terms of a governing instrument such as a will or trust.

**Specificity Requirement.** Under current law, for a direction in a governing instrument to be effective to direct payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument, the governing instrument must expressly refer to s. 733.817, F.S., or expressly indicate that the property passing under the governing instrument is to bear the burden of taxation for property not passing under the governing instrument. A direction in the governing instrument to the effect that all taxes are to be paid from property passing under the governing instrument or otherwise is effective to direct the payment of taxes attributable to property not passing under the governing instrument or otherwise is effective to direct the payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument from property passing under the governing instrument or otherwise is effective to direct the payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument.

Effective for decedents dying on or after July 1, 2015, the bill deletes the provision for directing against default apportionment by reference to s. 733.817, F.S., and provides that a direction against default apportionment may only be achieved by "express direction." An express direction in the governing instruments to the effect that all taxes are to be paid from property passing under the governing instrument whether attributable to property passing under the governing instrument or otherwise is generally effective.

However, such an express general direction is not effective to waive rights of recovery provided in sections 2207A, 2207B, and 2603 of the Internal Revenue Code, all of which require greater specificity. Those sections provide that the decedent may direct otherwise, but they require the decedent to specifically indicate the intent to waive the right of recovery under those sections. The purpose of the Internal Revenue Code provisions requiring greater specificity in directing against a right of recovery is not to raise revenue but to guard against the decedent's inadvertent waiver of those rights for the benefit of the estate.

The bill describes and codifies what is sufficient to comply with the specificity requirements of sections 2207A, 2207B, and 2603 of the Internal Revenue Code. It also provides that a general statement in a decedent's will or revocable trust waiving all rights of recovery under the Internal Revenue Code is not an express waiver of the rights of recovery provided in sections 2207A or 2207B of the Internal Revenue Code. This provision reflects current law.

Adopting Tax Apportionment Provisions in a Revocable Trust. The Internal Revenue Code enables the personal representative of an estate to recover the estate tax attributable to life insurance or property subject to a general power of appointment from the beneficiaries of those interests, but provides that the decedent may direct otherwise by will. Many decedents put their tax apportionment provisions in their revocable trusts. Section 733.817(5)(h)2., F.S., provides that a provision in the will that the tax is to be apportioned as provided in the revocable trust is deemed to be a direction in the will as well as the revocable trust.

The bill requires that the provision in the will adopting the apportionment provisions of the revocable trust and the apportionment provision of the revocable trust must be express in order to be effective.

**Directing that taxes are paid from a revocable trust.** Current law permits the decedent's will to direct that estate taxes be paid from the decedent's revocable trust unless the trust contains a contrary provision.<sup>37</sup> It is implicit in current law that the revocable trust that is to pay the tax must be specifically identified and that for an apportionment provision in the revocable trust to be contrary, it must be express. The bill requires that a direction in a will to pay estate taxes from a revocable trust must contain a specific reference to the trust, and that for an apportionment provision in a revocable trust to be considered contrary, it must be an express direction.

**Conflicting Provisions.** If there is a conflict as to payment of taxes between the decedent's will and the governing instrument, the decedent's will controls, except that the governing instrument will be given effect with respect to any tax remaining unpaid after the application of the decedent's will and a direction in a governing instrument to pay the tax attributable to assets that pass pursuant to the governing instrument from assets that pass pursuant to that governing instrument is effective notwithstanding any conflict with the decedent's will, unless the tax provision in the decedent's will expressly overrides the conflicting provision in the governing instrument.<sup>38</sup>

The bill provides that apportionment conflicts between all governing instruments (whether a conflicting instrument is a will or other instrument) are controlled by the last executed governing instrument containing an effective tax apportionment clause to the extent of the conflict. If a will or trust is amended, the date of the amendment is the controlling date only if the amendment contains an express tax apportionment provision. Only tax apportionment provisions that would

<sup>37</sup> Section 733.817(5)(h)3., F.S.

<sup>&</sup>lt;sup>38</sup> Section 733.817(5)(h)5., F.S.

be effective, but for the conflict, create a conflict. The new rule applies to estates of decedents dying on or after July 1, 2015.

### Construction

#### Apportionment of Property Received By a Will or Trust as a Beneficiary

Property passing under a will or trust is apportioned under the provisions of s. 733.817(5)(a) and (b), F.S. This is the case even if the will or trust received the property as beneficiary of an annuity, insurance policy, IRA, or similar interest, or as recipient of appointed property. This has caused some uncertainty among practitioners as the general "catch-all" apportionment provision in s. 733.817(5)(f), F.S., would seem to apply to these interests. However, the general provisions do not apply if the recipient is the estate or trust. The statute does not contemplate a double tax on what is essentially the same property. However, property subject to a power of appointment does not pass under the will simply because the power is exercised by the will unless the property passes to the estate.<sup>39</sup>

The bill provides that the beneficiary of an annuity or insurance policy or the recipient of property subject to a power of appointment is the "recipient" as defined in s. 733.817(1)(i), F.S. If those interests are paid to the estate or a trust, and subsequently disposed of pursuant to the will or trust, the tax on them is to be apportioned in the manner provided for interests passing from the estate or the trust. Property passing under a general power of appointment to the decedent's creditors (or the creditors of the decedent's estate) benefits the estate and is treated as if it were apportioned to the estate.

#### **Common Instrument Construction**

Section 733.817(5)(d), F.S., provides that a decedent's will and revocable trust are construed together to apportion the tax as if all recipients of the estate and trust (other than the estate and trust themselves) were taking under one common instrument for the purpose of apportioning tax to recipients of residuary and non-residuary interests under the provisions regarding wills, trusts and protected homesteads. However, the statute applies to a will and revocable trust in which one does not pour into the other, an application that serves no purpose.

For estates of decedents dying on or after July 1, 2015, the bill requires that a decedent's will or revocable trust (or two revocable trusts, if applicable) must pour into the other for the common instrument construction to apply. The purpose of this provision is to determine which interests are in effect pre-residuary interests and which are residuary interests where a will or trust (or another trust) pours into the other so that the tax attributable to those interests may be apportioned accordingly.

### Updates in Response to Changes in Federal Tax Law

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001.<sup>40</sup> That federal legislation phased out over a 5-year period, starting in 2002, the credit for state

<sup>&</sup>lt;sup>39</sup> In re Estate of Wylie, 342 So.2d 996 (Fla. 4th DCA 1977); Smith v. Bank of Clearwater, 479 So.2d 755 (Fla. 2nd DCA 1985).

<sup>&</sup>lt;sup>40</sup> Pub. L. 107-16 (June 7, 2001); 115 Stat. 38.

death taxes and effectively eliminated the Florida estate tax. The credit was replaced by a deduction for state death taxes.<sup>41</sup> This bill reflects the changes in federal tax law as follows:

- The definition of "net tax" is amended to take into account the deduction for state death taxes that replaced the credit for state death taxes. Additionally, s. 733.817(2)(c), F.S., was created to allocate the state death tax deduction to the interests producing the deduction for the purpose of determining the tax attributable to the interest. This is a curative revision intended to clarify existing law and applies retroactively to all proceedings in which the apportionment of taxes has not been finally determined or agreed for estates of decedents dying on or after January 1, 2005. It does not affect any tax payable to the state of Florida.
- Provisions regarding the allocation of the reduction of the Florida estate tax for tax paid to others states are made contingent upon the reinstatement of the Florida estate tax.

### Other Changes Related to the Apportionment of the Estate Tax

The bill defines the terms "generation skipping transfer tax" and "Section 2044 interest" as used in s. 733.817, F.S. The definitions are consistent with the terms as used in the Internal Revenue Code.<sup>42</sup>

The bill provides that the generation-skipping transfer tax be apportioned in accordance with s. 2603 of the Internal Revenue Code.<sup>43</sup> Section 2603(b) charges the tax to the property constituting the transfer in effect charging it to the transferee.

The definition of the term "tax" as used in s. 733.817, F.S., is amended to explicitly exclude any additional estate tax that may be imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue Code to recapture tax savings related to family owned farms and businesses. The payment of the recaptured tax is imposed upon the applicable beneficiaries by ss. 2032(A) and 2057 of the Internal Revenue Code and is not a part of the "tax" apportioned by s. 733.817, F.S.

The bill fills a current gap in the statute by providing that if the apportionment statute does not apportion part of the tax that was not effectively directed by a governing instrument, the court may assess liability for payment of the tax in the manner it finds equitable.

The bill clarifies that the taxes on property that would pass to others but for the elective share pursuant to s. 732.2075(2), F.S., are apportioned under the general "catch all" provision of the statute, to the extent those assets do not qualify for the marital deduction. It further provides that this provision applies only to interests passing by reason of the exercise or non-exercise of a general power of appointment, if not passing to the estate or a trust.

Currently, the net tax attributable to property over which the decedent held a general power of appointment is calculated in the same manner as other property included in the measure of the tax. For estates of decedents dying on or after July 1, 2015, the bill authorizes the power holder to direct that the property subject to the general power of appointment bear the additional tax

<sup>&</sup>lt;sup>41</sup> 26 U.S.C. s. 2058.

<sup>&</sup>lt;sup>42</sup> 26 U.S.C. ss. 2611-2612 and 26 U.S.C s. 2044.

<sup>&</sup>lt;sup>43</sup> The generation-skipping transfer tax is based on the value of property received by the beneficiary, i.e., net of the estate tax charged against that property. Accordingly, the estate tax apportionment provisions must be determined first. Section 733.817, F.S., does not currently give any guidance on this matter.

incurred by reason of the inclusion of the property subject to the general power of appointment in the power holder's gross estate. This only applies if the direction is express and is in the will.

Effective for decedents dying on or after July 1, 2015, the bill provides that if property is included in the gross estate under both sections 2044 and 2041 of the Internal Revenue Code, the property is deemed included under section 2044 for the purposes of s. 733.817, F.S.

The bill codifies existing law that a grant of permission or authority to pay or collect taxes is not a direction against statutory apportionment<sup>44</sup> and that an effective direction for payment of tax on a type of interest in a manner different from that provided in s. 733.817, F.S., is not effective as an express direction for payment of tax on other types of interests.<sup>45</sup>

Effective for decedents dying on or after July 1, 2015, the bill updates references regarding notice of a petition for an order of apportionment to provide that the personal representative must give notice "in the manner of formal notice" instead of simply "formal notice" as "formal notice" is not currently required by the Florida Probate Rules.

Except as otherwise noted in this analysis, the changes to s. 733.817, F.S., apply retroactively to all estate proceedings pending on July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed.

## **Effective Date**

Except as otherwise provided in sections of the bill, the bill takes effect July 1, 2015.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Several provisions in this bill have retroactive applications. A bill may apply retroactively provided that it does not impair vested rights.

<sup>&</sup>lt;sup>44</sup> Nations Bank v. Brenner, 756 So.2d 203 (Fla. 3d DCA 2000); In re Estate of McClaran, 811 So.2d 799 (Fla.2d DCA 2002).

<sup>&</sup>lt;sup>45</sup> In re Estate of McClaran, 811 So.2d. 799 (Fla.2d DCA 2002).

#### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 733.106, 733.212, 733.2123, 733.3101, 733.504, 733.617, 733.817, 736.0708, 736.1005, 736.1006, and 738.302.

#### IX. Additional Information:

## A. Committee Substitute – Statement of Changes:

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

#### CS by Judiciary on March 10, 2015:

The changes made by the committee substitute were technical, not substantive, changes.

The effective date of the bill was changed from "upon becoming a law" to July 1, 2015, which necessitated deleting effective date provisions of July 1, 2015, in sections 1, 7, 9, and 10, but adding an effective date of July 1, 2015, for retroactive provisions in the new section 11. An additional date change in new section 13 is clarified to read 'July 1, 2015."

Additional stylistic and statutory cross-references are made and the phrase "trust agreement" is changed to "trust instrument." Previous section 11, involving the reenactment of s. 738.802, F.S., is deleted at the suggestion of Senate Bill Drafting.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Hukill

A bill to be entitled

#### 590-02148-15

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#### 2015872c1

2 An act relating to estates; amending s. 733.106, F.S.; authorizing the court, if costs and attorney fees are 3 to be paid from the estate under specified sections of law, to direct payment from a certain part of the estate or, under specified circumstances, to direct payment from a trust; authorizing costs and fees to be assessed against one or more persons' part of the ç trust in such proportions as the court finds just and 10 proper; specifying factors that the court may consider 11 in directing the assessment of such costs and fees; 12 authorizing a court to assess costs and fees without 13 finding that the person engaged in specified wrongful 14 acts; amending s. 733.212, F.S.; revising the required 15 content for a notice of administration; revising 16 provisions that require an interested person, who has 17 been served a notice of administration, to file 18 specified objections in an estate matter within 3 19 months after service of such notice; providing that 20 the 3-month period may only be extended for certain 21 estoppel; providing that objections that are not 22 barred by the 3-month period must be filed no later 23 than a specified date; deleting references to 24 objections based upon the qualifications of a personal 25 representative; amending s. 733.2123, F.S.; conforming 26 provisions to changes made by the act; amending s. 27 733.3101, F.S.; requiring a personal representative to 28 resign immediately if he or she knows that he or she 29 was not qualified to act at the time of appointment;

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30	requiring a personal representative who was qualified
31	to act at such appointment to file a notice if no
32	longer qualified; authorizing an interested person
33	within a specified period to request the removal of a
34	personal representative who files such notice;
35	providing that a personal representative is liable for
36	costs and attorney fees incurred in a removal
37	proceeding if he or she is removed and should have
38	known of the facts supporting the removal; defining
39	the term "qualified"; amending s. 733.504, F.S.;
40	requiring a personal representative to be removed and
41	the letters of administration revoked if he or she was
42	not qualified to act at the time of appointment;
43	amending s. 733.617, F.S.; prohibiting an attorney or
44	person related to the attorney from receiving
45	compensation for serving as a personal representative
46	if the attorney prepared or supervised execution of
47	the will unless the attorney or person is related to
48	the testator or the testator acknowledges in writing
49	the receipt of certain disclosures; specifying the
50	disclosures that must be acknowledged; specifying when
51	an attorney is deemed to have prepared or supervised
52	the execution of a will; specifying when a person is
53	"related" to another individual; specifying when an
54	attorney or person related to the attorney is deemed
55	to be nominated as personal representative; providing
56	that the provisions do not limit an interested
57	person's rights or remedies at law or equity except
58	for compensation payable to a personal representative;
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59	providing that the failure to obtain a written
60	acknowledgment of the disclosure does not disqualify a
61	personal representative from serving or affect the
62	validity of a will; providing a form for the written
63	acknowledgment; providing applicability; amending s.
64	733.817, F.S.; defining and redefining terms; deleting
65	a provision that exempts an interest in protected
66	homestead from the apportionment of taxes; providing
67	for the payment of taxes on protected homestead family
68	allowance and exempt property by certain other
69	property to the extent such other property is
70	sufficient; revising the allocation of taxes; revising
71	the apportionment of the net tax attributable to
72	specified interests; authorizing a court to assess
73	liability in an equitable manner under certain
74	circumstances; providing that a governing instrument
75	may not direct that taxes be paid from property other
76	than property passing under the governing instrument,
77	except under specified conditions; requiring that
78	direction in a governing instrument be express to
79	apportion taxes under certain circumstances; requiring
80	that the right of recovery provided in the Internal
81	Revenue Code for certain taxes be expressly waived in
82	the decedent's will or revocable trust with certain
83	specificity; specifying the property upon which
84	certain tax is imposed for allocation and
85	apportionment of certain tax; providing that a general
86	statement in the decedent's will or revocable trust
87	waiving all rights of reimbursement or recovery under
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88	the Internal Revenue Code is not an express waiver of
89	certain rights of recovery; requiring direction to
90	specifically reference the generation-skipping
91	transfer tax imposed by the Internal Revenue Code to
92	direct its apportionment; authorizing, under certain
93	circumstances, the decedent to direct by will the
94	amount of net tax attributable to property over which
95	the decedent held a general power of appointment under
96	certain circumstances; providing that an express
97	direction in a revocable trust is deemed to be a
98	direction contained in the decedent's will as well as
99	the revocable trust under certain circumstances;
100	providing that an express direction in the decedent's
101	will to pay tax from the decedent's revocable trust by
102	specific reference to the revocable trust is effective
103	unless a contrary express direction is contained in
104	the revocable trust; revising the resolution of
105	conflicting directions in governing instruments with
106	regard to payment of taxes; providing that the later
107	express direction in the will or other governing
108	instrument controls; providing that the date of an
109	amendment to a will or other governing instrument is
110	the date of the will or trust for conflict resolution
111	only if the codicil or amendment contains an express
112	tax apportionment provision or an express modification
113	of the tax apportionment provision; providing that a
114	will is deemed executed after another governing
115	instrument if the decedent's will and another
116	governing instrument were executed on the same date;

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117	providing that an earlier conflicting governing
118	instrument controls as to any tax remaining unpaid
119	after the application of the later conflicting
120	governing instrument; providing that a grant of
121	permission or authority in a governing instrument to
122	request payment of tax from property passing under
123	another governing instrument is not a direction
124	apportioning the tax to the property passing under the
125	other governing instrument; providing a grant of
126	permission or authority in a governing instrument to
127	pay tax attributable to property not passing under the
128	governing instrument is not a direction apportioning
129	the tax to property passing under the governing
130	instrument; providing application; prohibiting the
131	requiring of a personal representative or fiduciary to
132	transfer to a recipient property that may be used for
133	payment of taxes; amending s. 736.0708, F.S.;
134	prohibiting an attorney or person related to the
135	attorney from receiving compensation for serving as a
136	trustee if the attorney prepared or supervised
137	execution of the trust instrument unless the attorney
138	or person is related to the settlor or the settlor
139	acknowledges in writing the receipt of certain
140	disclosures; specifying the disclosures that must be
141	acknowledged; specifying when an attorney is deemed to
142	have prepared or supervised the execution of a trust
143	instrument; specifying when a person is "related" to
144	another individual; specifying when an attorney or
145	person related to the attorney is deemed to be
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146	appointed as trustee; providing that the provisions do
147	not limit an interested person's rights or remedies at
148	law or equity except for compensation payable to a
149	trustee; providing that the failure to obtain a
150	written acknowledgment of the disclosure does not
151	disqualify a trustee from serving or affect the
152	validity of a trust instrument; providing a form for
153	the written acknowledgment; providing applicability;
154	amending s. 736.1005, F.S.; authorizing the court, if
155	attorney fees are to be paid from the trust under
156	specified sections of law, to direct payment from a
157	certain part of the trust; providing that fees may be
158	assessed against one or more persons' part of the
159	trust in such proportions as the court finds just and
160	proper; specifying factors that the court may consider
161	in directing the assessment of such fees; providing
162	that a court may assess fees without finding that a
163	person engaged specified wrongful acts; amending s.
164	736.1006, F.S.; authorizing the court, if costs are to
165	be paid from the trust under specified sections of
166	law, to direct payment from a certain part of the
167	trust; providing that costs may be assessed against
168	one or more persons' part of the trust in such
169	proportions as the court finds just and proper;
170	specifying factors that the court may consider in
171	directing the assessment of such costs; providing that
172	specified sections of the act are remedial and
173	intended to clarify existing law; providing for
174	retroactive and prospective application of specified
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175	portions of the act; providing effective dates.
176	
177	Be It Enacted by the Legislature of the State of Florida:
178	
179	Section 1. Section 733.106, Florida Statutes, is amended to
180	read:
181	733.106 Costs and <u>attorney</u> attorney's fees
182	(1) In all probate proceedings $_{\underline{\textit{\prime}}}$ costs may be awarded as in
183	chancery actions.
184	(2) A person nominated as personal representative, or any
185	proponent of a will if the person so nominated does not act
186	within a reasonable time, if in good faith justified in offering
187	the will in due form for probate, shall receive costs and
188	$\underline{\texttt{attorney}}\ \underline{\texttt{attorney}'}\ \underline{\texttt{s}}\ \underline{\texttt{fees}}\ \underline{\texttt{from}}\ \underline{\texttt{the}}\ \underline{\texttt{even}}\ \underline{\texttt{though}}\ \underline{\texttt{probate}}\ \underline{\texttt{s}}$
189	denied or revoked.
190	(3) Any attorney who has rendered services to an estate may
191	be awarded reasonable compensation from the estate.
192	(4) If When costs and attorney attorney's fees are to be
193	paid from the estate under this section, s. 733.6171(4), s.
194	736.1005, or s. 736.1006, the court, in its discretion, may
195	direct from what part of the estate they shall be paid.
196	(a) If the court directs an assessment against a person's
197	part of the estate and such part is insufficient to fully pay
198	the assessment, the court may direct payment from the person's
199	part of a trust, if any, if a pourover will is involved and the
200	matter is interrelated with the trust.
201	(b) All or any part of the costs and attorney fees to be
202	paid from the estate may be assessed against one or more
203	persons' part of the estate in such proportions as the court
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	finds to be just and proper.		
205	(c) In the exercise of its discretion, the court may		
206	consider the following factors:		
207	1. The relative impact of an assessment on the estimated		
208	value of each person's part of the estate.		
209	2. The amount of costs and attorney fees to be assessed		
210	against a person's part of the estate.		
211	3. The extent to which a person whose part of the estate is		
212	to be assessed, individually or through counsel, actively		
213	participated in the proceeding.		
214	4. The potential benefit or detriment to a person's part of		
215	the estate expected from the outcome of the proceeding.		
216	5. The relative strength or weakness of the merits of the		
217	claims, defenses, or objections, if any, asserted by a person		
218	18 whose part of the estate is to be assessed.		
219	6. Whether a person whose part of the estate is to be		
220	assessed was a prevailing party with respect to one or more		
221	claims, defenses, or objections.		
222	7. Whether a person whose part of the estate is to be		
223	assessed unjustly caused an increase in the amount of costs and		
224	attorney fees incurred by the personal representative or another		
225	interested person in connection with the proceeding.		
226	8. Any other relevant fact, circumstance, or equity.		
227	(d) The court may assess a person's part of the estate		
228	without finding that the person engaged in bad faith,		
229	wrongdoing, or frivolousness.		
230	Section 2. Paragraph (c) of subsection (2) and subsection		
231	(3) of section 733.212, Florida Statutes, are amended to read:		
232	733.212 Notice of administration; filing of objections		
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233	(2) The notice shall state:
234	(c) That any interested person on whom a copy of the notice
235	of administration is served must file on or before the date that
236	is 3 months after the date of service of a copy of the notice of
237	administration on that person any objection that challenges the
238	validity of the will, the qualifications of the personal
239	representative, the venue, or the jurisdiction of the court. The
240	$\underline{3}$ -month time period may only be extended for estoppel based upon
241	a misstatement by the personal representative regarding the time
242	period within which an objection must be filed. The time period
243	may not be extended for any other reason, including affirmative
244	representation, failure to disclose information, or misconduct
245	by the personal representative or any other person. Unless
246	sooner barred by subsection (3), all objections to the validity
247	of a will, venue, or the jurisdiction of the court must be filed
248	no later than the earlier of the entry of an order of final
249	discharge of the personal representative or 1 year after service
250	of the notice of administration.
251	(3) Any interested person on whom a copy of the notice of
252	administration is served must object to the validity of the
253	will, the qualifications of the personal representative, the
254	venue, or the jurisdiction of the court by filing a petition or
255	other pleading requesting relief in accordance with the Florida
256	Probate Rules on or before the date that is 3 months after the
257	date of service of a copy of the notice of administration on the
258	objecting person, or those objections are forever barred. The 3-
259	month time period may only be extended for estoppel based upon a
260	misstatement by the personal representative regarding the time
261	period within which an objection must be filed. The time period
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291	forth the reasons. The personal representative's notice shall
292	state that any interested person may petition to remove the
293	personal representative. An interested person on whom a copy of
294	the personal representative's notice is served may file a
295	petition requesting the personal representative's removal within
296	30 days after the date on which such notice is served.
297	(3) A personal representative who fails to comply with this
298	section shall be personally liable for costs, including <u>attorney</u>
299	<del>attorney's</del> fees, incurred in any removal proceeding $_{ au}$ if the
300	personal representative is removed. This liability extends to a
301	personal representative who does not know, but should have
302	known, of the facts that would have required him or her to
303	resign under subsection (1) or to file and serve notice under
304	subsection (2). This liability shall be cumulative to any other
305	provided by law.
306	(4) As used in this section, the term "qualified" means
307	that the personal representative is qualified under ss. 733.302
308	<u>-733.305.</u>
309	Section 5. Section 733.504, Florida Statutes, is amended to
310	read:
311	733.504 Removal of personal representative; causes for
312	removalA personal representative shall be removed and the
313	letters revoked if he or she was not qualified to act at the
314	time of appointment. A personal representative may be removed
315	and the letters revoked for any of the following causes, and the
316	removal shall be in addition to any penaltics prescribed by law:
317	(1) Adjudication that the personal representative is
318	incapacitated.
319	(2) Physical or mental incapacity rendering the personal
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320	representative incapable of the discharge of his or her duties.		
321	(3) Failure to comply with any order of the court, unless		
322	the order has been superseded on appeal.		
323	(4) Failure to account for the sale of property or to		
324	produce and exhibit the assets of the estate when so required.		
325	(5) Wasting or maladministration of the estate.		
326	(6) Failure to give bond or security for any purpose.		
327	(7) Conviction of a felony.		
328	(8) Insolvency of, or the appointment of a receiver or		
329	liquidator for, any corporate personal representative.		
330	(9) Holding or acquiring conflicting or adverse interests		
331	against the estate that will or may interfere with the		
332	administration of the estate as a whole. This cause of removal		
333	shall not apply to the surviving spouse because of the exercise		
334	of the right to the elective share, family allowance, or		
335	exemptions, as provided elsewhere in this code.		
336	(10) Revocation of the probate of the decedent's will that		
337	authorized or designated the appointment of the personal		
338	representative.		
339	(11) Removal of domicile from Florida, if domicile was a		
340	requirement of initial appointment.		
341	(12) The personal representative was qualified to act at		
342	the time of appointment, but is would not now be entitled to		
343	appointment.		
344			
345	Removal under this section is in addition to any penalties		
346	prescribed by law.		
347	Section 6. Effective October 1, 2015, subsection (6) of		
348	section 733.617, Florida Statutes, is amended, and subsection		
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349	(8) is added to that section, to read:
350	733.617 Compensation of personal representative
351	(6) Except as provided in subsection (8), a If the personal
352	representative who is a member of The Florida Bar and who has
353	rendered legal services in connection with the administration of
354	the estate, then in addition to a fee as personal
355	representative, there also shall be allowed a fee for the legal
356	services rendered in addition to a fee as personal
357	representative.
358	(8) (a) An attorney, or a person related to the attorney, is
359	not entitled to compensation for serving as personal
360	representative if the attorney prepared or supervised the
361	execution of the will that nominates the attorney or person
362	related to the attorney as personal representative, unless the
363	attorney or person nominated is related to the testator or the
364	attorney makes the following disclosures to the testator in
365	writing before the will is executed:
366	1. Subject to certain statutory limitations, most family
367	members regardless of their residence, other persons who are
368	residents of Florida, including friends, and corporate
369	fiduciaries are eligible to serve as a personal representative.
370	2. Any person, including an attorney, who serves as a
371	personal representative is entitled to receive reasonable
372	compensation for serving as personal representative.
373	3. Compensation payable to the personal representative is
374	in addition to any attorney fees payable to the attorney or the
375	attorney's firm for legal services rendered to the personal
376	representative.
377	(b) The testator must execute a written statement
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378	acknowledging that the disclosures required by this subsection
379	were made prior to the execution of the will. The written
380	acknowledgment must be in a separate writing from the will, but
381	may be annexed to the will. The written acknowledgment may be
382	executed before or after the execution of the will in which the
383	attorney or related person is nominated as the personal
384	representative.
385	(c) For purposes of this subsection:
386	1. An attorney is deemed to have prepared or supervised the
387	execution of a will if the preparation or the supervision of the
388	execution of the will was performed by an employee or attorney
389	employed by the same firm as the attorney at the time the will
390	was executed.
391	2.a. A person is "related" to an individual if, at the time
392	the attorney prepared or supervised the execution of the will,
393	the person is:
394	(I) A spouse of the individual;
395	(II) A lineal ascendant or descendant of the individual;
396	(III) A sibling of the individual;
397	(IV) A relative of the individual or of the individual's
398	spouse with whom the attorney maintains a close, familial
399	relationship;
400	(V) A spouse of a person described in sub-subparagraphs
401	(I)-(IV); or
402	(VI) A person who cohabits with the individual.
403	b. An employee or attorney employed by the same firm as the
404	attorney at the time the will is executed is deemed to be
405	related to the attorney.
406	3. An attorney or person related to the attorney is deemed
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407	to be nominated in the will if the will provided the attorney or
408	a person related to the attorney with the power to nominate the
409	personal representative and the attorney or person related to
410	the attorney was nominated using that power.
411	(d) This subsection applies to provisions nominating an
412	attorney or a person related to the attorney as personal
413	representative, copersonal representative, or successor or
414	alternate personal representative if the person nominated is
415	unable or unwilling to serve.
416	(e) Other than compensation payable to the personal
417	representative, this subsection does not limit any rights or
418	remedies that an interested person may have at law or equity.
419	(f) The failure to obtain a written acknowledgment from the
420	testator under this subsection does not disqualify a personal
421	representative from serving and does not affect the validity of
422	<u>a will.</u>
423	(g) A written acknowledgment signed by the testator that is
424	in substantially the following form is deemed to comply with the
425	disclosure requirements of this subsection:
426	
427	I, (Name), declare that:
428	I have designated (my attorney, an attorney employed in
429	the same law firm as my attorney, or a person related to my
430	attorney) as a nominated personal representative in my will
431	(or codicil) dated (Date)
432	Before executing the will (or codicil), I was informed
433	that:
434	(1) Subject to certain statutory limitations, most family
435	members regardless of their residence, other persons who are
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436	residents of Florida, including friends, and corporate
437	fiduciaries are eligible to serve as a personal representative.
438	(2) Any person, including an attorney, who serves as a
439	personal representative is entitled to receive reasonable
440	compensation for serving as personal representative.
441	(3) Compensation payable to the personal representative is
442	in addition to any attorney fees payable to the attorney or the
443	attorney's firm for legal services rendered to the personal
444	representative.
445	
446	(Testator)
447	
448	(Dated)
449	
450	(h) This subsection applies to each nomination made
451	pursuant to a will that is:
452	1. Executed by a resident of this state on or after October
453	<u>1, 2015.</u>
454	2. Republished by a resident of this state on or after
455	October 1, 2015, if the republished will nominates the attorney
456	who prepared or supervised the execution of the instrument that
457	republished the will, or a person related to such attorney, as
458	personal representative.
459	Section 7. Section 733.817, Florida Statutes, is amended to
460	read:
461	(Substantial rewording of section. See
462	s. 733.817, F.S., for present text.)
463	733.817 Apportionment of estate taxes
464	(1) DEFINITIONSAs used in this section, the term:
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465 (a) "Fiduciary" means a person, other than the personal
466 representative in possession of property included in the measure
467 of the tax, who is liable to the applicable taxing authority for
468 payment of the entire tax to the extent of the value of the
469 property in possession.
(b) "Generation-skipping transfer tax" means the
471 generation-skipping transfer tax imposed by chapter 13 of the
472 Internal Revenue Code on direct skips of interests includible in
the federal gross estate or a corresponding tax imposed by any
474 state or country or political subdivision of the foregoing. The
term does not include the generation-skipping transfer tax on
476 taxable distributions, taxable terminations, or any other
generation-skipping transfer. The terms "direct skip," "taxable
distribution," and "taxable termination" have the same meanings
as provided in s. 2612 of the Internal Revenue Code.
(c) "Governing instrument" means a will, trust instrument,
481 or any other document that controls the transfer of property on
the occurrence of the event with respect to which the tax is
183 being levied.
(d) "Gross estate" means the gross estate, as determined by
185 the Internal Revenue Code with respect to the federal estate tax
and the Florida estate tax, and as that concept is otherwise
487 determined by the estate, inheritance, or death tax laws of the
488particular state, country, or political subdivision whose tax is
489 being apportioned.
(e) "Included in the measure of the tax" means for each
91 separate tax that an interest may incur, only interests included
492 in the measure of that particular tax are considered. As used in
493 this section, the term does not include:
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494	1. Any interest, whether passing under the will or not, to
495	the extent the interest is initially deductible from the gross
496	estate, without regard to any subsequent reduction of the
497	deduction by reason of the charge of any part of the applicable
498	tax to the interest. If an election is required for
499	deductibility, an interest is not initially deductible unless
500	the election for deductibility is allowed.
501	2. Interests or amounts that are not included in the gross
502	estate but are included in the amount upon which the applicable
503	tax is computed, such as adjusted taxable gifts pursuant to s.
504	2001 of the Internal Revenue Code.
505	3. Gift taxes included in the gross estate pursuant to s.
506	2035 of the Internal Revenue Code and the portion of any inter
507	vivos transfer included in the gross estate pursuant to s. 529
508	of the Internal Revenue Code, notwithstanding inclusion in the
509	gross estate.
510	(f) "Internal Revenue Code" means the Internal Revenue Code
511	of 1986, as amended.
512	(g) "Net tax" means the net tax payable to the particular
513	state, country, or political subdivision whose tax is being
514	apportioned, after taking into account all credits against the
515	applicable tax except as provided in this section. With respect
516	to the federal estate tax, net tax is determined after taking
517	into account all credits against the tax except for the credit
518	for foreign death taxes and except for the credit or deduction
519	for state taxes imposed by states other than this state.
520	(h) "Nonresiduary devise" means any devise that is not a
521	residuary devise.
522	(i) "Nonresiduary interest," in connection with a trust,
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523	means any interest in a trust which is not a residuary interest.
524	(j) "Recipient" means, with respect to property or an
525	interest in property included in the gross estate, an heir at
526	law in an intestate estate, devisee in a testate estate,
527	beneficiary of a trust, beneficiary of a life insurance policy,
528	annuity, or other contractual right, surviving tenant, taker as
529	a result of the exercise or in default of the exercise of a
530	general power of appointment, person who receives or is to
531	receive the property or an interest in the property, or person
532	in possession of the property, other than a creditor.
533	(k) "Residuary devise" has the meaning in s. 731.201.
534	(1) "Residuary interest," in connection with a trust, means
535	an interest in the assets of a trust which remain after
536	provision for any distribution that is to be satisfied by
537	reference to a specific property or type of property, fund, sum,
538	or statutory amount.
539	(m) "Revocable trust" means a trust as described in s.
540	733.707(3).
541	(n) "Section 2044 interest" means an interest included in
542	the measure of the tax by reason of s. 2044 of the Internal
543	Revenue Code.
544	(o) "State" means any state, territory, or possession of
545	the United States, the District of Columbia, or the Commonwealth
546	of Puerto Rico.
547	(p) "Tax" means any estate tax, inheritance tax,
548	generation-skipping transfer tax, or other tax levied or
549	assessed under the laws of this or any other state, the United
550	States, any other country, or any political subdivision of the
551	foregoing, as finally determined, which is imposed as a result
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552	of the death of the decedent. The term also includes any
553	interest or penalties imposed in addition to the tax. Unless the
554	context indicates otherwise, the term means each separate tax.
555	The term does not include any additional estate tax imposed by
556	s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a
557	corresponding tax imposed by any state or country or political
558	subdivision of the foregoing. The additional estate tax imposed
559	shall be apportioned as provided in s. 2032A or s. 2057 of the
560	Internal Revenue Code.
561	(q) "Temporary interest" means an interest in income or an
562	estate for a specific period of time, for life, or for some
563	other period controlled by reference to extrinsic events,
564	whether or not in trust.
565	(r) "Tentative Florida tax" with respect to any property
566	means the net Florida estate tax that would have been
567	attributable to that property if no tax were payable to any
568	other state in respect of that property.
569	(s) "Value" means the pecuniary worth of the interest
570	involved as finally determined for purposes of the applicable
571	tax after deducting any debt, expense, or other deduction
572	chargeable to it for which a deduction was allowed in
573	determining the amount of the applicable tax. A lien or other
574	encumbrance is not regarded as chargeable to a particular
575	interest to the extent that it will be paid from other
576	interests. The value of an interest is not reduced by reason of
577	the charge against it of any part of the tax, except as provided
578	in paragraph (3)(a).
579	(2) ALLOCATION OF TAXExcept as effectively directed in
580	the governing instrument pursuant to subsection (4), the net tax
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81	attributable to the interests included in the measure of each
82	$\underline{ tax \ shall \ be \ determined \ by \ the \ proportion \ that \ the \ value \ of \ each \ }$
83	interest included in the measure of the tax bears to the total
84	value of all interests included in the measure of the tax.
85	Notwithstanding the foregoing provision of this subsection and
86	except as effectively directed in the governing instrument:
87	(a) The net tax attributable to section 2044 interests
88	shall be determined in the manner provided for the federal
89	estate tax in s. 2207A of the Internal Revenue Code, and the
90	amount so determined shall be deducted from the tax to determine
91	the net tax attributable to all other interests included in the
92	measure of the tax.
93	(b) The foreign tax credit allowed with respect to the
94	federal estate tax shall be allocated among the recipients of
95	interests finally charged with the payment of the foreign tax in
96	reduction of any federal estate tax chargeable to the recipients
97	of the foreign interests, whether or not any federal estate tax
98	is attributable to the foreign interests. Any excess of the
99	foreign tax credit shall be applied to reduce proportionately
00	the net amount of federal estate tax chargeable to the remaining
01	recipients of the interests included in the measure of the
02	federal estate tax.
03	(c) The reduction in the net tax attributable to the
04	deduction for state death taxes allowed by s. 2058 of the
05	Internal Revenue Code shall be allocated to the recipients of
06	the interests that produced the deduction. For this purpose, the
07	reduction in the net tax shall be calculated in the manner
08	provided for interests other than those described in paragraph
09	(a).
I	

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610	(d) The reduction in the Florida tax, if one is imposed, on
611	the estate of a Florida resident for tax paid to another state
612	shall be allocated as follows:
613	1. If the net tax paid to another state is greater than or
614	equal to the tentative Florida tax attributable to the property
615	subject to tax in the other state, none of the Florida tax shall
616	be attributable to that property.
617	2. If the net tax paid to another state is less than the
618	tentative Florida tax attributable to the property subject to
619	tax in the other state, the net Florida tax attributable to the
620	property subject to tax in the other state shall be the excess
621	of the amount of the tentative Florida tax attributable to the
622	property over the net tax payable to the other state with
623	respect to the property.
624	3. Any remaining net Florida tax shall be attributable to
625	property included in the measure of the Florida tax exclusive of
626	the property subject to tax in another state.
627	4. The net federal tax attributable to the property subject
628	to tax in the other state shall be determined as if the property
629	were located in that state.
630	(e) The net tax attributable to a temporary interest, if
631	any, is regarded as attributable to the principal that supports
632	the temporary interest.
633	(3) APPORTIONMENT OF TAXExcept as otherwise effectively
634	directed in the governing instrument pursuant to subsection (4),
635	the net tax attributable to each interest shall be apportioned
636	as follows:
637	(a) Generation-skipping transfer tax.—Any federal or state
638	generation-skipping transfer tax shall be apportioned as
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639	provided in s. 2603 of the Internal Revenue Code after the
640	application of the remaining provisions of this subsection to
641	taxes other than the generation-skipping transfer tax.
642	(b) Section 2044 interestsThe net tax attributable to
643	section 2044 interests shall be apportioned among the recipients
644	of the section 2044 interests in the proportion that the value
645	of each section 2044 interest bears to the total of all section
646	2044 interests. The net tax apportioned by this paragraph to
647	section 2044 interests that pass in the manner described in
648	paragraph (c) or paragraph (d) shall be apportioned to the
649	section 2044 interests in the manner described in those
650	paragraphs before the apportionment of the net tax attributable
651	to the other interests passing as provided in those paragraphs.
652	The net tax attributable to the interests other than the section
653	2044 interests which pass in the manner described in paragraph
654	(c) or paragraph (d) shall be apportioned only to such other
655	interests pursuant to those paragraphs.
656	(c) WillsThe net tax attributable to property passing
657	under the decedent's will shall be apportioned in the following
658	order of priority:
659	1. The net tax attributable to nonresiduary devises shall
660	be charged to and paid from the residuary estate, whether or not
661	all interests in the residuary estate are included in the
662	measure of the tax. If the residuary estate is insufficient to
663	pay the net tax attributable to all nonresiduary devises, the
664	balance of the net tax attributable to nonresiduary devises
665	shall be apportioned among the recipients of the nonresiduary
666	devises in the proportion that the value of each nonresiduary
667	devise included in the measure of the tax bears to the total of
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668	all nonresiduary devises included in the measure of the tax.
669	2. The net tax attributable to residuary devises shall be
670	apportioned among the recipients of the residuary devises
671	included in the measure of the tax in the proportion that the
672	value of each residuary devise included in the measure of the
673	tax bears to the total of all residuary devises included in the
674	measure of the tax. If the residuary estate is insufficient to
675	pay the net tax attributable to all residuary devises, the
676	balance of the net tax attributable to residuary devises shall
677	be apportioned among the recipients of the nonresiduary devises
678	in the proportion that the value of each nonresiduary devise
679	included in the measure of the tax bears to the total of all
680	nonresiduary devises included in the measure of the tax.
681	(d) TrustsThe net tax attributable to property passing
682	under the terms of any trust other than a trust created in the
683	decedent's will shall be apportioned in the following order of
684	priority:
685	1. The net tax attributable to nonresiduary interests of
686	the trust shall be charged to and paid from the residuary
687	portion of the trust, whether or not all interests in the
688	residuary portion are included in the measure of the tax. If the
689	residuary portion is insufficient to pay the net tax
690	attributable to all nonresiduary interests, the balance of the
691	net tax attributable to nonresiduary interests shall be
692	apportioned among the recipients of the nonresiduary interests
693	in the proportion that the value of each nonresiduary interest
694	included in the measure of the tax bears to the total of all
695	nonresiduary interests included in the measure of the tax.
696	2. The net tax attributable to residuary interests of the

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697	trust shall be apportioned among the recipients of the residuary
698	interests of the trust included in the measure of the tax in the
699	proportion that the value of each residuary interest included in
700	the measure of the tax bears to the total of all residuary
701	interests of the trust included in the measure of the tax. If
702	the residuary portion is insufficient to pay the net tax
703	attributable to all residuary interests, the balance of the net
704	tax attributable to residuary interests shall be apportioned
705	among the recipients of the nonresiduary interests in the
706	proportion that the value of each nonresiduary interest included
707	in the measure of the tax bears to the total of all nonresiduary
708	interests included in the measure of the tax.
709	
710	Except as provided in paragraph (g), this paragraph applies
711	separately for each trust.
712	(e) Protected homestead, exempt property, and family
713	allowance
714	1. The net tax attributable to an interest in protected
715	homestead, exempt property, and the family allowance determined
716	under s. 732.403 shall be apportioned against the recipients of
717	other interests in the estate or passing under any revocable
718	trust in the following order of priority:
719	a. Class IRecipients of interests passing by intestacy
720	that are included in the measure of the federal estate tax.
721	b. Class IIRecipients of residuary devises, residuary
722	interests, and pretermitted shares under ss. 732.301 and 732.302
723	that are included in the measure of the federal estate tax.
724	c. Class IIIRecipients of nonresiduary devises and
725	nonresiduary interests that are included in the measure of the
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726	federal estate tax.
727	2. Any net tax apportioned to a class pursuant to this
728	paragraph shall be apportioned among each recipient in the class
729	in the proportion that the value of the interest of each bears
730	to the total value of all interests included in that class. A
731	tax may not be apportioned under this paragraph to the portion
732	of any interest applied in satisfaction of the elective share
733	whether or not included in the measure of the tax. For purposes
734	of this paragraph, if the value of the interests described in s.
735	732.2075(1) exceeds the amount of the elective share, the
736	elective share shall be treated as satisfied first from
737	interests other than those described in classes I, II, and III,
738	and to the extent that those interests are insufficient to
739	satisfy the elective share, from the interests passing to or for
740	the benefit of the surviving spouse described in classes I, II,
741	and III, beginning with those described in class I, until the
742	elective share is satisfied. This paragraph has priority over
743	paragraphs (a) and (h).
744	3. The balance of the net tax attributable to any interest
745	in protected homestead, exempt property, and the family
746	allowance determined under s. 732.403 which is not apportioned
747	under the preceding provisions of this paragraph shall be
748	apportioned to the recipients of those interests included in the
749	measure of the tax in the proportion that the value of each
750	bears to the total value of those interests included in the
751	measure of the tax.
752	(f) ConstructionFor purposes of this subsection:
753	1. If the decedent's estate is the beneficiary of a life
754	insurance policy, annuity, or contractual right included in the
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755	decedent's gross estate, or is the taker as a result of the
756	exercise or default in exercise of a general power of
757	appointment held by the decedent, that interest shall be
758	regarded as passing under the terms of the decedent's will for
759	the purposes of paragraph (c) or by intestacy if not disposed of
760	by will. Additionally, any interest included in the measure of
761	the tax by reason of s. 2041 of the Internal Revenue Code
762	passing to the decedent's creditors or the creditors of the
763	decedent's estate shall be regarded as passing to the decedent's
764	estate for the purpose of this subparagraph.
765	2. If a trust is the beneficiary of a life insurance
766	policy, annuity, or contractual right included in the decedent's
767	gross estate, or is the taker as a result of the exercise or
768	default in exercise of a general power of appointment held by
769	the decedent, that interest shall be regarded as passing under
770	the trust for purposes of paragraph (d).
771	(g) Common instrument constructionIn the application of
772	this subsection, paragraphs (b)-(f) shall be applied to
773	apportion the net tax to the recipients under certain governing
774	instruments as if all recipients under those instruments, other
775	than the estate or revocable trust itself, were taking under a
776	common instrument. This construction applies to the following:
777	1. The decedent's will and revocable trust if the estate is
778	a beneficiary of the revocable trust or if the revocable trust
779	is a beneficiary of the estate.
780	2. A revocable trust of the decedent and another revocable
781	trust of the decedent if either trust is the beneficiary of the
782	other trust.
783	(h) Other interestsThe net tax that is not apportioned to
I	

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784	interests under paragraphs (b)-(g), including, but not limited
785	to, the net tax attributable to interests passing by intestacy,
786	interests applied in satisfaction of the elective share pursuant
787	to s. 732.2075(2), interests passing by reason of the exercise
788	or nonexercise of a general power of appointment, jointly held
789	interests passing by survivorship, life insurance, properties in
790	which the decedent held a reversionary or revocable interest,
791	annuities, and contractual rights, shall be apportioned among
792	the recipients of the remaining interests included in the
793	measure of the tax in the proportion that the value of each such
794	interest bears to the total value of all remaining interests
795	included in the measure of the tax.
796	(i) Assessment of liability by courtIf the court finds
797	that:
798	1. It is inequitable to apportion interest or penalties, or
799	both, in the manner provided in paragraphs (a)-(h), the court
800	may assess liability for the payment thereof in the manner that
801	the court finds equitable.
802	2. The payment of any tax was not effectively directed in
803	the governing instrument pursuant to subsection (4) and that
804	such tax is not apportioned by this subsection, the court may
805	assess liability for the payment of such tax in the manner that
806	the court finds equitable.
807	(4) DIRECTION AGAINST APPORTIONMENT
808	(a) Except as provided in this subsection, a governing
809	instrument may not direct that taxes be paid from property other
810	than that passing under the governing instrument.
811	(b) For a direction in a governing instrument to be
812	effective to direct payment of taxes attributable to property
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,	Page 28 of 43 CODING: Words <del>stricken</del> are deletions; words underlined are additions.
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813	passing under the governing instrument in a manner different
814	from that provided in this section, the direction must be
815	express.
816	(c) For a direction in a governing instrument to be
817	effective to direct payment of taxes attributable to property
818	not passing under the governing instrument from property passing
819	under the governing instrument, the governing instrument must
820	expressly direct that the property passing under the governing
821	instrument bear the burden of taxation for property not passing
822	under the governing instrument. Except as provided in paragraph
823	(d), a direction in the governing instrument to the effect that
824	all taxes are to be paid from property passing under the
825	governing instrument whether attributable to property passing
826	under the governing instrument or otherwise shall be effective
827	to direct payment from property passing under the governing
828	instrument of taxes attributable to property not passing under
829	the governing instrument.
830	(d) In addition to satisfying the other provisions of this
831	subsection:
832	1.a. For a direction in the decedent's will or revocable
833	trust to be effective in waiving the right of recovery provided
834	in s. 2207A of the Internal Revenue Code for the tax
835	attributable to section 2044 interests, and for any tax imposed
836	by Florida based upon such section 2044 interests, the direction
837	must expressly waive that right of recovery. An express
838	direction that property passing under the will or revocable
839	trust bear the tax imposed by s. 2044 of the Internal Revenue
840	Code is deemed an express waiver of the right of recovery
841	provided in s. 2207A of the Internal Revenue Code. A reference
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842	to "qualified terminable interest property," "QTIP," or property
843	in which the decedent had a "qualifying income interest for
844	life" is deemed to be a reference to property upon which tax is
845	imposed by s. 2044 of the Internal Revenue Code which is subject
846	to the right of recovery provided in s. 2207A of the Internal
847	Revenue Code.
848	b. If property is included in the gross estate pursuant to
849	ss. 2041 and 2044 of the Internal Revenue Code, the property is
850	deemed included under s. 2044, and not s. 2041, for purposes of
851	allocation and apportionment of the tax.
852	2. For a direction in the decedent's will or revocable
853	trust to be effective in waiving the right of recovery provided
854	in s. 2207B of the Internal Revenue Code for tax imposed by
855	reason of s. 2036 of the Internal Revenue Code, and any tax
856	imposed by Florida based upon s. 2036 of the Internal Revenue
857	Code, the direction must expressly waive that right of recovery.
858	An express direction that property passing under the will or
859	revocable trust bear the tax imposed by s. 2036 of the Internal
860	Revenue Code is deemed an express waiver of the right of
861	recovery provided in s. 2207B of the Internal Revenue Code. If
862	property is included in the gross estate pursuant to ss. 2036
863	and 2038 of the Internal Revenue Code, the property is deemed
864	included under s. 2038, not s. 2036, for purposes of allocation
865	and apportionment of the tax, and there is no right of recovery
866	under s. 2207B of the Internal Revenue Code.
867	3. A general statement in the decedent's will or revocable
868	trust waiving all rights of reimbursement or recovery under the
869	Internal Revenue Code is not an express waiver of the rights of
870	recovery provided in s. 2207A or s. 2207B of the Internal
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871	Revenue Code.
872	4. For a direction in a governing instrument to be
873	effective to direct payment of generation-skipping transfer tax
374	in a manner other than as provided in s. 2603 of the Internal
875	Revenue Code, and any tax imposed by Florida based on s. 2601 of
76	the Internal Revenue Code, the direction must specifically
377	reference the tax imposed by s. 2601 of the Internal Revenue
78	Code. A reference to the generation-skipping transfer tax or s.
79	2603 of the Internal Revenue Code is deemed to be a reference to
80	property upon which tax is imposed by reason of s. 2601 of the
81	Internal Revenue Code.
82	(e) If the decedent expressly directs by will, the net tax
83	attributable to property over which the decedent held a general
84	power of appointment may be determined in a manner other than as
85	provided in subsection (2) if the net tax attributable to that
86	property does not exceed the difference between the total net
87	tax determined pursuant to subsection (2), determined without
88	regard to this paragraph, and the total net tax that would have
89	been payable if the value of the property subject to such power
90	of appointment had not been included in the decedent's gross
91	estate. If tax is attributable to one or more section 2044
92	interests pursuant to subsection (2), the net tax attributable
93	to the section 2044 interests shall be calculated before the
94	application of this paragraph unless the decedent expressly
95	directs otherwise by will.
96	(f) If the decedent's will expressly provides that the tax
97	is to be apportioned as provided in the decedent's revocable
98	trust by specific reference to the revocable trust, an express
899	direction in the revocable trust is deemed to be a direction
•	Page 31 of 43

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900	contained in the will as well as the revocable trust.
901	(g) An express direction in the decedent's will to pay tax
902	from the decedent's revocable trust by specific reference to the
903	revocable trust is effective unless a contrary express direction
904	is contained in the revocable trust.
905	(h) If governing instruments contain effective directions
906	that conflict as to payment of taxes, the most recently executed
907	tax apportionment provision controls to the extent of the
908	conflict. For the purpose of this subsection, if a will or other
909	governing instrument is amended, the date of the codicil to the
910	will or amendment to the governing instrument is regarded as the
911	date of the will or other governing instrument only if the
912	codicil or amendment contains an express tax apportionment
913	provision or an express modification of the tax apportionment
914	provision. A general statement ratifying or republishing all
915	provisions not otherwise amended does not meet this condition.
916	If the decedent's will and another governing instrument were
917	executed on the same date, the will is deemed executed after the
918	other governing instrument. The earlier conflicting governing
919	instrument controls as to any tax remaining unpaid after the
920	application of the later conflicting governing instrument.
921	(i) A grant of permission or authority in a governing
922	instrument to request payment of tax from property passing under
923	another governing instrument is not a direction apportioning the
924	tax to the property passing under the other governing
925	instrument. A grant of permission or authority in a governing
926	instrument to pay tax attributable to property not passing under
927	the governing instrument is not a direction apportioning the tax
928	to property passing under the governing instrument.
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929	(j) This section applies to any tax remaining to be paid
930	after the application of any effective express directions. An
931	effective express direction for payment of tax on specific
932	property or a type of property in a manner different from that
933	provided in this section is not effective as an express
934	direction for payment of tax on other property or other types of
935	property included in the measure of the tax.
936	(5) TRANSFER OF PROPERTYA personal representative or
937	fiduciary shall not be required to transfer to a recipient any
938	property reasonably anticipated to be necessary for the payment
939	of taxes. Further, the personal representative or fiduciary is
940	not required to transfer any property to the recipient until the
941	amount of the tax due from the recipient is paid by the
942	recipient. If property is transferred before final apportionment
943	of the tax, the recipient shall provide a bond or other security
944	for his or her apportioned liability in the amount and form
945	prescribed by the personal representative or fiduciary.
946	(6) ORDER OF APPORTIONMENT
947	(a) The personal representative may petition at any time
948	for an order of apportionment. If administration of the
949	decedent's estate has not commenced at any time after 90 days
950	from the decedent's death, any fiduciary may petition for an
951	order of apportionment in the court in which venue would be
952	proper for administration of the decedent's estate. Notice of
953	the petition for order of apportionment must be served on all
954	interested persons in the manner provided for service of formal
955	notice. At any time after 6 months from the decedent's death,
956	any recipient may petition the court for an order of
957	apportionment.
1	

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i	590-02148-15 2015872c1
958	(b) The court shall determine all issues concerning
959	apportionment. If the tax to be apportioned has not been finally
960	determined, the court shall determine the probable tax due or to
961	become due from all interested persons, apportion the probable
962	tax, and retain jurisdiction over the parties and issues to
963	modify the order of apportionment as appropriate until after the
964	tax is finally determined.
965	(7) DEFICIENCY
966	(a) If the personal representative or fiduciary does not
967	have possession of sufficient property otherwise distributable
968	to the recipient to pay the tax apportioned to the recipient,
969	whether under this section, the Internal Revenue Code, or the
970	governing instrument, if applicable, the personal representative
971	or fiduciary shall recover the deficiency in tax so apportioned
972	to the recipient:
973	1. From the fiduciary in possession of the property to
974	which the tax is apportioned, if any; and
975	2. To the extent of any deficiency in collection from the
976	fiduciary, or to the extent collection from the fiduciary is
977	excused pursuant to subsection (8) and in all other cases, from
978	the recipient of the property to which the tax is apportioned,
979	unless relieved of this duty as provided in subsection (8).
980	(b) In any action to recover the tax apportioned, the order
981	of apportionment is prima facie correct.
982	(c) In any action for the enforcement of an order of
983	apportionment, the court shall award taxable costs as in
984	chancery actions, including reasonable attorney fees, and may
985	award penalties and interest on the unpaid tax in accordance
986	with equitable principles.
I	David 24 - 5 42
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	590-02148-15 2015872c1
987	(d) This subsection does not authorize the recovery of any
988	tax from a company issuing life insurance included in the gross
989	estate, or from a bank, trust company, savings and loan
990	association, or similar institution with respect to any account
991	in the name of the decedent and any other person which passed by
992	operation of law at the decedent's death.
993	(8) RELIEF FROM DUTY
994	(a) A personal representative or fiduciary who has the duty
995	under this section of collecting the apportioned tax from
996	recipients may be relieved of the duty to collect the tax by an
997	order of the court finding that:
998	1. The estimated court costs and attorney fees in
999	collecting the apportioned tax from a person against whom the
1000	tax has been apportioned will approximate or exceed the amount
1001	of the recovery;
1002	2. The person against whom the tax has been apportioned is
1003	a resident of a foreign country other than Canada and refuses to
1004	pay the apportioned tax on demand; or
1005	3. It is impracticable to enforce contribution of the
1006	apportioned tax against a person against whom the tax has been
1007	apportioned in view of the improbability of obtaining a judgment
1008	or the improbability of collection under any judgment that might
1009	be obtained, or otherwise.
1010	(b) A personal representative or fiduciary is not liable
1011	for failure to attempt to enforce collection if the personal
1012	representative or fiduciary reasonably believes that collection
1013	would have been economically impracticable.
1014	(9) UNCOLLECTED TAX Any apportioned tax that is not
1015	collected shall be reapportioned in accordance with this section
I	

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1016	as if the portion of the property to which the uncollected tax
1017	had been apportioned had been exempt.
1018	(10) CONTRIBUTIONThis section does not limit the right of
1010	any person who has paid more than the amount of the tax
1019	apportionable to that person, calculated as if all apportioned
1020	amounts would be collected, to obtain contribution from those
1022	who have not paid the full amount of the tax apportionable to
1023	them, calculated as if all apportioned amounts would be
1024	collected, and that right is hereby conferred. In any action to
1025	enforce contribution, the court shall award taxable costs as in
1026	chancery actions, including reasonable attorney fees.
1027	(11) FOREIGN TAXThis section does not require the
1028	personal representative or fiduciary to pay any tax levied or
1029	assessed by a foreign country unless specific directions to that
1030	effect are contained in the will or other instrument under which
1031	the personal representative or fiduciary is acting.
1032	Section 8. Effective October 1, 2015, subsection (4) is
1033	added to section 736.0708, Florida Statutes, to read:
1034	736.0708 Compensation of trustee
1035	(4)(a) An attorney, or a person related to the attorney, is
1036	not entitled to compensation for serving as trustee if the
1037	attorney prepared or supervised the execution of the trust
1038	instrument that appoints the attorney or person related to the
1039	attorney as trustee, unless the attorney or person appointed is
1040	related to the settlor or the attorney makes the following
1041	disclosures to the settlor in writing before the trust
1042	instrument is executed:
1043	1. Unless specifically disqualified by the terms of the
1044	trust instrument, any person, regardless of his or her
I	Page 36 of 43

590-02148-152015872c11045residence, including a family member, friend, or corporate1046fiduciary is eligible to serve as a trustee.10472. Any person, including an attorney, who serves as a1048trustee is entitled to receive reasonable compensation for1049serving as trustee.10503. Compensation payable to the trustee is in addition to1051any attorney fees payable to the attorney or the attorney's firm1052for legal services rendered to the trustee.1053(b) The settlor must execute a written statement1054acknowledging that the disclosures required by this subsection1055were made before the execution of the trust instrument. The1056written acknowledgment must be in a separate writing from the1057trust instrument, but may be annexed to the trust instrument.1058The written acknowledgment may be executed before or after the1059execution of the trust instrument in which the attorney or1060related person is appointed as the trustee.1061(c) For purposes of this subsection:
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1059execution of the trust instrument in which the attorney or1060related person is appointed as the trustee.
1060 related person is appointed as the trustee.
1061 (c) For purposes of this subsection:
1062 1. An attorney is deemed to have prepared or supervised the
1063 execution of a trust instrument if the preparation or the
1064 supervision of the execution of the trust instrument was
1065 performed by an employee or attorney employed by the same firm
1066 as the attorney at the time the trust instrument was executed.
1067 2.a. A person is "related" to an individual if, at the time
1068 the attorney prepared or supervised the execution of the trust
1069 instrument, the person is:
1070 (I) A spouse of the individual;
1071 (II) A lineal ascendant or descendant of the individual;
1072 (III) A sibling of the individual;
1073 (IV) A relative of the individual or of the individual's
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1074	spouse with whom the lawyer maintains a close, familial	
1075	relationship;	
1076	(V) A spouse of a person described in sub-subparagraphs	
1077	(I)-(IV); or	
1078	(VI) A person who cohabitates with the individual.	
1079	b. An employee or attorney employed by the same firm as the	
1080	attorney at the time the trust instrument is executed is deemed	
1081	to be related to the attorney.	
1082	3. An attorney or person related to the attorney is deemed	
1083	to be appointed in the trust instrument if the trust instrument	
1084	provided the attorney or a person related to the attorney with	
1085	the power to appoint the trustee and the attorney or person	
1086	related to the attorney was appointed using that power.	
1087	(d) This subsection applies to provisions appointing an	
1088	attorney or a person related to the attorney as trustee,	
1089	cotrustee, or as successor or alternate trustee if the person	
1090	appointed is unable or unwilling to serve.	
1091	(e) Other than compensation payable to the trustee, this	
1092	subsection does not limit any rights or remedies that an	
1093	interested person may have at law or equity.	
1094	(f) The failure to obtain a written acknowledgment from the	
1095	settlor under this subsection does not disqualify a trustee from	
1096	serving and does not affect the validity of a trust instrument.	
1097	(g) A written acknowledgment signed by the settlor that is	
1098	in substantially the following form is deemed to comply with the	
1099	disclosure requirements of this subsection:	
1100		
1101	I, (Name) declare that:	
1102	I have designated (my attorney, an attorney employed in	
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	590-02148-15 2015872c1
1103	the same law firm as my attorney, or a person related to my
1104	attorney) as a trustee in my trust instrument dated
1105	(Date)
1106	Before executing the trust, I was informed that:
1107	1. Unless specifically disqualified by the terms of the
1108	trust instrument, any person, regardless of his or her
1109	residence, including a family member, friend, or corporate
1110	fiduciary is eligible to serve as a trustee.
1111	2. Any person, including an attorney, who serves as a
1112	trustee is entitled to receive reasonable compensation for
1113	serving as trustee.
1114	3. Compensation payable to the trustee is in addition to
1115	any attorney fees payable to the attorney or the attorney's firm
1116	for legal services rendered to the trustee.
1117	
1118	(Settlor)
1119	
1120	(Dated)
1121	
1122	(h) This subsection applies to each appointment made
1123	pursuant to a trust instrument that is:
1124	1. Executed by a resident of this state on or after October
1125	<u>1, 2015.</u>
1126	2. Amended by a resident of this state on or after October
1127	1, 2015, if the trust instrument appoints the attorney who
1128	prepared or supervised the execution of the amendment, or a
1129	person related to such attorney, as trustee.
1130	Section 9. Section 736.1005, Florida Statutes, is amended
1131	to read:
1	Dago 20 of 42

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1	590-02148-15 2015872c1
1132	736.1005 Attorney attorney's fees for services to the
1133	trust
1134	(1) Any attorney who has rendered services to a trust may
1135	be awarded reasonable compensation from the trust. The attorney
1136	may apply to the court for an order awarding <u>attorney</u> attorney's
1137	fees and, after notice and service on the trustee and all
1138	beneficiaries entitled to an accounting under s. 736.0813, the
1139	court shall enter an order on the fee application.
1140	(2) <u>If attorney</u> <del>Whenever attorney's</del> fees are to be paid
1141	from out of the trust under subsection (1), s. 736.1007(5)(a),
1142	or s. 733.106(4)(a), the court, in its discretion, may direct
1143	from what part of the trust the fees shall be paid.
1144	(a) All or any part of the attorney fees to be paid from
1145	the trust may be assessed against one or more persons' part of
1146	the trust in such proportions as the court finds to be just and
1147	proper.
1148	(b) In the exercise of its discretion, the court may
1149	consider the following factors:
1150	1. The relative impact of an assessment on the estimated
1151	value of each person's part of the trust.
1152	2. The amount of attorney fees to be assessed against a
1153	person's part of the trust.
1154	3. The extent to which a person whose part of the trust is
1155	to be assessed, individually or through counsel, actively
1156	participated in the proceeding.
1157	4. The potential benefit or detriment to a person's part of
1158	the trust expected from the outcome of the proceeding.
1159	5. The relative strength or weakness of the merits of the
1160	claims, defenses, or objections, if any, asserted by a person
	Page 40 of 43

590-02148-15 2015872c1 whose part of the trust is to be assessed. 1161 6. Whether a person whose part of the trust is to be 1162 1163 assessed was a prevailing party with respect to one or more 1164 claims, defenses, or objections. 1165 7. Whether a person whose part of the trust is to be 1166 assessed unjustly caused an increase in the amount of attorney 1167 fees incurred by the trustee or another person in connection 1168 with the proceeding. 1169 8. Any other relevant fact, circumstance, or equity. 1170 (c) The court may assess a person's part of the trust 1171 without finding that the person engaged in bad faith, 1172 wrongdoing, or frivolousness. 1173 (3) Except when a trustee's interest may be adverse in a 1174 particular matter, the attorney shall give reasonable notice in 1175 writing to the trustee of the attorney's retention by an 1176 interested person and the attorney's entitlement to fees 1177 pursuant to this section. A court may reduce any fee award for 1178 services rendered by the attorney prior to the date of actual 1179 notice to the trustee, if the actual notice date is later than a 1180 date of reasonable notice. In exercising this discretion, the 1181 court may exclude compensation for services rendered after the 1182 reasonable notice date but before prior to the date of actual 1183 notice. 1184 Section 10. Section 736.1006, Florida Statutes, is amended 1185 to read: 1186 736.1006 Costs in trust proceedings .-1187 (1) In all trust proceedings, costs may be awarded as in 1188 chancery actions. 1189 (2) If Whenever costs are to be paid from out of the trust Page 41 of 43 CODING: Words stricken are deletions; words underlined are additions.

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1190	590-02148-15 2015872c
	under subsection (1) or s. 733.106(4)(a), the court, in its
1191	discretion, may direct from what part of the trust the costs
1192	shall be paid. All or any part of the costs to be paid from the
1193	trust may be assessed against one or more persons' part of the
1194	trust in such proportions as the court finds to be just and
1195	proper. In the exercise of its discretion, the court may
1196	consider the factors set forth in s. 736.1005(2).
1197	Section 11. The amendments made by this act to ss. 733.212,
1198	733.2123, 733.3101, and 733.504, Florida Statutes, are remedial
1199	in nature, are intended to clarify existing law, and apply
1200	retroactively to all proceedings pending or commenced on or
1201	after July 1, 2015.
1202	Section 12. (1) The amendment made by this act to s.
1203	733.817(1)(g) and (2)(c), Florida Statutes, is remedial in
1204	nature, is intended to clarify existing law, and applies
1205	retroactively to all proceedings pending or commenced on or
1206	after July 1, 2015, in which the apportionment of taxes has not
1207	been finally determined or agreed for the estates of decedents
1208	who die after December 31, 2004.
1209	(2) The amendment made by this act to s. 733.817(1)(e)3.,
1210	(3) (e), (3) (q), (4) (b), (4) (c), (4) (d) 1.b., (4) (e), (4) (h), and
1211	(6), Florida Statutes, applies to the estates of decedents who
1212	die on or after July 1, 2015.
1213	(3) Except as provided in subsections (1) and (2), the
1214	amendment made by this act to s. 733.817, Florida Statutes, is
1215	remedial in nature, is intended to clarify existing law, and
L216	applies retroactively to all proceedings pending or commenced on
1217	or after July 1, 2015, in which the apportionment of taxes has
1218	not been finally determined or agreed and without regard to the

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1219	date of the decedent's death.
1220	Section 13. The amendments made by this act to ss. 733.106,
1221	736.1005, and 736.1006, Florida Statutes, apply to proceedings
1222	commenced on or after July 1, 2015. The law in effect before
1223	July 1, 2015, applies to proceedings commenced before that date.
1224	Section 14. Except as otherwise expressly provided in this
1225	act, this act shall take effect July 1, 2015.
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с	<b>ODING:</b> Words stricken are deletions; words underlined are additions.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES: Finance and Tax, *Chair* Communications, Energy, and Public Utilities, *Vice Chair* Appropriations Appropriations Subcommittee on Transportation, Tourism, and Economic Development Banking and Insurance Fiscal Policy

JOINT COMMITTEE: Joint Committee on Public Counsel Oversight



SENATOR DOROTHY L. HUKILL 8th District

March 10, 2015

The Honorable Lizbeth Benacquisto 320 Knott Building 404 S. Monroe Street Tallahassee, FL 32399

Re: Senate Bill 872 – Estates

Dear Chairwoman Benacquisto:

Senate Bill 872, relating Estates has been referred to the Banking and Insurance Committee. I am requesting your consideration on placing SB 872 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely. 1. Ankill

Dorothy L. Hukill, District 8

cc: James Knudson, Staff Director of the Banking and Insurance Committee Sheri Green, Administrative Assistant of the Banking and Insurance Committee

Senate's Website: www.flsenate.gov

REPLY TO:

 <sup>209</sup> Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Florida Senate - 2015 Bill No. CS for SB 744

LEGISLATIVE ACTION

Senate

House

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

Section 1. Part XVII of chapter 468, Florida Statutes,

consisting of sections 468.85 through 468.8519, is created to

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

1

10

<u>PART XVII</u> <u>PROPERTY INSURANCE APPRAISAL UMPIRES</u> 468.85 Property insurance appraisal umpire licensing

#### Page 1 of 39
11	program; legislative purpose; scope of part
12	(1) The property insurance appraisal umpire licensing
13	program is created within the Department of Business and
14	Professional Regulation.
15	(2) The Legislature finds it necessary in the interest of
16	the public safety and welfare to prevent damage to real and
17	personal property, to avert economic injury to the residents of
18	this state, and to regulate persons and companies that hold
19	themselves out to the public as qualified to perform as property
20	insurance appraisal umpires.
21	(3) This part applies to residential and commercial
22	residential property insurance contracts and to the umpires and
23	appraisers who participate in the appraisal process.
24	(4) A person acting as a property insurance appraisal
25	umpire on or after October 1, 2016, must be licensed pursuant to
26	this part.
27	(5) The department may adopt rules to administer this part.
28	468.851 DefinitionsAs used in this part, the term:
29	(1) "Appraisal" means the process of estimating or
30	evaluating actual cash value, the amount of loss, or the cost of
31	repair or replacement of property for the purpose of quantifying
32	the monetary value of a property loss claim when an insurer and
33	an insured have failed to mutually agree on the value of the
34	loss pursuant to a residential or commercial residential
35	property insurance contract that is required in such contracts
36	for the resolution of a claim dispute by appraisal.
37	(2) "Competent" means properly licensed, sufficiently
38	qualified, and capable of performing an appraisal.
39	(3) "Department" means the Department of Business and

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40	Professional Regulation.
41	(4) "Independent" means not subject to control,
42	restriction, modification, and limitation by the appointing
43	party. An independent umpire shall conduct his or her
44	investigation, evaluation, and estimation without instruction by
45	an appointing party.
46	(5) "Property insurance appraisal umpire" or "umpire" means
47	a competent, independent, licensed, and impartial third party
48	selected by the licensed appraisers for the insurer and the
49	insured to resolve issues that the licensed appraisers are
50	unable to reach an agreement during the course of the appraisal
51	process pursuant to a residential or commercial property
52	insurance contract that is required to provide for resolution of
53	a claim dispute by appraisal.
54	(6) "Property insurance appraiser" or "appraiser" means a
55	competent, licensed, and independent and impartial third party
56	selected by an insurer or an insured to develop an appraisal for
57	purposes of the appraisal process under a residential or
58	commercial property insurance contract that provides for
59	resolution of a claim dispute by appraisal.
60	(7) "Uniform application" means the uniform application of
61	the National Association of Insurance Commissioners for
62	nonresident agent licensing, effective January 15, 2001, or
63	subsequent versions adopted by rule by the department.
64	468.8511 Fees
65	(1) The department, by rule, may establish fees to be paid
66	for application, examination, reexamination, licensing and
67	renewal, inactive status application, reactivation of inactive
68	licenses, and application for providers of continuing education.

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69	The department may also establish by rule a delinquency fee.
70	Fees shall be based on department estimates of the revenue
71	required to implement the provisions of this part. Fees shall be
72	remitted with the application, examination, reexamination,
73	licensing and renewal, inactive status application, and
74	reactivation of inactive licenses, and application for providers
75	of continuing education.
76	(2) The application fee shall not exceed \$200 and is
77	nonrefundable. The examination fee shall not exceed \$200 plus
78	the actual per applicant cost to the department to purchase the
79	examination, if the department chooses to purchase the
80	examination. The examination fee shall be in an amount that
81	covers the cost of obtaining and administering the examination
82	and shall be refunded if the applicant is found ineligible to
83	sit for the examination.
84	(3) The fee for an initial license shall not exceed \$250.
85	(4) The fee for an initial certificate of authorization
86	shall not exceed \$250.
87	(5) The fee for a biennial license renewal shall not exceed
88	\$500.
89	(6) The fee for application for inactive status shall not
90	exceed \$125.
91	(7) The fee for reactivation of an inactive license shall
92	not exceed \$250.
93	(8) The fee for applications from providers of continuing
94	education may not exceed \$600.
95	(9) The fee for fingerprinting shall be included in the
96	department's costs for each background check.
97	468.85115 Application for license as a property insurance

appraisal umpire	
(1) The department shall not issue a license as a property	
insurance appraisal umpire to any person except upon written	
application previously filed with the department, with	
qualification and advance payment of all applicable fees. Any	
such application shall be made under oath or affirmation and	
signed by the applicant. The department shall accept the uniform	n
application for a nonresident property insurance appraisal	
umpire. The department may adopt revised versions of the uniform	n
application by rule.	
(2) In the application, the applicant shall set forth:	
(a) His or her full name, age, social security number,	
residence address, business address, mailing address, contact	
telephone numbers, including a business telephone number, and e-	-
mail address.	
(b) Proof that he or she has completed or is in the process	3
of completing any required prelicensing course.	
(c) Whether he or she has been refused or has voluntarily	
surrendered or has had suspended or revoked a professional	
license by the supervising officials of any state.	
(d) Proof that the applicant meets the requirements for	
licensure as a property insurance appraisal umpire as required	
under ss. 468.8511 and 468.8512, and this section.	
(e) The applicant's gender.	
(f) The applicant's native language.	
(g) The applicant's highest achieved level of education.	
(h) All education requirements that the applicant has	
completed to qualify as a property insurance appraisal umpire,	
including the name of the course, the course provider, and the	

127	course completion dates.
128	(3) Each application shall be accompanied by payment of any
129	applicable fee.
130	(4) At the time of application, the applicant must be
131	fingerprinted by a law enforcement agency or other entity
132	approved by the department and he or she must pay the
133	fingerprint processing fee in s. 468.8511. Fingerprints must be
134	processed by the Department of Law Enforcement.
135	(5) The Department of Law Enforcement may, to the extent
136	provided for by federal law, exchange state, multistate, and
137	federal criminal history records with the department or office
138	for the purpose of the issuance, denial, suspension, or
139	revocation of a certificate of authority, certification, or
140	license to operate in this state.
141	(6) The Department of Law Enforcement may accept
142	fingerprints of any other person required by statute or rule to
143	submit fingerprints to the department or office or any applicant
144	or licensee regulated by the department or office who is
145	required to demonstrate that he or she has not been convicted of
146	or pled guilty or nolo contendere to a felony or a misdemeanor.
147	(7) The Department of Law Enforcement shall, upon receipt
148	of fingerprints from the department or office, submit the
149	fingerprints to the Federal Bureau of Investigation for a
150	federal criminal history records check.
151	(8) Statewide criminal records obtained through the
152	Department of Law Enforcement, federal criminal records obtained
153	through the Federal Bureau of Investigation, and local criminal
154	records obtained through local law enforcement agencies shall be
155	used by the department and office for the purpose of issuance,

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156	denial, suspension, or revocation of certificates of authority,
157	certifications, or licenses issued to operate in this state.
158	(9) The department shall develop and maintain as a public
159	record a current list of licensed property insurance appraisal
160	umpires.
161	468.8512 Examinations
162	(1) A person desiring to be licensed as a property
163	insurance appraisal umpire must apply to the department after
164	satisfying the examination requirements of this part. The
165	following persons are exempt from the examination requirements
166	of this part:
167	(a) Retired county, circuit, and appellate judges.
168	(b) Circuit court civil certified mediators approved by the
169	Florida Supreme Court pursuant to the Florida Rules for
170	Certified and Court-Appointed Mediators.
171	(c) Mediators who are on the list of approved mediators
172	pursuant to rule 69J-166.031, Florida Administrative Code.
173	(2) An applicant may practice in this state as a property
174	insurance appraisal umpire if he or she passes the required
175	examination, is of good moral character, and meets one of the
176	following requirements:
177	(a) The applicant is currently licensed, registered,
178	certified, or approved as an engineer as defined in s. 471.005,
179	or as a retired professional engineer as defined in s. 471.005,
180	and has taught or successfully completed 4 hours of classroom
181	coursework, approved by the department, specifically related to
182	construction, building codes, appraisal procedures, appraisal
183	preparation, and any other related material deemed appropriate
184	by the department.
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185	(b) The applicant is currently or, within the 5 years
186	immediately preceding the date on which the application is filed
187	with the department, has been licensed, registered, certified,
188	or approved as a general contractor, building contractor, or
189	residential contractor as defined in s. 489.105 and has taught
190	or successfully completed 4 hours of classroom coursework,
191	approved by the department, specifically related to
192	construction, building codes, appraisal procedure, appraisal
193	preparation, and any other related material deemed appropriate
194	by the department.
195	(c) The applicant is currently or, within the 5 years
196	immediately preceding the date on which the application is filed
197	with the department, has been licensed or registered as an
198	architect to engage in the practice of architecture pursuant to
199	part I of chapter 481 and has taught or successfully completed 4
200	hours of classroom coursework, approved by the department,
201	specifically related to construction, building codes, appraisal
202	procedure, appraisal preparation, and any other related material
203	deemed appropriate by the department.
204	(d) The applicant is currently or, within the 5 years
205	immediately preceding the date on which the application is filed
206	with the department, has been a qualified geologist or
207	professional geologist as defined in s. 492.102 and has taught
208	or successfully completed 4 hours of classroom coursework,
209	approved by the department, specifically related to
210	construction, building codes, appraisal procedure, appraisal
211	preparation, and any other related material deemed appropriate
212	by the department.
213	(e) The applicant is currently or, within the 5 years

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214 immediately preceding the date on which the application is filed 215 with the department, has been licensed as a certified public 216 accountant as defined in s. 473.302 and has taught or 217 successfully completed 4 hours of classroom coursework, approved 218 by the department, specifically related to construction, 219 building codes, appraisal procedure, appraisal preparation, and 220 any other related material deemed appropriate by the department. 221 (f) The applicant is currently or, within the 5 years 2.2.2 immediately preceding the date on which the application is filed 223 with the department, has been a licensed attorney in this state 224 and has taught or successfully completed 4 hours of classroom 225 coursework, approved by the department, specifically related to 226 construction, building codes, appraisal procedure, appraisal 227 preparation, and any other related material deemed appropriate 228 by the department. 229 (g) The applicant has received a baccalaureate degree from 230 an accredited 4-year college or university in the field of engineering, architecture, or building construction and has 231 232 taught or successfully completed 4 hours of classroom 233 coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal 234 235 preparation, and any other related material deemed appropriate 236 by the department. 2.37 (h) The applicant is a currently licensed adjuster whose 238 license covers all lines of insurance except the life and 239 annuities class. The adjuster's license must include the 240 property and casualty class of insurance. The currently licensed 241 adjuster must be licensed for at least 5 years to qualify for a 242 property insurance appraisal umpire's license.

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	(i) The applicant has received a minimum of 8 semester
h	nours or 12 quarter hours of credit from an accredited college
С	or university in the field of accounting, geology, engineering,
а	architecture, or building construction.
	(j) The applicant has successfully completed 40 hours of
С	lassroom coursework, approved by the department, specifically
r	related to construction, building codes, appraisal procedure,
а	oppraisal preparation, property insurance, and any other related
n	naterial deemed appropriate by the department.
	(3) The department shall review and approve courses of
ζ.	study for the continuing education of property insurance
а	appraisal umpires.
	(4) The department may not issue a license as a property
i	nsurance appraisal umpire to any individual found by it to be
U	intrustworthy or incompetent or who:
	(a) Has not filed an application with the department in
a	accordance with s. 485.85115.
	(b) Is not a natural person who is at least 18 years of
а	uge.
	(c) Is not a United States citizen or legal alien who
<u>r</u>	oossesses work authorization from the United States Citizenship
a	and Immigration Services.
	(d) Has not completed the education, experience, or
1	icensing requirements of this section.
	(5) An incomplete application expires 6 months after the
Ċ	late it is received by the department.
	(6) An applicant seeking to become licensed under this part
n	nay not be rejected solely by virtue of membership or lack of
n	membership in any particular appraisal organization.

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272	468.8513 Licensure
272	(1) The department shall license any applicant who the
274	department certifies has completed the requirements of ss.
275	$\frac{468.8511}{468.85115}$ , and $\frac{468.8512}{1000}$ .
276	(2) The department shall not issue a license by endorsement
277	to any applicant for a property insurance appraisal umpire
278	license who is under investigation in another state for any act
279	that would constitute a violation of this part until such time
280	that the investigation is complete and disciplinary proceedings
281	have been terminated.
282	468.8514 Renewal of license
283	(1) The department shall renew a license upon receipt of
284	the renewal application and fee and upon certification by the
285	department that the licensee has satisfactorily completed the
286	continuing education requirements of s. 468.8515.
287	(2) The department shall adopt rules establishing a
288	procedure for the biennial renewal of licenses.
289	468.8515 Continuing education
290	(1) The department may not renew a license until the
291	licensee submits satisfactory proof to the department that,
292	during the 2 years before his or her application for renewal,
293	the licensee completed at least 30 hours of continuing education
294	in addition to 5 hours of ethics. Criteria and course content
295	shall be approved by the department by rule.
296	(2) The department may prescribe by rule additional
297	continuing professional education hours, not to exceed 25
298	percent of the total required hours, for failure to complete the
299	required hours by the end of the renewal period.
300	(3) Each umpire course provider, instructor, and classroom

301	course must be approved by and registered with the department
302	before prelicensure courses for property insurance appraisal
303	umpires may be offered. Each classroom course must include a
304	written examination at the conclusion of the course and must
305	cover all of the material contained in the course. A student may
306	not receive credit for the course unless the student achieves a
307	grade of at least 75 percent on the examination.
308	(4) The department shall adopt rules establishing:
309	(a) Standards for the approval, registration, discipline,
310	or removal from registration of course providers, instructors,
311	and courses. The standards must be designed to ensure that
312	instructors have the knowledge, competence, and integrity to
313	fulfill the educational objectives of the prelicensure
314	requirements of this part.
315	(b) A process for determining compliance with the
316	prelicensure requirements of this part.
317	
318	The department shall adopt rules prescribing the forms necessary
319	to administer the prelicensure requirements of this part.
320	(5) Approval to teach prescribed or approved appraisal
321	courses does not entitle the instructor to teach any courses
322	outside the scope of this part.
323	468.8516 Inactive license
324	(1) A licensee may request that his or her license be
325	placed on inactive status by filing an application with the
326	department.
327	(2) A license that has become inactive may be reactivated
328	upon application to the department. The department may prescribe
329	by rule continuing education requirements as a condition for

330	reactivation of an inactive license. The continuing education
331	requirements for reactivating a license may not exceed 14 hours
332	for each year the license was inactive.
333	(3) The department shall adopt rules relating to licenses
334	that have become inactive and for the renewal of inactive
335	licenses. The department shall prescribe by rule a fee not to
336	exceed \$250 for the reactivation of an inactive license and a
337	fee not to exceed \$250 for the renewal of an inactive license.
338	468.8517 Certification of partnerships, corporations, and
339	other business entitiesThe practice of, or the offer to
340	practice as, a property insurance appraisal umpire by licensees
341	through a partnership, corporation, or other business entity
342	offering property insurance appraisal umpire services to the
343	public, or by a partnership, corporation, or other business
344	entities through licensees under this part as agents, employees,
345	officers, or partners is permitted, subject to the provisions of
346	this part. This section does not allow a corporation or other
347	business entity to hold a license to practice property insurance
348	appraisal umpire services. A partnership, corporation, or other
349	business entity is not relieved of responsibility for the
350	conduct or acts of its agents, employees, or officers by reason
351	of its compliance with this section. An individual practicing as
352	a property insurance appraisal umpire is not relieved of
353	responsibility for professional services performed by reason of
354	his or her employment or relationship with a partnership,
355	corporation, or other business entity.
356	468.8518 Grounds for compulsory refusal, suspension, or
357	revocation of an umpire's licenseThe department shall deny an
358	application for, suspend, revoke, or refuse to renew or continue

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359	the license or appointment of any applicant, property insurance
360	appraisal umpire or licensee and shall suspend or revoke the
361	eligibility to hold a license or appointment of any such person
362	if it finds that any one or more of the following applicable
363	grounds exist:
364	(1) Lack of one or more of the qualifications for the
365	license as specified in this part.
366	(2) Material misstatement, misrepresentation, or fraud in
367	obtaining the license or in attempting to obtain the license or
368	appointment.
369	(3) Failure to pass to the satisfaction of the department
370	any examination required under this chapter.
371	(4) That the license or appointment was willfully used, or
372	will be used, to circumvent any of the requirements or
373	prohibitions of this chapter.
374	(5) Demonstrated a lack of fitness or trustworthiness to
375	engage as a property insurance appraisal umpire.
376	(6) Demonstrated a lack of reasonably adequate knowledge
377	and technical competence to engage in the transactions
378	authorized by the license.
379	(7) Fraudulent or dishonest practices in the conduct of
380	business under the license.
381	(8) Willful failure to comply with, or willful violation
382	of, any proper order or rule of the department or willful
383	violation of any provision of this chapter.
384	(9) Having been found guilty of or having plead guilty or
385	nolo contendere to a felony or a crime punishable by
386	imprisonment of 1 year or more under the law of the United
387	States or of any state thereof or under the law of any other

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388	country which involves moral turpitude, without regard to
389	whether a judgment of conviction has been entered by the court
390	having jurisdiction of such cases.
391	(10)(a) Violated a duty imposed upon her or him by law or
392	by the terms of a contract, whether written, oral, expressed, or
393	implied, in an appraisal;
394	(b) Has aided, assisted, or conspired with any other person
395	engaged in any such misconduct and in furtherance thereof; or
396	(c) Has formed an intent, design, or scheme to engage in
397	such misconduct and committed an overt act in furtherance of
398	such intent, design, or scheme.
399	
400	It is immaterial to a finding that a licensee has committed a
401	violation of this subsection that the victim or intended victim
402	of the misconduct has sustained no damage or loss, that the
403	damage or loss has been settled and paid after the discovery of
404	misconduct, or that such victim or intended victim was a
405	customer or a person in a confidential relationship with the
406	licensee or was an identified member of the general public.
407	(11)(a) Had a registration, license, or certification as an
408	umpire revoked, suspended, or otherwise acted against;
409	(b) Has had his or her registration, license, or
410	certificate to practice or conduct any regulated profession,
411	business, or vocation revoked or suspended by this or any other
412	state, any nation, or any possession or district of the United
413	States; or
414	(c) Has had an application for such registration,
415	licensure, or certification to practice or conduct any regulated
416	profession, business, or vocation denied by this or any other

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417	state, any nation, or any possession or district of the United
418	States.
419	(12)(a) Made or filed a report or record, written or oral,
420	which the licensee knows to be false;
421	(b) Has willfully failed to file a report or record
422	required by state or federal law;
423	(c) Has willfully impeded or obstructed such filing; or
424	(d) Has induced another person to impede or obstruct such
425	filing.
426	(13) Accepted an appointment as an umpire if the
427	appointment is contingent upon the umpire reporting a
428	predetermined result, analysis, or opinion, or if the fee to be
429	paid for the services of the umpire is contingent upon the
430	opinion, conclusion, or valuation reached by the umpire.
431	468.85185 Grounds for discretionary denial, suspension, or
432	revocation of an umpire's licenseThe department may deny an
433	application for and suspend, revoke, or refuse to renew or
434	continue a license as a property insurance appraisal umpire if
435	the applicant or licensee has:
436	(1) Failed to timely communicate with the appraisers
437	without good cause.
438	(2) Failed or refused to exercise reasonable diligence in
439	submitting recommendations to the appraisers.
440	(3) Violated any ethical standard for property insurance
441	appraisal umpires set forth in s. 468.8519.
442	(4) Failed to inform the department in writing within 30
443	days after pleading guilty or nolo contendere to, or being
444	convicted or found guilty of, a felony.
445	(5) Failed to timely notify the department of any change in

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446	business location, or has failed to fully disclose all business
447	locations from which he or she operates as a property insurance
448	appraisal umpire.
449	468.8519 Ethical standards for property insurance appraisal
450	umpires
451	(1) CONFIDENTIALITYAn umpire shall maintain
452	confidentiality of all information revealed during an appraisal
453	except where disclosure is required by law.
454	(2) RECORDKEEPING.—An umpire shall maintain confidentiality
455	in the storage and disposal of records and may not disclose any
456	identifying information when materials are used for research,
457	training, or statistical compilations.
458	(3) FEES AND EXPENSESFees charged for appraisal services
459	shall be reasonable and consistent with the nature of the case.
460	An umpire shall be guided by the following in determining fees:
461	(a) All charges for services as an umpire based on time may
462	not exceed actual time spent or allocated.
463	(b) Charges for costs shall be for those actually incurred.
464	(c) An umpire may not charge, agree to, or accept as
465	compensation or reimbursement any payment, commission, or fee
466	that is based on a percentage basis, or that is contingent upon
467	arriving at a particular value or any future happening or
468	outcome of the assignment.
469	(4) MAINTENANCE OF RECORDS An umpire shall maintain
470	records necessary to support charges for services and expenses,
471	and upon request shall provide an accounting of all applicable
472	charges to the parties. An umpire licensed under this part shall
473	retain original or true copies of any contracts engaging the
474	umpire's services, appraisal reports, and supporting data

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	assembled and formulated by the umpire in preparing appraisal
	reports for at least 5 years. The period for retaining the
	records applicable to each engagement starts on the date of the
	submission of the appraisal report to the client. The records
	must be made available by the umpire for inspection and copying
	by the department upon reasonable notice to the umpire. If an
	appraisal has been the subject of, or has been admitted as
	evidence in, a lawsuit, reports, and records, the appraisal mus
	be retained for at least 2 years after the date that the trial
	ends.
	(5) ADVERTISINGAn umpire may not engage in marketing
	practices that contain false or misleading information. An
	umpire shall ensure that any advertisements of the umpire's
	qualifications, services to be rendered, or the appraisal
	process are accurate and honest. An umpire may not make claims
	of achieving specific outcomes or promises implying favoritism
	for the purpose of obtaining business.
	(6) INTEGRITY AND IMPARTIALITY.—An umpire may not engage
	any business, provide any service, or perform any act that wou
	compromise the umpire's integrity or impartiality.
	(7) SKILL AND EXPERIENCE.—An umpire shall decline an
	appointment or selection, withdraw, or request appropriate
	assistance when the facts and circumstances of the appraisal a
	beyond the umpire's skill or experience.
	(8) GIFTS AND SOLICITATIONAn umpire may not give or
	accept any gift, favor, loan, or other item of value in an
	appraisal process except for the umpire's reasonable fee. Durin
	the appraisal process, an umpire may not solicit or otherwise
l	attempt to procure future professional services.

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504	Section 2. Part XVIII of chapter 468, Florida Statutes,
505	consisting of sections 468.86 through 468.8619, is created to
506	read:
507	PART XVIII
508	PROPERTY INSURANCE APPRAISERS
509	468.86 Property insurance appraiser licensing program;
510	legislative purpose; scope of part
511	(1) The property insurance appraiser licensing program is
512	created within the Department of Business and Professional
513	Regulation.
514	(2) The Legislature finds it necessary and in the interest
515	of the public safety and welfare, to prevent damage to real and
516	personal property, to avert economic injury to the residents of
517	this state, and to regulate persons and companies that hold
518	themselves out to the public as qualified to perform as a
519	property insurance appraiser.
520	(3) This part applies to residential and commercial
521	residential property insurance contracts and to the umpires and
522	appraisers who participate in the appraisal process.
523	(4) A person acting as a property insurance appraiser on or
524	after October 1, 2016, must be licensed pursuant to this part.
525	(5) The department may adopt rules to administer the
526	requirements of this part.
527	468.861 DefinitionsAs used in this part, the term:
528	(1) "Appraisal" means the process of estimating or
529	evaluating actual cash value, the amount of loss, or the cost of
530	repair or replacement of property for the purpose of quantifying
531	the monetary value of a property loss claim when an insurer and
532	an insured have failed to mutually agree on the value of the
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533	loss pursuant to a residential or commercial residential
534	property insurance contract that is required in such contracts
535	for the resolution of a claim dispute by appraisal.
536	(2) "Competent" means properly licensed, sufficiently
537	qualified, and capable of performing an appraisal.
538	(3) "Department" means the Department of Business and
539	Professional Regulation.
540	(4) "Independent" means not subject to control,
541	restriction, modification, and limitation by the appointing
542	party.
543	(5) "Property insurance appraisal umpire" or "umpire" means
544	a competent, independent, licensed, and impartial third party
545	selected by the licensed appraisers for the insurer and the
546	insured to resolve issues that the licensed appraisers are
547	unable to reach an agreement during the course of the appraisal
548	process pursuant to a residential or commercial property
549	insurance contract that is required to provide for resolution of
550	a claim dispute by appraisal.
551	(6) "Property insurance appraiser" or "appraiser" means a
552	competent, licensed, and independent and impartial third party
553	selected by an insurer or an insured to develop an appraisal for
554	purposes of the appraisal process under a residential or
555	commercial property insurance contract that provides for
556	resolution of a claim dispute by appraisal.
557	(7) "Uniform application" means the uniform application of
558	the National Association of Insurance Commissioners for
559	nonresident agent licensing, effective January 15, 2001, or
560	subsequent versions adopted by rule by the department.
561	<u>468.8611 Fees</u>

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562	(1) The department, by rule, may establish fees to be paid
563	for application, examination, reexamination, licensing and
564	renewal, inactive status application, reactivation of inactive
565	licenses, and application for providers of continuing education.
566	The department may also establish by rule a delinquency fee.
567	Fees shall be based on department estimates of the revenue
568	required to implement the provisions of this part. Fees shall be
569	remitted with the application, examination, reexamination,
570	licensing and renewal, inactive status application, reactivation
571	of inactive licenses, and application for providers of
572	continuing education.
573	(2) The application fee shall not exceed \$200 and is
574	nonrefundable. The examination fee shall not exceed \$200 plus
575	the actual per applicant cost to the department to purchase the
576	examination, if the department chooses to purchase the
577	examination. The examination fee shall be in an amount that
578	covers the cost of obtaining and administering the examination
579	and shall be refunded if the applicant is found ineligible to
580	sit for the examination.
581	(3) The fee for an initial license shall not exceed \$250.
582	(4) The fee for an initial certificate of authorization
583	shall not exceed \$250.
584	(5) The fee for a biennial license renewal shall not exceed
585	\$500.
586	(6) The fee for application for inactive status shall not
587	exceed \$125.
588	(7) The fee for reactivation of an inactive license shall
589	not exceed \$250.
590	(8) The fee for applications from providers of continuing
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education may not exceed \$600.
(9) The fee for fingerprinting shall be included in the
department's costs for the background check.
468.86115 Application for license as a property insurance
appraiser
(1) The department shall not issue a license as a property
insurance appraiser to any person except upon written
application previously filed with the department, with
qualification and advance payment of all applicable fees. Any
such application shall be made under oath or affirmation and
signed by the applicant. The department shall accept the uniform
application for a nonresident property insurance appraiser. The
department may adopt revised versions of the uniform application
by rule.
(2) In the application, the applicant shall set forth:
(a) His or her full name, age, social security number,
residence address, business address, mailing address, contact
telephone numbers, including a business telephone number, and e-
mail address.
(b) Proof that he or she has completed or is in the process
of completing any required prelicensing course.
(c) Whether he or she has been refused or has voluntarily
surrendered or has had suspended or revoked a professional
license by the supervising officials of any state.
(d) Proof that the applicant meets the requirements of
licensure as a property insurance appraiser as required under
ss. 468.8611 and 468.8612, and this section.
(e) The applicant's gender.
(f) The applicant's native language.

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620	(g) The applicant's highest achieved level of education.
621	(h) All education requirements that the applicant has
622	completed to qualify as a property insurance appraiser,
623	including the name of the course, the course provider, and the
624	course completion dates.
625	(3) Each application shall be accompanied by payment of any
626	applicable fee.
627	(4) At the time of application, the applicant must be
628	fingerprinted by a law enforcement agency or other entity
629	approved by the department, and he or she must pay the
630	fingerprint processing fee in s. 468.8611. Fingerprints must be
631	processed by the Department of Law Enforcement.
632	(5) The Department of Law Enforcement may, to the extent
633	provided for by federal law, exchange state, multistate, and
634	federal criminal history records with the department or office
635	for the purpose of the issuance, denial, suspension, or
636	revocation of a certificate of authority, certification, or
637	license to operate in this state.
638	(6) The Department of Law Enforcement may accept
639	fingerprints of any other person required by statute or rule to
640	submit fingerprints to the department or office or any applicant
641	or licensee regulated by the department or office who is
642	required to demonstrate that he or she has not been convicted of
643	or pled guilty or nolo contendere to a felony or a misdemeanor.
644	(7) The Department of Law Enforcement shall, upon receipt
645	of fingerprints from the department or office, submit the
646	fingerprints to the Federal Bureau of Investigation for a
647	federal criminal history records check.
648	(8) Statewide criminal records obtained through the

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649	Department of Law Enforcement, federal criminal records obtained
650	through the Federal Bureau of Investigation, and local criminal
651	records obtained through local law enforcement agencies shall be
652	used by the department and office for the purpose of issuance,
653	denial, suspension, or revocation of certificates of authority,
654	certifications, or licenses issued to operate in this state.
655	(9) The department shall develop and maintain as a public
656	record a current list of licensed property insurance appraisers.
657	468.8612 Examinations
658	(1) A person desiring to be licensed as a property
659	insurance appraiser must apply to the department after
660	satisfying the examination requirements of this part. The
661	following persons are exempt from the examination requirements
662	of this part:
663	(a) Retired county, circuit, and appellate judges.
664	(b) Circuit court civil certified mediators approved by the
665	Florida Supreme Court pursuant to the Florida Rules for
666	Certified and Court-Appointed Mediators.
667	(c) Mediators who are on the list of approved mediators
668	pursuant to rule 69J-166.031, Florida Administrative Code.
669	(2) An applicant may practice in this state as a property
670	insurance appraiser if he or she passes the required
671	examination, is of good moral character, and meets one of the
672	following requirements:
673	(a) The applicant is currently licensed, registered,
674	certified, or approved as an engineer as defined in s. 471.005,
675	or as a retired professional engineer as defined in s. 471.005,
676	and has taught or successfully completed 4 hours of classroom
677	coursework, approved by the department, specifically related to
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678	construction, building codes, appraisal procedures, appraisal
679	preparation, and any other related material deemed appropriate
680	by the department.
681	(b) The applicant is currently or, within the 5 years
682	immediately preceding the date on which the application is filed
683	with the department, has been licensed, registered, certified,
684	or approved as a general contractor, building contractor, or
685	residential contractor as defined in s. 489.105 and has taught
686	or successfully completed 4 hours of classroom coursework,
687	approved by the department, specifically related to
688	construction, building codes, appraisal procedure, appraisal
689	preparation, and any other related material deemed appropriate
690	by the department.
691	(c) The applicant is currently or, within the 5 years
692	immediately preceding the date on which the application is filed
693	with the department, has been licensed or registered as an
694	architect to engage in the practice of architecture pursuant to
695	part I of chapter 481 and has taught or successfully completed 4
696	hours of classroom coursework, approved by the department,
697	specifically related to construction, building codes, appraisal
698	procedure, appraisal preparation, and any other related material
699	deemed appropriate by the department.
700	(d) The applicant is currently or, within the 5 years
701	immediately preceding the date on which the application is filed
702	with the department, has been a qualified geologist or
703	professional geologist as defined in s. 492.102 and has taught
704	or successfully completed 4 hours of classroom coursework,
705	approved by the department, specifically related to
706	construction, building codes, appraisal procedure, appraisal

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707 preparation, and any other related material deemed appropriate 708 by the department. (e) The applicant is currently or, within the 5 years 709 710 immediately preceding the date on which the application is filed 711 with the department, has been licensed as a certified public 712 accountant as defined in s. 473.302 and has taught or 713 successfully completed 4 hours of classroom coursework, approved 714 by the department, specifically related to construction, 715 building codes, appraisal procedure, appraisal preparation, and 716 any other related material deemed appropriate by the department. 717 (f) The applicant is currently or, within the 5 years 718 immediately preceding the date on which the application is filed 719 with the department, has been a licensed attorney in this state 720 and has taught or successfully completed 4 hours of classroom 721 coursework, approved by the department, specifically related to 722 construction, building codes, appraisal procedure, appraisal 723 preparation, and any other related material deemed appropriate 724 by the department. 725 (q) The applicant has received a baccalaureate degree from 726 an accredited 4-year college or university in the field of 727 engineering, architecture, or building construction and has 728 taught or successfully completed 4 hours of classroom 729 coursework, approved by the department, specifically related to 730 construction, building codes, appraisal procedure, appraisal 731 preparation, and any other related material deemed appropriate 732 by the department. 733 (h) The applicant is a currently licensed adjuster whose 734 license covers all lines of insurance except the life and 735 annuities class. The adjuster's license must include the

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736	property and casualty class of insurance. The currently licensed
737	adjuster must be licensed for at least 3 years to qualify for a
738	property insurance appraiser's license.
739	(i) The applicant has received a minimum of 8 semester
740	hours or 12 quarter hours of credit from an accredited college
741	or university in the field of accounting, geology, engineering,
742	architecture, or building construction.
743	(j) The applicant has successfully completed 40 hours of
744	classroom coursework, approved by the department, specifically
745	related to construction, building codes, appraisal procedure,
746	appraisal preparation, property insurance, and any other related
747	material deemed appropriate by the department.
748	(3) The department shall review and approve courses of
749	study for the continuing education of property insurance
750	appraisers.
751	(4) The department may not issue a license as a property
752	insurance appraiser to any individual found by it to be
753	untrustworthy or incompetent or who:
754	(a) Has not filed an application with the department in
755	accordance with s. 468.85115.
756	(b) Is not a natural person who is at least 18 years of
757	age.
758	(c) Is not a United States citizen or legal alien who
759	possesses work authorization from the United States Citizenship
760	and Immigration Services.
761	(d) Has not completed the education, experience, or
762	licensing requirements in this section.
763	(5) An incomplete application expires 6 months after the
764	date it is received by the department.

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765	(6) An applicant seeking to become licensed under this part
766	may not be rejected solely by virtue of membership or lack of
767	membership in any particular appraisal organization.
768	468.8613 Licensure
769	(1) The department shall license any applicant who the
770	department certifies has completed the requirements of ss.
771	468.8611, 468.86115, and 468.8612.
772	(2) The department shall not issue a license by endorsement
773	to any applicant for a property insurance appraiser license who
774	is under investigation in another state for any act that would
775	constitute a violation of this part until such time that the
776	investigation is complete and disciplinary proceedings have been
777	terminated.
778	468.8614 Renewal of license
779	(1) The department shall renew a license upon receipt of
780	the renewal application and fee and upon certification by the
781	department that the licensee has satisfactorily completed the
782	continuing education requirements of s. 468.8615.
783	(2) The department shall adopt rules establishing a
784	procedure for the biennial renewal of licenses.
785	468.8615 Continuing education
786	(1) The department may not renew a license until the
787	licensee submits satisfactory proof to the department that,
788	during the 2 years before his or her application for renewal,
789	the licensee completed at least 30 hours of continuing education
790	in addition to 5 hours of ethics. Criteria and course content
791	shall be approved by the department by rule.
792	(2) The department may prescribe by rule additional
793	continuing professional education hours, not to exceed 25

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794 percent of the total required hours, for failure to complete the 795 required hours for renewal by the end of the renewal period. 796 (3) Each appraiser course provider, instructor, and 797 classroom course must be approved by and registered with the 798 department before prelicensure courses for property insurance 799 appraisers may be offered. Each classroom course must include a 800 written examination at the conclusion of the course and must 801 cover all of the material contained in the course. A student may 802 not receive credit for the course unless the student achieves a 803 grade of at least 75 percent on the examination. 804 (4) The department shall adopt rules establishing: 805 (a) Standards for the approval, registration, discipline, 806 or removal from registration of course providers, instructors, 807 and courses. The standards must be designed to ensure that 808 instructors have the knowledge, competence, and integrity to 809 fulfill the educational objectives of the prelicensure 810 requirements of this part. 811 (b) A process for determining compliance with the 812 prelicensure requirements of this part. 813 814 The department shall adopt rules prescribing the forms necessary 815 to administer the prelicensure requirements of this part. 816 (5) Approval to teach prescribed or approved appraisal 817 courses does not entitle the instructor to teach any courses 818 outside the scope of this part. 819 468.8616 Inactive license.-820 (1) A licensee may request that his or her license be 821 placed on inactive status by filing an application with the 822 department.

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823 (2) A license that has become inactive may be reactivated 824 upon application to the department. The department may prescribe 825 by rule continuing education requirements as a condition for 826 reactivation of an inactive license. The continuing education 827 requirements for reactivating a license may not exceed 14 hours 828 for each year the license was inactive. (3) The department shall adopt rules relating to licenses 829 830 that have become inactive and for the renewal of inactive 8.31 licenses. The department shall prescribe by rule a fee not to 832 exceed \$250 for the reactivation of an inactive license and a 833 fee not to exceed \$250 for the renewal of an inactive license. 834 468.8617 Certification of partnerships, corporations, and 835 other business entities.-The practice of, or the offer to 836 practice as, a property insurance appraiser by licensees through 837 a partnership, corporation, or other business entity offering 838 property insurance appraiser services to the public, or by a 839 partnership, corporation, or other business entity through 840 licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. 841 842 This section does not allow a corporation or other business 843 entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other 844 845 business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason 846 847 of its compliance with this section. An individual practicing as 848 a property insurance appraiser is not relieved of responsibility 849 for professional services performed by reason of his or her 850 employment or relationship with a partnership, corporation, or 851 other business entity.

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852	468.8618 Grounds for compulsory refusal, suspension, or
853	revocation of an appraiser's licenseThe department shall deny
854	an application for, suspend, revoke, or refuse to renew or
855	continue the license or appointment of any applicant, property
856	insurance appraiser, or licensee and shall suspend or revoke the
857	eligibility to hold a license or appointment of any such person
858	if it finds that any one or more of the following applicable
859	grounds exist:
860	(1) Lack of one or more of the qualifications for the
861	license as specified in this part.
862	(2) Material misstatement, misrepresentation, or fraud in
863	obtaining the license or in attempting to obtain the license or
864	appointment.
865	(3) Failure to pass to the satisfaction of the department
866	any examination required under this act.
867	(4) That the license or appointment was willfully used, or
868	will be used, to circumvent any of the requirements or
869	prohibitions of this code.
870	(5) Demonstrated a lack of fitness or trustworthiness to
871	engage as a property insurance appraiser.
872	(6) Demonstrated a lack of reasonably adequate knowledge
873	and technical competence to engage in the transactions
874	authorized by the license.
875	(7) Fraudulent or dishonest practices in the conduct of
876	business under the license.
877	(8) Willful failure to comply with, or willful violation
878	of, any proper order or rule of the department or willful
879	violation of any provision of this act.
880	(9) Having been found guilty of or having pled guilty or

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881	nolo contendere to a felony or a crime punishable by
882	imprisonment of 1 year or more under the law of the United
883	States or of any state thereof or under the law of any other
884	country which involves moral turpitude, without regard to
885	whether a judgment of conviction has been entered by the court
886	having jurisdiction of such cases.
887	(10) Violated a duty imposed upon her or him by law or by
888	the terms of a contract, whether written, oral, expressed, or
889	implied, in an appraisal; has aided, assisted, or conspired with
890	any other person engaged in any such misconduct and in
891	furtherance thereof; or has formed an intent, design, or scheme
892	to engage in such misconduct and committed an overt act in
893	furtherance of such intent, design, or scheme. It is immaterial
894	to a finding that a licensee has committed a violation of this
895	subsection that the victim or intended victim of the misconduct
896	has sustained no damage or loss, that the damage or loss has
897	been settled and paid after the discovery of misconduct, or that
898	such victim or intended victim was a customer or a person in a
899	confidential relationship with the licensee or was an identified
900	member of the general public.
901	(11) Had a registration, license, or certification as an
902	appraiser revoked, suspended, or otherwise acted against; has
903	had his or her registration, license, or certificate to practice
904	or conduct any regulated profession, business, or vocation
905	revoked or suspended by this or any other state, any nation, or
906	any possession or district of the United States; or has had an
907	application for such registration, licensure, or certification
908	to practice or conduct any regulated profession, business, or
909	vocation denied by this or any other state, any nation, or any

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910	possession or district of the United States.
911	(12)(a) Made or filed a report or record, written or oral,
912	which the licensee knows to be false;
913	(b) Has willfully failed to file a report or record
914	required by state or federal law;
915	(c) Has willfully impeded or obstructed such filing; or
916	(d) Has induced another person to impede or obstruct such
917	filing.
918	(13) Accepted an appointment as an appraiser if the
919	appointment is contingent upon the appraiser reporting a
920	predetermined result, analysis, or opinion, or if the fee to be
921	paid for the services of the appraiser is contingent upon the
922	opinion, conclusion, or valuation reached by the appraiser.
923	468.86185 Grounds for discretionary denial, suspension, or
924	revocation of an appraiser's licenseThe department may deny an
925	application for and suspend, revoke, or refuse to renew or
926	continue a license as a property insurance appraiser if the
927	applicant or licensee has:
928	(1) Failed to timely communicate with the opposing party's
929	appraiser without good cause.
930	(2) Failed or refused to exercise reasonable diligence in
931	submitting recommendations to the opposing party's appraiser.
932	(3) Violated any ethical standard for property insurance
933	appraisers set forth in s. 468.8619.
934	(4) Failed to inform the department in writing within 30
935	days after pleading guilty or nolo contendere to, or being
936	convicted or found guilty of, a felony.
937	(5) Failed to timely notify the department of any change in
938	business location or has failed to fully disclose all business

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939	locations from which he or she operates as a property insurance
940	appraiser.
941	468.8619 Ethical standards for property insurance
942	appraisers
943	(1) CONFIDENTIALITYAn appraiser shall maintain
944	confidentiality of all information revealed during an appraisal
945	except to the party that hired the appraiser and except where
946	disclosure is required by law.
947	(2) RECORDKEEPINGAn appraiser shall maintain
948	confidentiality in the storage and disposal of records and may
949	not disclose any identifying information when materials are used
950	for research, training, or statistical compilations.
951	(3) FEES AND EXPENSESFees charged for appraisal services
952	shall be reasonable and consistent with the nature of the case.
953	An appraiser shall be guided by the following in determining
954	fees:
955	(a) All charges for services as an appraiser based on time
956	may not exceed actual time spent or allocated.
957	(b) Charges for costs shall be for those actually incurred.
958	(4) MAINTENANCE OF RECORDSAn appraiser shall maintain
959	records necessary to support charges for services and expenses,
960	and upon request shall provide an accounting of all applicable
961	charges to the parties. An appraiser licensed under this part
962	shall retain for at least 5 years original or true copies of any
963	contracts engaging the appraiser's services, appraisal reports,
964	and supporting data assembled and formulated by the appraiser in
965	preparing appraisal reports. The period for retaining the
966	records applicable to each engagement starts on the date of the
967	submission of the appraisal report to the client. The records

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968	must be made available by the appraiser for inspection and
969	copying by the department upon reasonable notice to the
970	appraiser. If an appraisal has been the subject of, or has been
971	admitted as evidence in, a lawsuit, reports, and records the
972	appraisal must be retained for at least 2 years after the date
973	that the trial ends.
974	(5) ADVERTISINGAn appraiser may not engage in marketing
975	practices that contain false or misleading information. An
976	appraiser shall ensure that any advertisements of the
977	appraiser's qualifications, services to be rendered, or the
978	appraisal process are accurate and honest. An appraiser may not
979	make claims of achieving specific outcomes or promises implying
980	favoritism for the purpose of obtaining business.
981	(6) INTEGRITY AND IMPARTIALITYAn appraiser may not accept
982	any engagement, provide any service, or perform any act that
983	would compromise the appraiser's integrity or impartiality.
984	(a) An appraiser may not accept an appointment unless he or
985	she can:
986	1. Serve impartially;
987	2. Serve independently from the party appointing him or
988	her;
989	3. Serve competently; and
990	4. Be available to promptly commence the appraisal, and
991	thereafter devote the time and attention to its completion in a
992	manner expected by all involved parties.
993	(b) An appraiser shall conduct the appraisal process in a
994	manner that advances the fair and efficient resolution of the
995	matters submitted for decision. A licensed appraiser shall make
996	all reasonable efforts to prevent delays in the appraisal

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997 process, the harassment of parties or other participants, or 998 other abuse or disruption of the appraisal process. 999 (c) Once a licensed appraiser has accepted an appointment, 1000 the appraiser may not withdraw or abandon the appointment unless 1001 compelled to do so by unanticipated circumstances that would 1002 render it impossible or impracticable to continue. 1003 (d) The licensed appraiser shall, after careful 1004 deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters 1005 1006 justly, exercising independent judgment, and may not allow 1007 outside pressure to affect the decision. An appraiser may not 1008 delegate the duty to decide to any other person. 1009 (7) SKILL AND EXPERIENCE. - An appraiser shall decline an 1010 appointment or selection, withdraw, or request appropriate 1011 assistance when the facts and circumstances of the appraisal are 1012 beyond the appraiser's skill or experience. 1013 (8) GIFTS AND SOLICITATION. - An appraiser may not give or accept any gift, favor, loan, or other item of value in an 1014 appraisal process except for the appraiser's reasonable fee. 1015 1016 During the appraisal process, an appraiser may not solicit or 1017 otherwise attempt to procure future professional services. 1018 (9) COMMUNICATIONS WITH PARTIES.-1019 (a) If an agreement of the parties establishes the manner 1020 or content of the communications between the appraisers, the 1021 parties, and the umpire, the appraisers shall abide by such 1022 agreement. In the absence of agreement, an appraiser may not 1023 discuss a proceeding with any party or with the umpire in the 1024 absence of any other party, except in the following circumstances: 1025

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1026	1. If the appointment of the appraiser or umpire is being
1027	considered, the prospective appraiser or umpire may ask about
1028	the identities of the parties, counsel, and the general nature
1029	of the case, and may respond to inquiries from a party, its
1030	counsel or an umpire designed to determine his or her
1031	suitability and availability for the appointment;
1032	2. To consult with the party who appointed the appraiser
1033	concerning the selection of a neutral umpire;
1034	3. To make arrangements for any compensation to be paid by
1035	the party who appointed the appraiser; or
1036	4. To make arrangements for obtaining materials and
1037	inspection of the property with the party who appointed the
1038	appraiser. Such communication is limited to scheduling and the
1039	exchange of materials.
1040	(b) There may be no communications whereby a party dictates
1041	to an appraiser what the result of the proceedings must be, what
1042	matters or elements may be included or considered by the
1043	appraiser, or what actions the appraiser may take.
1044	Section 3. This act shall take effect July 1, 2015.
1045	
1046	======================================
1047	And the title is amended as follows:
1048	Delete everything before the enacting clause
1049	and insert:
1050	A bill to be entitled
1051	An act relating to property insurance appraisal
1052	umpires and property insurance appraisers; creating
1053	part XVII of chapter 468, F.S., relating to property
1054	insurance appraisal umpires; creating the property
	1
COMMITTEE AMENDMENT

Florida Senate - 2015 Bill No. CS for SB 744



1055 insurance appraisal umpire licensing program within 1056 the Department of Business and Professional 1057 Regulation; providing legislative findings; providing 1058 applicability; requiring a person acting as a property 1059 insurance appraisal umpire on or after a certain date 1060 to be licensed under the act; authorizing the 1061 department to adopt rules; providing definitions; 1062 authorizing the department to establish fees; 1063 providing licensing application requirements; 1064 providing authority and procedures regarding 1065 submission and processing of fingerprints; providing 1066 examination requirements; specifying exemptions from 1067 such requirements; providing application requirements 1068 for licensure as a property insurance appraisal 1069 umpire; providing licensure renewal requirements; 1070 authorizing the department to adopt rules; providing 1071 continuing education requirements; providing 1072 requirements for the inactivation of a license by a 1073 licensee; providing requirements for renewing an 1074 inactive license; establishing license reactivation 1075 fees; providing for certification of partnerships and 1076 corporations offering property insurance appraisal 1077 umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's 1078 1079 license; providing grounds for discretionary denial, 1080 suspension, or revocation of an umpire's license; 1081 providing ethical standards for property insurance 1082 appraisal umpires; creating part XVIII of chapter 468, F.S., relating to property insurance appraisers; 1083

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597-03023-15

Florida Senate - 2015 Bill No. CS for SB 744



1084 creating the property insurance appraiser licensing program within the Department of Business and 1085 1086 Professional Regulation; providing legislative 1087 findings; providing applicability; requiring a person 1088 acting as a property insurance appraiser on or after a 1089 certain date to be licensed under the act; authorizing 1090 the department to adopt rules; providing definitions; 1091 authorizing the department to establish fees; limiting 1092 fee amounts; providing licensing application 1093 requirements; providing authority and procedures regarding submission and processing of fingerprints; 1094 1095 providing examination requirements; specifying 1096 exemptions from such requirements; providing 1097 application requirements for licensure as a property 1098 insurance appraiser; providing licensure renewal 1099 requirements; authorizing the department to adopt 1100 rules; providing continuing education requirements; 1101 providing requirements for the inactivation of a 1102 license by a licensee; providing requirements for 1103 renewing an inactive license; establishing license 1104 reactivation fees; providing for certification of 1105 partnerships and corporations offering property 1106 insurance appraiser services; providing grounds for compulsory refusal, suspension, or revocation of an 1107 1108 appraiser's license; providing grounds for 1109 discretionary denial, suspension, or revocation of an 1110 appraiser's license; providing ethical standards; providing an effective date. 1111

597-03023-15

			SIS AND FIS		ST STATEME	
	Prepared	By: The Pr	ofessional Staff of	the Committee on	Banking and Insura	nce
BILL:	CS/SB 744	4				
INTRODUCER:	Regulated	Industrie	s Committee an	d Senator Richte	er	
SUBJECT:	Property I	Property Insurance Appraisal Umpires and Property Insurance Appraisers				
DATE:	March 30,	2015	REVISED:			
ANA	LYST	STAF	F DIRECTOR	REFERENCE	1	ACTION
I. Oxamendi		Imho	f	RI	Fav/CS	
2. Billmeier		Knud	son	BI	Pre-meeting	
3.				AP		

# Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

### I. Summary:

CS/SB 744 provides for the licensing and regulation of property insurance appraisers and umpires by the Department of Business and Professional Regulation. Property insurance contracts often contain "appraisal" provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss. Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.

The bill provides the education and experience qualifications to be an appraiser and an appraisal umpire. The bill provides fees and maximum limitations on such fees, including a nonrefundable \$200 application fee, a \$200 initial license fee, and a \$500 biennial renewal fee. The fees for appraisers and appraisal umpires are identical. The bill provides continuing education requirements, and provides grounds for the discipline of a license, and ethical standards for appraisers and appraisal umpires.

### II. Present Situation:

### **Property Insurance Appraisers and Umpires**

Property insurance contracts often contain "appraisal" provisions. Appraisal provisions are used

when the parties agree that there is a covered loss but disagree as to the amount of the loss.<sup>1</sup> Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.<sup>2</sup> . The insurer or policyholder may challenge and disqualify an umpire who has specified familial or professional relationships with either party or the representative of a party.<sup>3</sup>

#### **Public Adjusters**

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.<sup>4</sup> The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.<sup>5</sup> The conduct of a public adjuster is governed by statute and by rule.<sup>6</sup> A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.<sup>7</sup>

#### The Sunrise Act

Florida does not license or regulate property insurance appraisal umpires and property insurance appraisers.

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

<sup>&</sup>lt;sup>1</sup> See Fla.Jur. Insurance s. 3292.

<sup>&</sup>lt;sup>2</sup> Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc., 54 So.3d 578 (Fla.3d DCA 2011) and Intracoastal Ventures Corp. v. Safeco Ins. Co. of America, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

<sup>&</sup>lt;sup>3</sup> Section 627.70151, F.S.

<sup>&</sup>lt;sup>4</sup> Section 626.854(1), F.S.

<sup>&</sup>lt;sup>5</sup> Section 626.865, F.S.

<sup>&</sup>lt;sup>6</sup> See generally, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.

<sup>&</sup>lt;sup>7</sup> Section 626.856, F.S.

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

The response submitted by the proponents of the bill, the Insurance Appraisers and Umpires Association (IAUA),<sup>8</sup> states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and noninsurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

<sup>&</sup>lt;sup>8</sup> More information about the Insurance Appraisers and Umpires Association is available at: http://www.iaua.us/aboutiaua.aspx (last visited March 13, 2015).

### **Department of Business and Professional Regulation**

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>9</sup> The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following twelve divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.
- Division of Drugs, Devices and Cosmetics

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.<sup>10</sup> Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>9</sup> Chapter 93-220, L.O.F.

<sup>&</sup>lt;sup>10</sup> Section 310.151, F.S.

• Florida Building Commission under ch. 553, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission<sup>11</sup> and the Regulatory Council of Community Managers<sup>12</sup> are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

## III. Effect of Proposed Changes:

The bill creates part XVII of ch. 468, F.S., to provide for the regulation of property insurance appraisal umpires (appraisal umpires), and part XVIII of ch. 468, F.S., to provide for the regulation of property insurance appraisers (appraisers).

### **Property Insurance Appraisal Umpires**

The provisions in part XVII of ch. 468, F.S., relating to the licensing and regulation of appraisal umpires mirror or are comparable to the provisions for the licensing and regulation of appraisers. According to a representative for the IAUA, separate licensing of these professions helps to insure the independence of appraisal umpire professionals.

### Property Insurance Appraisal Umpire Licensing Program

The bill creates s. 468.85, F.S., to create the property insurance appraisal umpire licensing program within the department. It provides that part XVII of ch. 468, F.S., applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XVII of ch. 468, F.S.

### Definitions

The bill creates s. 468.85, F.S., to define the terms "appraisal," "competent," "department," "independent," "property insurance appraisal umpire," "umpire," "property insurance loss

<sup>&</sup>lt;sup>11</sup> Section 548.003, F.S.

<sup>&</sup>lt;sup>12</sup> Section 468.4315, F.S.

appraiser," "appraiser," and "uniform application." These definitions are identical to the definitions provided in s. 468.86, F.S., for part XVIII of ch. 468, F.S., relating to appraisers.

The bill defines the term "appraisal" to mean:

the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

The bill defines the terms "property insurance appraisal umpire" or "umpire" to mean:

a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

The bill defines the terms "property insurance loss appraiser" or "appraiser" to mean :

a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

The bill defines the term "uniform application" to mean:

the uniform application of the National Association of Insurance Commissioners<sup>13</sup> for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

#### Fees

The bill creates s. 468.851, F.S., to delineate the following maximum fees for appraisal umpires:

- Application: \$200 (nonrefundable)
- Examination: \$200
- Initial license: \$250
- Initial certificate of authorization: \$250
- Biennial license renewal: \$500
- Application for inactive status: \$125

<sup>&</sup>lt;sup>13</sup> The Office of Insurance Regulation is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every 5 years.

- Reactivation of an inactive license: \$250
- Continuing education provide: \$600

These fees are identical to the fees provided in s. 468.8611, F.S., for part XVIII of ch. 468, F.S., relating to appraisers.

## License Application Process

The bill creates s. 468.85115, F.S., to provide the application process for an appraisal umpire license. An applicant for an appraiser license must submit a written application under oath. The bill sets forth the information that must be included in the application along with the application fee, including proof of completing the required prelicensing course. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

This application process is comparable to that provided in s. 468.86115, F.S., for appraiser licensing.

## **Examinations and Qualifications**

The bill creates s. 468.8512, F.S., to provide the examination and education requirements to be licensed as an appraisal umpire.

Section 468.8512(1), F.S., provides that an applicant must apply to the department for a license after satisfying the examination requirements of part XVII of ch. 468, F.S. Section 468.8512(2), F.S., provides that the applicant must pass the required examination, be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraisal umpire a person must be currently, or within the past 5 years, licensed, certified, registered, or approved as any of the following professionals:

- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor as defined in s. 489.105, F.S.;
- An architect to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A qualified geologist or professional geologist as defined in s. 492.102, F.S.;
- A certified public accountant as defined in s. 473.302, F.S.; and
- A Florida-licensed attorney.

An applicant may also qualify if he or she has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction.

To qualify, these persons must have also taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes,

appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

The following persons qualify for an appraisal umpire license without completion of the 4-hour classroom requirement:

- A currently licensed adjuster whose has been licensed for at least 5 years and whose license covers all lines of insurance, except the life and annuities class, and whose license includes the property and casualty class of insurance.
- An applicant who has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.
- An applicant who has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

In addition to meeting the education, experience, and license requirements, an applicant for an appraisal umpire license must be:

- Found to be trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires 6 months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

These examination, education and experience qualifications are identical to those provided in s. 468.8512, F.S., for an appraiser license.

## Licensure

The bill creates s. 468.8513, F.S., to require the department to license any applicant who it certifies has completed the qualification and examination requirements of ss. 468.8511, 468.85115, and 468.8512, F.S.

The bill prohibits the department from issuing a license by endorsement to any applicant for an appraisal umpire license who is under investigation in another state for any act that would constitute a violation of part XVII of ch. 468, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

These licensure requirements are identical to those provided in s. 468.8613, F.S., for an appraiser license.

## **Renewal of License**

The bill creates s. 468.8514, F.S., to provide for the biennial renewal of the appraisal umpire license upon the payment of the renewal fee and certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515, F.S.

These license renewal provisions are identical to those provided in s. 468.8614, F.S., for an appraiser license.

## **Continuing Education**

The bill creates s. 468.8515, F.S., to require licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics.

The department may prescribe by rule additional continuing professional education hours if a licensee fails to complete the required hours by the end of the renewal period, but those additional hours may not exceed 25 percent of the total required hours.

Umpire course continuing education providers, instructors, and classroom courses must be approved by and registered with the department before prelicensure courses for appraisal umpires may be offered. Each classroom course must include a written examination. A student achieves a grade of at least 75 percent on the examination to receive credit.

These continuing education requirements are identical to those provided in s. 468.8615, F.S., for appraisers.

### Inactive license

The bill creates s. 468.8516, F.S., to permit appraisal umpire licensees to place their license on inactive status upon the filing of an application with the department. The license may be reactivated upon application to the department and completion of continuing education requirements prescribed by rule of the department. The continuing education requirements needed to reactivate an inactive license may not exceed 14 hours for each year the license was inactive. The fee to reactivate an inactive license may not exceed \$250, and the fee to renew an inactive license may not exceed \$250.

These requirements for inactive licenses are identical to those provided in s. 468.8616, F.S., for appraisers.

## Certification of Partnerships, Corporations, and Other Business Entities

The bill creates s. 468.8517, F.S., to permit appraisal umpire licensees to practice through a partnership, corporation, or other business entity. A corporation or other business entity may not hold a license to practice property insurance appraisal umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

These requirements for appraisal umpire partnerships, corporations, and other business entities are identical to those provided in s. 468.8617, F.S., for appraisers.

#### Grounds for Compulsory Refusal, Suspension, or Revocation of an Umpire's License

The bill creates s. 468.8518, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including engaging in fraudulent or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraisal umpire license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state or nation.

The compulsory disciplinary provisions for appraisal umpires are identical to those provided in s. 468.8618, F.S., for appraisers.

#### Grounds for Discretionary Refusal, Suspension, or Revocation of an Umpire's License

The bill creates s. 468.85185, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including failure to timely communicate with the appraisers without good cause, failure to exercise reasonable diligence in submitting recommendations to the appraisers, and violating any ethical standard for property insurance appraisal umpires set forth in s. 468.8519, F.S.

A licensee may be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

The discretionary disciplinary provisions for appraisal umpires are identical to those provided in s. 468.86185, F.S., for appraisers.

### Ethical Standards for Appraisal Umpires

The bill creates s. 468.8519, F.S., to provide the following ethical standards for appraisal umpires. An appraisal umpire must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;
- Charge fees for appraisal services that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis;
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the umpire's integrity or impartiality;

- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the umpire's skill or experience;
- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the umpire's reasonable fee; and
- Not solicit or otherwise attempt to procure future professional services during the appraisal process.

The ethical standards for appraisal umpires are identical to those provided in s. 468.8619, F.S., for appraisers.

#### **Property Insurance Appraisers**

The provisions in part XVIII of ch. 468, F.S., relating to the licensing and regulation of appraisal umpires mirror or are comparable to the provisions for the licensing and regulation of appraisers.

#### Property Insurance Appraiser Licensing Program

The bill creates s. 468.86, F.S., to create the property insurance appraiser licensing program within the department. It provides that part XVIII of ch. 468, F.S., applies to residential and commercial residential property insurance contracts and to the appraisal umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XVIII of ch. 468, F.S.

### Definitions

The bill creates s. 468.86, F.S., to define the terms "appraisal," "competent," "department," "independent," "property insurance appraisal umpire," "umpire," "property insurance loss appraiser," "appraiser," and "uniform application." These definitions are identical to the definitions provided in s. 468.85, F.S., for part XVII of ch. 468, F.S., relating to appraisal umpires.

The bill defines the term "appraisal" to mean:

the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

The bill defines the terms "property insurance appraisal umpire" or "umpire" to mean:

a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal. The bill defines the terms "property insurance loss appraiser" or "appraiser" to mean:

a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

The bill defines the term "uniform application" to mean:

the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

#### Fees

The bill creates s. 468.8611, F.S., to delineate the following maximum fees for property insurance loss appraisers: Application: \$200 (nonrefundable) Examination: \$200 Initial license: \$250 Initial certificate of authorization: \$250 Biennial license renewal: \$500 Application for inactive status: \$125 Reactivation of an inactive license: \$250 Continuing education provide: \$600

These fees are identical to the fees provided in s. 468.8511, F.S., for appraisal umpires.

#### License Application Process

The bill creates s. 468.86115, F.S., to provide the application process for an appraiser license. An applicant for an appraiser license must submit a written application under oath. The bill sets forth the information that must be included in the application along with the application fee, including proof of completing the required prelicensing course. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed appraisers.

This application process is identical to that provided in s. 468.85115, F.S., for appraisal umpire licensing.

#### Examinations and Qualifications

The bill creates s. 468.8612, F.S., to provide the examination and education requirements to be licensed as an appraiser.

Section 468.8612(1), F.S., provides that an applicant must apply to the department for a license after satisfying the examination requirements of part XVIII of ch. 468, F.S.

Section 468.8612(2), F.S., provides that the applicant must pass the required examination, be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraiser a person must be currently, or within the past 5 years, licensed, certified, registered, or approved as any of the following professionals:

- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor as defined in s. 489.105, F.S.;
- An architect to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A qualified geologist or professional geologist as defined in s. 492.102, F.S.;
- A certified public accountant as defined in s. 473.302, F.S.; and
- A Florida-licensed attorney.

An applicant may also qualify if he or she has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction.

To qualify, these persons must also have taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

The following persons qualify for an appraiser license without completion of the 4-hour classroom requirement:

- A currently licensed adjuster who has been licensed for at least 5 years and whose license covers all lines of insurance, except the life and annuities class, and whose license includes the property and casualty class of insurance.
- An applicant who has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.
- An applicant who has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

In addition to meeting the education, experience, and license requirements, an applicant for an appraiser license must be:

- Found to be trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires 6 months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

These examination, education and experience qualifications are identical to those provided in s. 468.8612, F.S., for an appraisal umpire license.

#### Licensure

The bill creates s. 468.8613, F.S., to require the department to license any applicant who it certifies has completed the qualification and examination requirements of ss. 468.8611, 468.86115, and 468.8612, F.S.

The bill prohibits the department from issuing a license by endorsement to any applicant for an appraiser license who is under investigation in another state for any act that would constitute a violation of XVIII of ch. 468, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

These licensure requirements are identical to those provided in s. 468.8512, F.S., for an appraisal umpire license.

#### Renewal of License

The bill creates s. 468.8614, F.S., to provide for the biennial renewal of the appraiser license upon the payment of the renewal fee and certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615, F.S.

These license renewal provisions are identical to those provided in s. 468.8514, F.S., for an appraisal umpire license.

#### **Continuing Education**

The bill creates s. 468.8615, F.S., to require appraiser licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics.

The department may prescribe by rule additional continuing professional education hours if a licensee fails to complete the required hours by the end of the renewal period, but those additional hours may not exceed 25 percent of the total required hours.

Appraiser continuing education course providers, instructors, and classroom courses must be approved by and registered with the department before prelicensure courses for appraisers may be offered. Each classroom course must include a written examination. A student achieves a grade of at least 75 percent on the examination to receive credit.

These continuing education requirements are identical to those provided in s. 468.8515, F.S., for appraisal umpires.

#### Inactive license

The bill creates s. 468.8616, F.S., to permit appraisers to place their license on inactive status upon the filing of an application with the department. The license may be reactivated upon application to the department and completion of continuing education requirements prescribed by rule of the department. The continuing education requirements needed to reactivate an inactive license may not exceed 14 hours for each year the license was inactive. The fee to reactivate an inactive license may not exceed \$250, and the fee to renew an inactive license may not exceed \$250.

These requirements for an inactive license are identical to those provided in s. 468.8516, F.S., for appraisal umpires.

### Certification of Partnerships, Corporations, and Other Business Entities

The bill creates s. 468.8617, F.S., to permit appraiser licensees to practice through a partnership, corporation, or other business entity. A corporation or other business entity may not hold a license to practice property insurance appraisal services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

These requirements for appraiser partnerships, corporations, and other business entities are identical to those provided in s. 468.8517, F.S., for appraisal umpires.

#### Grounds for Compulsory Refusal, Suspension, or Revocation of an Appraiser's License

The bill creates s. 468.8618, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and to refuse to renew or continue a license, including engaging in fraudulent or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraiser license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state or nation.

These compulsory disciplinary provisions for appraisers are identical to those provided in s. 468.8518, F.S., for appraisal umpires.

#### Grounds for Discretionary Refusal, Suspension, or Revocation of an Appraiser's License

The bill creates s. 468.86185, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including failure to timely communicate with the appraisers without good cause, failure to exercise reasonable diligence in submitting recommendations to the appraisers, and violating any ethical standard for property insurance appraisers set forth in s. 468.8619, F.S.

A licensee may be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

These discretionary disciplinary provisions for appraisers are identical to those provided in s. 468.85185, F.S., for appraisal umpires.

## Ethical Standards for Appraiser

The bill creates s. 468.8619, F.S., to provide the following ethical standards for property insurance appraisers. An appraiser must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;
- Charge fees for appraisal services that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis.
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading advertising or marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality, including being available to promptly commence the appraisal and thereafter devote his or her time to its completion in the manner expected by all involved parties;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience;
- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee; and
- Not solicit or otherwise attempt to procure future professional services during the appraisal process.

The above ethical standards for appraisers are identical to those provided in s. 468.8519, F.S., for appraisal umpires.

The bill also provides that an appraiser must communicate with all parties in the manner agreed to by the parties. The bill prohibits communications in which a party dictates to an appraiser the results of the proceedings, the matters or elements that must be included or considered by the appraiser, or the actions that the appraiser may take.

### **Effective Date**

The 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:

The bill provides the following license fees for property insurance appraisal umpires and appraisers:

- Application: \$200 (nonrefundable)
- Examination: \$200
- Initial license: \$250
- Initial certificate of authorization: \$250
- Biennial license renewal: \$500
- Application for inactive status: \$125
- Reactivation of an inactive license: \$250
- Continuing education provide: \$600
- B. Private Sector Impact:

Applicants for an appraiser license and for an appraisal umpire license would be required to pay the application and license fees specified in the bill, including the cost of fingerprinting for a criminal history records check. According to FDLE, the cost for a state and national criminal history record check is \$38.75.

C. Government Sector Impact:

According to the department, it estimates revenues from licensing fees of \$2,467,000 and expenditures of \$1,001,936 for FY 2015-2016; revenues of \$1,850,250 and expenditures of \$918,023 for FY 2016-2017; and revenues of \$2,304,500 and expenditures of \$918,203 for FY 2017-2018.

The department also indicated the need for additional FTE's to implement the new licensing requirements.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 468.85, 468.8519, 468.86, 468.851, 468.8511, 468.85115, 468.8512, 468.8513, 468.8514, 468.8515, 468.8516, 468.8517, 468.8518, 468.85185, 468.861, 468.8611, 468.86115, 468.8612, 468.8613, 468.8614, 468.8615, 468.8616, 468.8617, 468.8619, 468.8618, and 468.86185.

#### 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 Regulated Industries on March 18, 2015:

The CS does not create s. 468.862, F.S., to require commercial and residential real property insurers to use the property insurance appraisal process when the only issue remaining between an insured and an insurer is the actual cash value, the amount of loss, or the cost of repair or replacement of property for which a claim has been filed, and either party has demanded the use of the process for appraisals.

B. Amendments:

None.

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

 $\boldsymbol{B}\boldsymbol{y}$  the Committee on Regulated Industries; and Senator Richter

2015744c1 580-02529-15 1 A bill to be entitled 2 An act relating to property insurance appraisal 3 umpires and property insurance appraisers; creating part XVII of chapter 468, F.S., relating to property insurance appraisal umpires; creating the property insurance appraisal umpire licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing 8 9 applicability; authorizing the department to adopt 10 rules; providing definitions; authorizing the 11 department to establish fees; providing licensing 12 application requirements; providing authority and 13 procedures regarding submission and processing of 14 fingerprints; providing examination requirements; 15 providing application requirements for licensure as a 16 property insurance appraisal umpire; providing 17 licensure renewal requirements; authorizing the 18 department to adopt rules; providing continuing 19 education requirements; providing requirements for the 20 inactivation of a license by a licensee; providing 21 requirements for renewing an inactive license; 22 establishing license reactivation fees; providing for 23 certification of partnerships and corporations 24 offering property insurance appraisal umpire services; 25 providing grounds for compulsory refusal, suspension, 26 or revocation of an umpire's license; providing 27 grounds for discretionary denial, suspension, or 28 revocation of an umpire's license; providing ethical 29 standards for property insurance appraisal umpires; Page 1 of 38 CODING: Words stricken are deletions; words underlined are additions.

1	580-02529-15 2015744c1
30	creating part XVIII of chapter 468, F.S., relating to
31	property insurance appraisers; creating the property
32	insurance appraiser licensing program within the
33	Department of Business and Professional Regulation;
34	providing legislative findings; providing
35	applicability; authorizing the department to adopt
36	rules; providing definitions; authorizing the
37	department to establish fees; limiting fee amounts;
38	providing licensing application requirements;
39	providing authority and procedures regarding
40	submission and processing of fingerprints; providing
41	examination requirements; providing application
42	requirements for licensure as a property insurance
43	appraiser; providing licensure renewal requirements;
44	authorizing the department to adopt rules; providing
45	continuing education requirements; providing
46	requirements for the inactivation of a license by a
47	licensee; providing requirements for renewing an
48	inactive license; establishing license reactivation
49	fees; providing for certification of partnerships and
50	corporations offering property insurance appraiser
51	services; providing grounds for compulsory refusal,
52	suspension, or revocation of an appraiser's license;
53	providing grounds for discretionary denial,
54	suspension, or revocation of an appraiser's license;
55	providing ethical standards; providing an effective
56	date.
57	
58	Be It Enacted by the Legislature of the State of Florida:
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60	Section 1. Part XVII of chapter 468, Florida Statutes,
61	consisting of sections 468.85 through 468.8519, is created to
62	read:
63	PART XVII
64	PROPERTY INSURANCE APPRAISAL UMPIRES
65	468.85 Property insurance appraisal umpire licensing
66	program; legislative purpose; scope of part
67	(1) The property insurance appraisal umpire licensing
68	program is created within the Department of Business and
69	Professional Regulation.
70	(2) The Legislature finds it necessary in the interest of
71	the public safety and welfare to prevent damage to real and
72	personal property, to avert economic injury to the residents of
73	this state, and to regulate persons and companies that hold
74	themselves out to the public as qualified to perform as property
75	insurance appraisal umpires.
76	(3) This part applies to residential and commercial
77	residential property insurance contracts and to the umpires and
78	appraisers who participate in the appraisal process.
79	(4) The department may adopt rules to administer this part.
80	468.851 DefinitionsAs used in this part, the term:
81	(1) "Appraisal" means the process of estimating or
82	evaluating actual cash value, the amount of loss, or the cost of
83	repair or replacement of property for the purpose of quantifying
84	the monetary value of a property loss claim when an insurer and
85	an insured have failed to mutually agree on the value of the
86	loss pursuant to a residential or commercial residential
87	property insurance contract that is required in such contracts
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117	(1) The department, by rule, may establish fees to be paid
118	for application, examination, reexamination, licensing and
119	renewal, inactive status application, reactivation of inactive
120	licenses, and application for providers of continuing education.
121	The department may also establish by rule a delinquency fee.
122	Fees shall be based on department estimates of the revenue
123	required to implement the provisions of this part. Fees shall be
124	remitted with the application, examination, reexamination,
125	licensing and renewal, inactive status application, and
126	reactivation of inactive licenses, and application for providers
127	of continuing education.
128	(2) The application fee shall not exceed \$200 and is
129	nonrefundable. The examination fee shall not exceed \$200 plus
130	the actual per applicant cost to the department to purchase the
131	examination, if the department chooses to purchase the
132	examination. The examination fee shall be in an amount that
133	covers the cost of obtaining and administering the examination
134	and shall be refunded if the applicant is found ineligible to
135	sit for the examination.
136	(3) The fee for an initial license shall not exceed \$250.
137	(4) The fee for an initial certificate of authorization
138	shall not exceed \$250.
139	(5) The fee for a biennial license renewal shall not exceed
140	<u>\$500.</u>
141	(6) The fee for application for inactive status shall not
142	exceed \$125.
143	(7) The fee for reactivation of an inactive license shall
144	not exceed \$250.
145	(8) The fee for applications from providers of continuing

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146	education may not exceed \$600.
147	(9) The fee for fingerprinting shall be included in the
148	department's costs for each background check.
149	468.85115 Application for license as a property insurance
150	appraisal umpire
151	(1) The department shall not issue a license as a property
152	insurance appraisal umpire to any person except upon written
153	application previously filed with the department, with
154	qualification and advance payment of all applicable fees. Any
155	such application shall be made under oath or affirmation and
156	signed by the applicant. The department shall accept the uniform
157	application for a nonresident property insurance appraisal
158	umpire. The department may adopt revised versions of the uniform
159	application by rule.
160	(2) In the application, the applicant shall set forth:
161	(a) His or her full name, age, social security number,
162	residence address, business address, mailing address, contact
163	telephone numbers, including a business telephone number, and e-
164	mail address.
165	(b) Proof that he or she has completed or is in the process
166	of completing any required prelicensing course.
167	(c) Whether he or she has been refused or has voluntarily
168	surrendered or has had suspended or revoked a professional
169	license by the supervising officials of any state.
170	(d) Proof that the applicant meets the requirements for
171	licensure as a property insurance appraisal umpire as required
172	under ss. 468.8511 and 468.8512, and this section.
173	(e) The applicant's gender.
174	(f) The applicant's native language.
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175	(q) The applicant's highest achieved level of education.
176	(h) All education requirements that the applicant has
177	completed to qualify as a property insurance appraisal umpire,
178	including the name of the course, the course provider, and the
179	course completion dates.
180	(3) Each application shall be accompanied by payment of any
181	applicable fee.
182	(4) At the time of application, the applicant must be
183	fingerprinted by a law enforcement agency or other entity
184	approved by the department and he or she must pay the
185	fingerprint processing fee in s. 468.8511. Fingerprints must be
186	processed by the Department of Law Enforcement.
187	(5) The Department of Law Enforcement may, to the extent
188	provided for by federal law, exchange state, multistate, and
189	federal criminal history records with the department or office
190	for the purpose of the issuance, denial, suspension, or
191	revocation of a certificate of authority, certification, or
192	license to operate in this state.
193	(6) The Department of Law Enforcement may accept
194	fingerprints of any other person required by statute or rule to
195	submit fingerprints to the department or office or any applicant
196	or licensee regulated by the department or office who is
197	required to demonstrate that he or she has not been convicted of
198	or pled guilty or nolo contendere to a felony or a misdemeanor.
199	(7) The Department of Law Enforcement shall, upon receipt
200	of fingerprints from the department or office, submit the
201	fingerprints to the Federal Bureau of Investigation for a
202	federal criminal history records check.
203	(8) Statewide criminal records obtained through the
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	580-02529-15 2015744c1
204	Department of Law Enforcement, federal criminal records obtained
205	through the Federal Bureau of Investigation, and local criminal
206	records obtained through local law enforcement agencies shall be
207	used by the department and office for the purpose of issuance,
208	denial, suspension, or revocation of certificates of authority,
209	certifications, or licenses issued to operate in this state.
210	(9) The department shall develop and maintain as a public
211	record a current list of licensed property insurance appraisal
212	umpires.
213	468.8512 Examinations
214	(1) A person desiring to be licensed as a property
215	insurance appraisal umpire must apply to the department after
216	satisfying the examination requirements of this part.
217	(2) An applicant may practice in this state as a property
218	insurance appraisal umpire if he or she passes the required
219	examination, is of good moral character, and meets one of the
220	following requirements:
221	(a) The applicant is currently licensed, registered,
222	certified, or approved as an engineer as defined in s. 471.005,
223	or as a retired professional engineer as defined in s. 471.005,
224	and has taught or successfully completed 4 hours of classroom
225	coursework, approved by the department, specifically related to
226	construction, building codes, appraisal procedures, appraisal
227	preparation, and any other related material deemed appropriate
228	by the department.
229	(b) The applicant is currently or, within the 5 years
230	immediately preceding the date on which the application is filed
231	with the department, has been licensed, registered, certified,
232	or approved as a general contractor, building contractor, or
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233	residential contractor as defined in s. 489.105 and has taught
234	or successfully completed 4 hours of classroom coursework,
235	approved by the department, specifically related to
236	construction, building codes, appraisal procedure, appraisal
237	preparation, and any other related material deemed appropriate
238	by the department.
239	(c) The applicant is currently or, within the 5 years
240	immediately preceding the date on which the application is filed
241	with the department, has been licensed or registered as an
242	architect to engage in the practice of architecture pursuant to
243	part I of chapter 481 and has taught or successfully completed 4
244	hours of classroom coursework, approved by the department,
245	specifically related to construction, building codes, appraisal
246	procedure, appraisal preparation, and any other related material
247	deemed appropriate by the department.
248	(d) The applicant is currently or, within the 5 years
249	immediately preceding the date on which the application is filed
250	with the department, has been a qualified geologist or
251	professional geologist as defined in s. 492.102 and has taught
252	or successfully completed 4 hours of classroom coursework,
253	approved by the department, specifically related to
254	construction, building codes, appraisal procedure, appraisal
255	preparation, and any other related material deemed appropriate
256	by the department.
257	(e) The applicant is currently or, within the 5 years
258	immediately preceding the date on which the application is filed
259	with the department, has been licensed as a certified public
260	accountant as defined in s. 473.302 and has taught or
261	successfully completed 4 hours of classroom coursework, approved
1	

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262	by the department, specifically related to construction,
263	building codes, appraisal procedure, appraisal preparation, and
264	any other related material deemed appropriate by the department.
265	(f) The applicant is currently or, within the 5 years
266	immediately preceding the date on which the application is filed
267	with the department, has been a licensed attorney in this state
268	and has taught or successfully completed 4 hours of classroom
269	coursework, approved by the department, specifically related to
270	construction, building codes, appraisal procedure, appraisal
271	preparation, and any other related material deemed appropriate
272	by the department.
273	(g) The applicant has received a baccalaureate degree from
274	an accredited 4-year college or university in the field of
275	engineering, architecture, or building construction and has
276	taught or successfully completed 4 hours of classroom
277	coursework, approved by the department, specifically related to
278	construction, building codes, appraisal procedure, appraisal
279	preparation, and any other related material deemed appropriate
280	by the department.
281	(h) The applicant is a currently licensed adjuster whose
282	license covers all lines of insurance except the life and
283	annuities class. The adjuster's license must include the
284	property and casualty class of insurance. The currently licensed
285	adjuster must be licensed for at least 5 years to qualify for a
286	property insurance appraisal umpire's license.
287	(i) The applicant has received a minimum of 8 semester
288	hours or 12 quarter hours of credit from an accredited college
289	or university in the field of accounting, geology, engineering,
290	architecture, or building construction.
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291	(j) The applicant has successfully completed 40 hours of
292	classroom coursework, approved by the department, specifically
293	related to construction, building codes, appraisal procedure,
294	appraisal preparation, property insurance, and any other related
295	material deemed appropriate by the department.
296	(3) The department shall review and approve courses of
297	study for the continuing education of property insurance
298	appraisal umpires.
299	(4) The department may not issue a license as a property
300	insurance appraisal umpire to any individual found by it to be
301	untrustworthy or incompetent or who:
302	(a) Has not filed an application with the department in
303	accordance with s. 485.85115.
304	(b) Is not a natural person who is at least 18 years of
305	age.
306	(c) Is not a United States citizen or legal alien who
307	possesses work authorization from the United States Citizenship
308	and Immigration Services.
309	(d) Has not completed the education, experience, or
310	licensing requirements of this section.
311	(5) An incomplete application expires 6 months after the
312	date it is received by the department.
313	(6) An applicant seeking to become licensed under this part
314	may not be rejected solely by virtue of membership or lack of
315	membership in any particular appraisal organization.
316	468.8513 Licensure
317	(1) The department shall license any applicant who the
318	department certifies has completed the requirements of ss.
319	468.8511, 468.85115, and 468.8512.
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320	(2) The department shall not issue a license by endorsement
321	to any applicant for a property insurance appraisal umpire
322	license who is under investigation in another state for any act
323	that would constitute a violation of this part until such time
324	that the investigation is complete and disciplinary proceedings
325	have been terminated.
326	468.8514 Renewal of license
327	(1) The department shall renew a license upon receipt of
328	the renewal application and fee and upon certification by the
329	department that the licensee has satisfactorily completed the
330	continuing education requirements of s. 468.8515.
331	(2) The department shall adopt rules establishing a
332	procedure for the biennial renewal of licenses.
333	468.8515 Continuing education
334	(1) The department may not renew a license until the
335	licensee submits satisfactory proof to the department that,
336	during the 2 years before his or her application for renewal,
337	the licensee completed at least 30 hours of continuing education
338	in addition to 5 hours of ethics. Criteria and course content
339	shall be approved by the department by rule.
340	(2) The department may prescribe by rule additional
341	continuing professional education hours, not to exceed 25
342	percent of the total required hours, for failure to complete the
343	required hours by the end of the renewal period.
344	(3) Each umpire course provider, instructor, and classroom
345	course must be approved by and registered with the department
346	before prelicensure courses for property insurance appraisal
347	umpires may be offered. Each classroom course must include a
348	written examination at the conclusion of the course and must
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349	cover all of the material contained in the course. A student may
350	not receive credit for the course unless the student achieves a
351	grade of at least 75 percent on the examination.
352	(4) The department shall adopt rules establishing:
353	(a) Standards for the approval, registration, discipline,
354	or removal from registration of course providers, instructors,
355	and courses. The standards must be designed to ensure that
356	instructors have the knowledge, competence, and integrity to
357	fulfill the educational objectives of the prelicensure
358	requirements of this part.
359	(b) A process for determining compliance with the
360	prelicensure requirements of this part.
361	
362	The department shall adopt rules prescribing the forms necessary
363	to administer the prelicensure requirements of this part.
364	(5) Approval to teach prescribed or approved appraisal
365	courses does not entitle the instructor to teach any courses
366	outside the scope of this part.
367	468.8516 Inactive license
368	(1) A licensee may request that his or her license be
369	placed on inactive status by filing an application with the
370	department.
371	(2) A license that has become inactive may be reactivated
372	upon application to the department. The department may prescribe
373	by rule continuing education requirements as a condition for
374	reactivation of an inactive license. The continuing education
375	requirements for reactivating a license may not exceed 14 hours
376	for each year the license was inactive.
377	(3) The department shall adopt rules relating to licenses

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378	······································	
379	licenses. The department shall prescribe by rule a fee not to	
380	exceed \$250 for the reactivation of an inactive license and a	
381	fee not to exceed \$250 for the renewal of an inactive license.	
382	468.8517 Certification of partnerships, corporations, and	
383	other business entitiesThe practice of, or the offer to	
384	practice as, a property insurance appraisal umpire by licensees	
385	through a partnership, corporation, or other business entity	
386	offering property insurance appraisal umpire services to the	
387	public, or by a partnership, corporation, or other business	
388	entities through licensees under this part as agents, employees,	
389	officers, or partners is permitted, subject to the provisions of	
390	this part. This section does not allow a corporation or other	
391	business entity to hold a license to practice property insurance	
392	appraisal umpire services. A partnership, corporation, or other	
393	business entity is not relieved of responsibility for the	
394	conduct or acts of its agents, employees, or officers by reason	
395	of its compliance with this section. An individual practicing as	
396	a property insurance appraisal umpire is not relieved of	
397	responsibility for professional services performed by reason of	
398	his or her employment or relationship with a partnership,	
399	corporation, or other business entity.	
400	468.8518 Grounds for compulsory refusal, suspension, or	
401	revocation of an umpire's licenseThe department shall deny an	
402	application for, suspend, revoke, or refuse to renew or continue	
403	the license or appointment of any applicant, property insurance	
404	appraisal umpire or licensee and shall suspend or revoke the	
405	eligibility to hold a license or appointment of any such person	
406	if it finds that any one or more of the following applicable	
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407	grounds exist:
408	(1) Lack of one or more of the qualifications for the
409	license as specified in this part.
410	(2) Material misstatement, misrepresentation, or fraud in
411	obtaining the license or in attempting to obtain the license or
412	appointment.
413	(3) Failure to pass to the satisfaction of the department
414	any examination required under this chapter.
415	(4) That the license or appointment was willfully used, or
416	will be used, to circumvent any of the requirements or
417	prohibitions of this chapter.
418	(5) Demonstrated a lack of fitness or trustworthiness to
419	engage as a property insurance appraisal umpire.
420	(6) Demonstrated a lack of reasonably adequate knowledge
421	and technical competence to engage in the transactions
422	authorized by the license.
423	(7) Fraudulent or dishonest practices in the conduct of
424	business under the license.
425	(8) Willful failure to comply with, or willful violation
426	of, any proper order or rule of the department or willful
427	violation of any provision of this chapter.
428	(9) Having been found guilty of or having plead guilty or
429	nolo contendere to a felony or a crime punishable by
430	imprisonment of 1 year or more under the law of the United
431	States or of any state thereof or under the law of any other
432	country which involves moral turpitude, without regard to
433	whether a judgment of conviction has been entered by the court
434	having jurisdiction of such cases.
435	(10)(a) Violated a duty imposed upon her or him by law or
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436	by the terms of a contract, whether written, oral, expressed, or
437	implied, in an appraisal;
438	(b) Has aided, assisted, or conspired with any other person
439	engaged in any such misconduct and in furtherance thereof; or
440	(c) Has formed an intent, design, or scheme to engage in
441	such misconduct and committed an overt act in furtherance of
442	such intent, design, or scheme.
443	
444	It is immaterial to a finding that a licensee has committed a
445	violation of this subsection that the victim or intended victim
446	of the misconduct has sustained no damage or loss, that the
447	damage or loss has been settled and paid after the discovery of
448	misconduct, or that such victim or intended victim was a
449	customer or a person in a confidential relationship with the
450	licensee or was an identified member of the general public.
451	(11)(a) Had a registration, license, or certification as an
452	umpire revoked, suspended, or otherwise acted against;
453	(b) Has had his or her registration, license, or
454	certificate to practice or conduct any regulated profession,
455	business, or vocation revoked or suspended by this or any other
456	state, any nation, or any possession or district of the United
457	States; or
458	(c) Has had an application for such registration,
459	licensure, or certification to practice or conduct any regulated
460	profession, business, or vocation denied by this or any other
461	state, any nation, or any possession or district of the United
462	States.
463	(12)(a) Made or filed a report or record, written or oral,
464	which the licensee knows to be false;
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465	(b) Has willfully failed to file a report or record	
466	required by state or federal law;	
467	(c) Has willfully impeded or obstructed such filing; or	
468	(d) Has induced another person to impede or obstruct such	
469	filing.	
470	(13) Accepted an appointment as an umpire if the	
471	appointment is contingent upon the umpire reporting a	
472	predetermined result, analysis, or opinion, or if the fee to be	
473	paid for the services of the umpire is contingent upon the	
474	opinion, conclusion, or valuation reached by the umpire.	
475	468.85185 Grounds for discretionary denial, suspension, or	
476	revocation of an umpire's licenseThe department may deny an	
477	application for and suspend, revoke, or refuse to renew or	
478	continue a license as a property insurance appraisal umpire if	
479	the applicant or licensee has:	
480	(1) Failed to timely communicate with the appraisers	
481	without good cause.	
482	(2) Failed or refused to exercise reasonable diligence in	
483	submitting recommendations to the appraisers.	
484	(3) Violated any ethical standard for property insurance	
485	appraisal umpires set forth in s. 468.8519.	
486	(4) Failed to inform the department in writing within 30	
487	days after pleading guilty or nolo contendere to, or being	
488	convicted or found guilty of, a felony.	
489	(5) Failed to timely notify the department of any change in	
490	business location, or has failed to fully disclose all business	
491	locations from which he or she operates as a property insurance	
492	appraisal umpire.	
493	468.8519 Ethical standards for property insurance appraisal	

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494	umpires.—	
495	(1) CONFIDENTIALITYAn umpire shall maintain	
496	confidentiality of all information revealed during an appraisal	
497	except where disclosure is required by law.	
498	(2) RECORDKEEPINGAn umpire shall maintain confidentiality	
499	in the storage and disposal of records and may not disclose any	
500	identifying information when materials are used for research,	
501	training, or statistical compilations.	
502	(3) FEES AND EXPENSESFees charged for appraisal services	
503	shall be reasonable and consistent with the nature of the case.	
504	An umpire shall be guided by the following in determining fees:	
505	(a) All charges for services as an umpire based on time may	
506	not exceed actual time spent or allocated.	
507	(b) Charges for costs shall be for those actually incurred.	
508	(c) An umpire may not charge, agree to, or accept as	
509	compensation or reimbursement any payment, commission, or fee	
510	that is based on a percentage basis, or that is contingent upon	
511	arriving at a particular value or any future happening or	
512	outcome of the assignment.	
513	(4) MAINTENANCE OF RECORDS An umpire shall maintain	
514	records necessary to support charges for services and expenses,	
515	and upon request shall provide an accounting of all applicable	
516	charges to the parties. An umpire licensed under this part shall	
517	retain original or true copies of any contracts engaging the	
518	umpire's services, appraisal reports, and supporting data	
519	assembled and formulated by the umpire in preparing appraisal	
520	reports for at least 5 years. The period for retaining the	
521	records applicable to each engagement starts on the date of the	
522	submission of the appraisal report to the client. The records	
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523	23 must be made available by the umpire for inspection and copy	
524	by the department upon reasonable notice to the umpire. If an	
525	appraisal has been the subject of, or has been admitted as	
526	evidence in, a lawsuit, reports, and records, the appraisal must	
527	be retained for at least 2 years after the date that the trial	
28	ends.	
29	(5) ADVERTISINGAn umpire may not engage in marketing	
30	practices that contain false or misleading information. An	
31	umpire shall ensure that any advertisements of the umpire's	
32	qualifications, services to be rendered, or the appraisal	
33	process are accurate and honest. An umpire may not make claims	
34	of achieving specific outcomes or promises implying favoritism	
35	for the purpose of obtaining business.	
36	(6) INTEGRITY AND IMPARTIALITYAn umpire may not engage in	
37	any business, provide any service, or perform any act that would	
38		
39	(7) SKILL AND EXPERIENCE An umpire shall decline an	
40	appointment or selection, withdraw, or request appropriate	
41	assistance when the facts and circumstances of the appraisal are	
42	beyond the umpire's skill or experience.	
43	(8) GIFTS AND SOLICITATION An umpire may not give or	
44	accept any gift, favor, loan, or other item of value in an	
45	appraisal process except for the umpire's reasonable fee. During	
46	the appraisal process, an umpire may not solicit or otherwise	
47	attempt to procure future professional services.	
48	Section 2. Part XVIII of chapter 468, Florida Statutes,	
49	consisting of sections 468.86 through 468.8619, is created to	
50	read:	
51	PART XVIII	
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552	PROPERTY INSURANCE APPRAISERS
553	468.86 Property insurance appraiser licensing program;
554	legislative purpose; scope of part
555	(1) The property insurance appraiser licensing program is
556	created within the Department of Business and Professional
557	Regulation.
558	(2) The Legislature finds it necessary and in the interest
559	of the public safety and welfare, to prevent damage to real and
560	personal property, to avert economic injury to the residents of
561	this state, and to regulate persons and companies that hold
562	themselves out to the public as qualified to perform as a
563	property insurance appraiser.
564	(3) This part applies to residential and commercial
565	residential property insurance contracts and to the umpires and
566	appraisers who participate in the appraisal process.
567	(4) The department may adopt rules to administer the
568	requirements of this part.
569	468.861 DefinitionsAs used in this part, the term:
570	(1) "Appraisal" means the process of estimating or
571	evaluating actual cash value, the amount of loss, or the cost of
572	repair or replacement of property for the purpose of quantifying
573	the monetary value of a property loss claim when an insurer and
574	an insured have failed to mutually agree on the value of the
575	loss pursuant to a residential or commercial residential
576	property insurance contract that is required in such contracts
577	for the resolution of a claim dispute by appraisal.
578	(2) "Competent" means properly licensed, sufficiently
579	qualified, and capable of performing an appraisal.
580	(3) "Department" means the Department of Business and
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581	Professional Regulation.	
582	(4) "Independent" means not subject to control,	
583	restriction, modification, and limitation by the appointing	
584	party.	
585	(5) "Property insurance appraisal umpire" or "umpire" means	
586	a competent, independent, licensed, and impartial third party	
587	selected by the licensed appraisers for the insurer and the	
588	insured to resolve issues that the licensed appraisers are	
589	unable to reach an agreement during the course of the appraisal	
590	process pursuant to a residential or commercial property	
591	insurance contract that is required to provide for resolution of	
592	a claim dispute by appraisal.	
593	(6) "Property insurance loss appraiser" or "appraiser"	
594	means a competent, licensed, and independent and impartial third	
595	party selected by an insurer or an insured to develop an	
596	appraisal for purposes of the appraisal process under a	
597	7 residential or commercial property insurance contract that	
598	provides for resolution of a claim dispute by appraisal.	
599	(7) "Uniform application" means the uniform application of	
600	the National Association of Insurance Commissioners for	
601	nonresident agent licensing, effective January 15, 2001, or	
602	subsequent versions adopted by rule by the department.	
603	<u>468.8611 Fees</u>	
604	(1) The department, by rule, may establish fees to be paid	
605	for application, examination, reexamination, licensing and	
606	renewal, inactive status application, reactivation of inactive	
607	licenses, and application for providers of continuing education.	
608	The department may also establish by rule a delinquency fee.	
609	Fees shall be based on department estimates of the revenue	
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	580-02529-15 2015744c:	
610	required to implement the provisions of this part. Fees shall be	
611	remitted with the application, examination, reexamination,	
612	licensing and renewal, inactive status application, reactivation	
613		
614	continuing education.	
615	(2) The application fee shall not exceed \$200 and is	
616		
617	the actual per applicant cost to the department to purchase the	
618	examination, if the department chooses to purchase the	
619	examination. The examination fee shall be in an amount that	
620	covers the cost of obtaining and administering the examination	
621	and shall be refunded if the applicant is found ineligible to	
622	sit for the examination.	
623	(3) The fee for an initial license shall not exceed \$250.	
624	(4) The fee for an initial certificate of authorization	
625	shall not exceed \$250.	
626	(5) The fee for a biennial license renewal shall not exceed	
627	<u>\$500.</u>	
628	(6) The fee for application for inactive status shall not	
629	exceed \$125.	
630	(7) The fee for reactivation of an inactive license shall	
631	not exceed \$250.	
632	(8) The fee for applications from providers of continuing	
633	education may not exceed \$600.	
634	(9) The fee for fingerprinting shall be included in the	
635	department's costs for the background check.	
636	468.86115 Application for license as a property insurance	
637	appraiser	
638	(1) The department shall not issue a license as a property	
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639	9 insurance appraiser to any person except upon written	
640	application previously filed with the department, with	
641	qualification and advance payment of all applicable fees. Any	
642	such application shall be made under oath or affirmation and	
643	signed by the applicant. The department shall accept the uniform	
644	application for a nonresident property insurance appraiser. The	
645	department may adopt revised versions of the uniform application	
646	by rule.	
647	(2) In the application, the applicant shall set forth:	
648	(a) His or her full name, age, social security number,	
649	residence address, business address, mailing address, contact	
650	telephone numbers, including a business telephone number, and e-	
651	mail address.	
652	(b) Proof that he or she has completed or is in the process	
653	of completing any required prelicensing course.	
654	(c) Whether he or she has been refused or has voluntarily	
655	surrendered or has had suspended or revoked a professional	
656	license by the supervising officials of any state.	
657	(d) Proof that the applicant meets the requirements of	
658	licensure as a property insurance appraiser as required under	
659	ss. 468.8611 and 468.8612, and this section.	
660	(e) The applicant's gender.	
661	(f) The applicant's native language.	
662	(g) The applicant's highest achieved level of education.	
663	(h) All education requirements that the applicant has	
664	completed to qualify as a property insurance appraiser,	
665	including the name of the course, the course provider, and the	
666	course completion dates.	
667	(3) Each application shall be accompanied by payment of any	
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668 applicable fee.	
669 (4) At the time of application, the applicant must be	
670 fingerprinted by a law enforcement agency or other entity	-
671 approved by the department, and he or she must pay the	
672 fingerprint processing fee in s. 468.8611. Fingerprints m	ust be
673 processed by the Department of Law Enforcement.	
674 (5) The Department of Law Enforcement may, to the ex	tent
675 provided for by federal law, exchange state, multistate,	and
676 federal criminal history records with the department or o	ffice
677 for the purpose of the issuance, denial, suspension, or	
678 revocation of a certificate of authority, certification,	or
679 license to operate in this state.	
680 (6) The Department of Law Enforcement may accept	
681 fingerprints of any other person required by statute or r	ule to
682 submit fingerprints to the department or office or any ap	plicant
683 or licensee regulated by the department or office who is	
684 required to demonstrate that he or she has not been convi-	cted of
685 or pled guilty or nolo contendere to a felony or a misdem	eanor.
686 (7) The Department of Law Enforcement shall, upon re	ceipt
687 of fingerprints from the department or office, submit the	
688 <u>fingerprints to the Federal Bureau of Investigation for a</u>	
689 federal criminal history records check.	
690 (8) Statewide criminal records obtained through the	
691 Department of Law Enforcement, federal criminal records of	btained
692 through the Federal Bureau of Investigation, and local cr	iminal
693 records obtained through local law enforcement agencies s	hall be
694 used by the department and office for the purpose of issue	ance,
695 denial, suspension, or revocation of certificates of auth	ority,
696 certifications, or licenses issued to operate in this sta	te.
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697	(9) The department shall develop and maintain as a public
698	record a current list of licensed property insurance appraisers.
699	468.8612 Examinations
700	(1) A person desiring to be licensed as a property
701	insurance appraiser must apply to the department after
702	satisfying the examination requirements of this part.
703	(2) An applicant may practice in this state as a property
704	insurance appraiser if he or she passes the required
705	examination, is of good moral character, and meets one of the
706	following requirements:
707	(a) The applicant is currently licensed, registered,
708	certified, or approved as an engineer as defined in s. 471.005,
709	or as a retired professional engineer as defined in s. 471.005,
710	and has taught or successfully completed 4 hours of classroom
711	coursework, approved by the department, specifically related to
712	construction, building codes, appraisal procedures, appraisal
713	preparation, and any other related material deemed appropriate
714	by the department.
715	(b) The applicant is currently or, within the 5 years
716	immediately preceding the date on which the application is filed
717	with the department, has been licensed, registered, certified,
718	or approved as a general contractor, building contractor, or
719	residential contractor as defined in s. 489.105 and has taught
720	or successfully completed 4 hours of classroom coursework,
721	approved by the department, specifically related to
722	construction, building codes, appraisal procedure, appraisal
723	preparation, and any other related material deemed appropriate
724	by the department.
725	(c) The applicant is currently or, within the 5 years
,	

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726 immediately preceding the date on which the application is filed
727 with the department, has been licensed or registered as an
728 architect to engage in the practice of architecture pursuant to
729 part I of chapter 481 and has taught or successfully completed 4
730 hours of classroom coursework, approved by the department,
731 specifically related to construction, building codes, appraisal
732 procedure, appraisal preparation, and any other related material
733 deemed appropriate by the department.
734 (d) The applicant is currently or, within the 5 years
735 immediately preceding the date on which the application is filed
736 with the department, has been a qualified geologist or
737 professional geologist as defined in s. 492.102 and has taught
738 or successfully completed 4 hours of classroom coursework,
739 approved by the department, specifically related to
740 construction, building codes, appraisal procedure, appraisal
741 preparation, and any other related material deemed appropriate
742 by the department.
743 (e) The applicant is currently or, within the 5 years
744 immediately preceding the date on which the application is filed
745 with the department, has been licensed as a certified public
746 accountant as defined in s. 473.302 and has taught or
747 successfully completed 4 hours of classroom coursework, approved
748 by the department, specifically related to construction,
749 building codes, appraisal procedure, appraisal preparation, and
750 any other related material deemed appropriate by the department.
751 (f) The applicant is currently or, within the 5 years
752 immediately preceding the date on which the application is filed
753 with the department, has been a licensed attorney in this state
754 and has taught or successfully completed 4 hours of classroom
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755	coursework, approved by the department, specifically related to
756	construction, building codes, appraisal procedure, appraisal
57	preparation, and any other related material deemed appropriate
58	by the department.
59	(g) The applicant has received a baccalaureate degree from
60	an accredited 4-year college or university in the field of
61	engineering, architecture, or building construction and has
62	taught or successfully completed 4 hours of classroom
63	coursework, approved by the department, specifically related to
64	construction, building codes, appraisal procedure, appraisal
65	preparation, and any other related material deemed appropriate
66	by the department.
67	(h) The applicant is a currently licensed adjuster whose
68	license covers all lines of insurance except the life and
69	annuities class. The adjuster's license must include the
70	property and casualty class of insurance. The currently licensed
71	adjuster must be licensed for at least 3 years to qualify for a
12	property insurance appraiser's license.
73	(i) The applicant has received a minimum of 8 semester
4	hours or 12 quarter hours of credit from an accredited college
75	or university in the field of accounting, geology, engineering,
6	architecture, or building construction.
77	(j) The applicant has successfully completed 40 hours of
78	classroom coursework, approved by the department, specifically
79	related to construction, building codes, appraisal procedure,
30	appraisal preparation, property insurance, and any other related
31	material deemed appropriate by the department.
32	(3) The department shall review and approve courses of
33	study for the continuing education of property insurance
783	study for the continuing education of property insurance Page 27 of 38

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	580-02529-15 2015744c1
784	appraisers.
785	(4) The department may not issue a license as a property
786	insurance appraiser to any individual found by it to be
787	untrustworthy or incompetent or who:
788	(a) Has not filed an application with the department in
789	accordance with s. 468.85115.
790	(b) Is not a natural person who is at least 18 years of
791	age.
792	(c) Is not a United States citizen or legal alien who
793	possesses work authorization from the United States Citizenship
794	and Immigration Services.
795	(d) Has not completed the education, experience, or
796	licensing requirements in this section.
797	(5) An incomplete application expires 6 months after the
798	date it is received by the department.
799	(6) An applicant seeking to become licensed under this part
800	may not be rejected solely by virtue of membership or lack of
801	membership in any particular appraisal organization.
802	468.8613 Licensure
803	(1) The department shall license any applicant who the
804	department certifies has completed the requirements of ss.
805	468.8611, 468.86115, and 468.8612.
806	(2) The department shall not issue a license by endorsement
807	to any applicant for a property insurance appraiser license who
808	is under investigation in another state for any act that would
809	constitute a violation of this part until such time that the
810	investigation is complete and disciplinary proceedings have been
811	terminated.
812	468.8614 Renewal of license
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81.3	(1) The department shall renew a license upon receipt of
814	the renewal application and fee and upon certification by the
815	department that the licensee has satisfactorily completed the
816	continuing education requirements of s. 468.8615.
817	(2) The department shall adopt rules establishing a
818	procedure for the biennial renewal of licenses.
819	468.8615 Continuing education
820	(1) The department may not renew a license until the
821	licensee submits satisfactory proof to the department that,
822	during the 2 years before his or her application for renewal,
823	the licensee completed at least 30 hours of continuing education
824	in addition to 5 hours of ethics. Criteria and course content
825	shall be approved by the department by rule.
826	(2) The department may prescribe by rule additional
827	continuing professional education hours, not to exceed 25
828	percent of the total required hours, for failure to complete the
829	required hours for renewal by the end of the renewal period.
830	(3) Each appraiser course provider, instructor, and
831	classroom course must be approved by and registered with the
832	department before prelicensure courses for property insurance
833	appraisers may be offered. Each classroom course must include a
834	written examination at the conclusion of the course and must
835	cover all of the material contained in the course. A student may
836	not receive credit for the course unless the student achieves a
837	grade of at least 75 percent on the examination.
838	(4) The department shall adopt rules establishing:
839	(a) Standards for the approval, registration, discipline,
840	or removal from registration of course providers, instructors,
841	and courses. The standards must be designed to ensure that
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842	instructors have the knowledge, competence, and integrity to	
843	fulfill the educational objectives of the prelicensure	
844	requirements of this part.	
845	(b) A process for determining compliance with the	
846	prelicensure requirements of this part.	
847		
848	The department shall adopt rules prescribing the forms necessary	
849	to administer the prelicensure requirements of this part.	
850	(5) Approval to teach prescribed or approved appraisal	
851	courses does not entitle the instructor to teach any courses	
852	outside the scope of this part.	
853	468.8616 Inactive license	
854	(1) A licensee may request that his or her license be	
855	placed on inactive status by filing an application with the	
856	department.	
857	(2) A license that has become inactive may be reactivated	
858	upon application to the department. The department may prescribe	
859	by rule continuing education requirements as a condition for	
860	reactivation of an inactive license. The continuing education	
861	requirements for reactivating a license may not exceed 14 hours	
862	for each year the license was inactive.	
863	(3) The department shall adopt rules relating to licenses	
864	that have become inactive and for the renewal of inactive	
865	licenses. The department shall prescribe by rule a fee not to	
866	exceed \$250 for the reactivation of an inactive license and a	
867	fee not to exceed \$250 for the renewal of an inactive license.	
868	468.8617 Certification of partnerships, corporations, and	
869	other business entitiesThe practice of, or the offer to	
870	practice as, a property insurance appraiser by licensees through	
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871	a partnership, corporation, or other business entity offering
872	property insurance appraiser services to the public, or by a
873	partnership, corporation, or other business entity through
874	licensees under this part as agents, employees, officers, or
875	partners is permitted subject to the provisions of this part.
876	This section does not allow a corporation or other business
877	entity to hold a license to practice property insurance
878	appraiser services. A partnership, corporation, or other
879	business entity is not relieved of responsibility for the
880	conduct or acts of its agents, employees, or officers by reason
881	of its compliance with this section. An individual practicing as
882	a property insurance appraiser is not relieved of responsibility
883	for professional services performed by reason of his or her
884	employment or relationship with a partnership, corporation, or
885	other business entity.
886	468.8618 Grounds for compulsory refusal, suspension, or
887	revocation of an appraiser's licenseThe department shall deny
888	an application for, suspend, revoke, or refuse to renew or
889	continue the license or appointment of any applicant, property
890	insurance appraiser, or licensee and shall suspend or revoke the
891	eligibility to hold a license or appointment of any such person
892	if it finds that any one or more of the following applicable
893	grounds exist:
894	(1) Lack of one or more of the qualifications for the
895	license as specified in this part.
896	(2) Material misstatement, misrepresentation, or fraud in
897	obtaining the license or in attempting to obtain the license or
898	appointment.
899	(3) Failure to pass to the satisfaction of the department

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900	any examination required under this act.			
901	(4) That the license or appointment was willfully used, or			
902	will be used, to circumvent any of the requirements or			
903	prohibitions of this code.			
904	(5) Demonstrated a lack of fitness or trustworthiness to			
905	engage as a property insurance appraiser.			
906	(6) Demonstrated a lack of reasonably adequate knowledge			
907	and technical competence to engage in the transactions			
908	authorized by the license.			
909	(7) Fraudulent or dishonest practices in the conduct of			
910	business under the license.			
911	(8) Willful failure to comply with, or willful violation			
912	of, any proper order or rule of the department or willful			
913	violation of any provision of this act.			
914	(9) Having been found guilty of or having pled guilty or			
915	nolo contendere to a felony or a crime punishable by			
916	imprisonment of 1 year or more under the law of the United			
917	States or of any state thereof or under the law of any other			
918	country which involves moral turpitude, without regard to			
919	whether a judgment of conviction has been entered by the court			
920	having jurisdiction of such cases.			
921	(10) Violated a duty imposed upon her or him by law or by			
922	the terms of a contract, whether written, oral, expressed, or			
923	implied, in an appraisal; has aided, assisted, or conspired with			
924	any other person engaged in any such misconduct and in			
925	furtherance thereof; or has formed an intent, design, or scheme			
926	to engage in such misconduct and committed an overt act in			
927	furtherance of such intent, design, or scheme. It is immaterial			
928	to a finding that a licensee has committed a violation of this			
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applicant or licensee has:

appraiser without good cause.

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29	subsection that the victim or intended victim of the misconduct
30	has sustained no damage or loss, that the damage or loss has
31	$\underline{\mbox{been settled}}$ and paid after the discovery of misconduct, or that
32	such victim or intended victim was a customer or a person in a
33	confidential relationship with the licensee or was an identified
34	member of the general public.
35	(11) Had a registration, license, or certification as an
36	appraiser revoked, suspended, or otherwise acted against; has
37	had his or her registration, license, or certificate to practice
88	or conduct any regulated profession, business, or vocation
39	revoked or suspended by this or any other state, any nation, or
10	any possession or district of the United States; or has had an
11	application for such registration, licensure, or certification
12	to practice or conduct any regulated profession, business, or
13	vocation denied by this or any other state, any nation, or any
4	possession or district of the United States.
15	(12)(a) Made or filed a report or record, written or oral,
16	which the licensee knows to be false;
17	(b) Has willfully failed to file a report or record
8	required by state or federal law;
9	(c) Has willfully impeded or obstructed such filing; or
0	(d) Has induced another person to impede or obstruct such
1	filing.
2	(13) Accepted an appointment as an appraiser if the
3	appointment is contingent upon the appraiser reporting a
4	predetermined result, analysis, or opinion, or if the fee to be
5	paid for the services of the appraiser is contingent upon the
6	opinion, conclusion, or valuation reached by the appraiser.
7	468.86185 Grounds for discretionary denial, suspension, or
I	Page 33 of 38

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

966	(3) Violated any ethical standard for property insurance
967	appraisers set forth in s. 468.8619.
968	(4) Failed to inform the department in writing within 30
969	days after pleading guilty or nolo contendere to, or being
970	convicted or found guilty of, a felony.
971	(5) Failed to timely notify the department of any change in
972	business location or has failed to fully disclose all business
973	locations from which he or she operates as a property insurance
974	appraiser.
975	468.8619 Ethical standards for property insurance
976	appraisers
977	(1) CONFIDENTIALITYAn appraiser shall maintain
978	confidentiality of all information revealed during an appraisal
979	except to the party that hired the appraiser and except where
980	disclosure is required by law.
981	(2) RECORDKEEPINGAn appraiser shall maintain
982	confidentiality in the storage and disposal of records and may
983	not disclose any identifying information when materials are used
984	for research, training, or statistical compilations.
985	(3) FEES AND EXPENSESFees charged for appraisal services
986	shall be reasonable and consistent with the nature of the case.

revocation of an appraiser's license.-The department may deny an

(1) Failed to timely communicate with the opposing party's

(2) Failed or refused to exercise reasonable diligence in

application for and suspend, revoke, or refuse to renew or

continue a license as a property insurance appraiser if the

submitting recommendations to the opposing party's appraiser.

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	580-02529-15 2015744c1
987	An appraiser shall be guided by the following in determining
988	fees:
989	(a) All charges for services as an appraiser based on time
990	may not exceed actual time spent or allocated.
991	(b) Charges for costs shall be for those actually incurred.
992	(4) MAINTENANCE OF RECORDSAn appraiser shall maintain
993	records necessary to support charges for services and expenses,
994	and upon request shall provide an accounting of all applicable
995	charges to the parties. An appraiser licensed under this part
996	shall retain for at least 5 years original or true copies of any
997	contracts engaging the appraiser's services, appraisal reports,
998	and supporting data assembled and formulated by the appraiser in
999	preparing appraisal reports. The period for retaining the
1000	records applicable to each engagement starts on the date of the
1001	submission of the appraisal report to the client. The records
1002	must be made available by the appraiser for inspection and
1003	copying by the department upon reasonable notice to the
1004	appraiser. If an appraisal has been the subject of, or has been
1005	admitted as evidence in, a lawsuit, reports, and records the
1006	appraisal must be retained for at least 2 years after the date
1007	that the trial ends.
1008	(5) ADVERTISING An appraiser may not engage in marketing
1009	practices that contain false or misleading information. An
1010	appraiser shall ensure that any advertisements of the
1011	appraiser's qualifications, services to be rendered, or the
1012	appraisal process are accurate and honest. An appraiser may not
1013	make claims of achieving specific outcomes or promises implying
1014	favoritism for the purpose of obtaining business.
1015	(6) INTEGRITY AND IMPARTIALITYAn appraiser may not accept
1	Page 35 of 38

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	580-02529-15 2015744c1
1016	any engagement, provide any service, or perform any act that
1017	would compromise the appraiser's integrity or impartiality.
1018	(a) An appraiser may not accept an appointment unless he or
1019	she can:
1020	1. Serve impartially;
1021	2. Serve independently from the party appointing him or
1022	her;
1023	3. Serve competently; and
1024	4. Be available to promptly commence the appraisal, and
1025	thereafter devote the time and attention to its completion in a
1026	manner expected by all involved parties.
1027	(b) An appraiser shall conduct the appraisal process in a
1028	manner that advances the fair and efficient resolution of the
1029	matters submitted for decision. A licensed appraiser shall make
1030	all reasonable efforts to prevent delays in the appraisal
1031	process, the harassment of parties or other participants, or
1032	other abuse or disruption of the appraisal process.
1033	(c) Once a licensed appraiser has accepted an appointment,
1034	the appraiser may not withdraw or abandon the appointment unless
1035	compelled to do so by unanticipated circumstances that would
1036	render it impossible or impracticable to continue.
1037	(d) The licensed appraiser shall, after careful
1038	deliberation, decide all issues submitted for determination and
1039	no other issues. A licensed appraiser shall decide all matters
1040	justly, exercising independent judgment, and may not allow
1041	outside pressure to affect the decision. An appraiser may not
1042	delegate the duty to decide to any other person.
1043	(7) SKILL AND EXPERIENCEAn appraiser shall decline an
1044	appointment or selection, withdraw, or request appropriate
1	Page 36 of 38
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CODING: Words stricken are deletions; words underlined are additions.

580-02529-15 2015744c1 1045 assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience. 1046 1047 (8) GIFTS AND SOLICITATION.-An appraiser may not give or 1048 accept any gift, favor, loan, or other item of value in an 1049 appraisal process except for the appraiser's reasonable fee. 1050 During the appraisal process, an appraiser may not solicit or 1051 otherwise attempt to procure future professional services. 1052 (9) COMMUNICATIONS WITH PARTIES.-1053 (a) If an agreement of the parties establishes the manner 1054 or content of the communications between the appraisers, the 1055 parties, and the umpire, the appraisers shall abide by such 1056 agreement. In the absence of agreement, an appraiser may not 1057 discuss a proceeding with any party or with the umpire in the 1058 absence of any other party, except in the following 1059 circumstances: 1060 1. If the appointment of the appraiser or umpire is being 1061 considered, the prospective appraiser or umpire may ask about 1062 the identities of the parties, counsel, and the general nature 1063 of the case, and may respond to inquiries from a party, its 1064 counsel or an umpire designed to determine his or her 1065 suitability and availability for the appointment; 1066 2. To consult with the party who appointed the appraiser 1067 concerning the selection of a neutral umpire; 1068 3. To make arrangements for any compensation to be paid by 1069 the party who appointed the appraiser; or 1070 4. To make arrangements for obtaining materials and 1071 inspection of the property with the party who appointed the 1072 appraiser. Such communication is limited to scheduling and the 1073 exchange of materials. Page 37 of 38

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

	580-02529-15 2015744c1
1074	(b) There may be no communications whereby a party dictates
1075	to an appraiser what the result of the proceedings must be, what
1076	matters or elements may be included or considered by the
1077	appraiser, or what actions the appraiser may take.
1078	Section 3. This act shall take effect July 1, 2015.

Page 38 of 38 CODING: Words stricken are deletions; words <u>underlined</u> are additions.



The Florida Senate

## **Committee Agenda Request**

То:	Senator Lizbeth Benacquisto, Chair Committee on Banking and Insurance	
Subject:	Committee Agenda Request	
Date	March 19, 2015	

I respectfully request that **Senate Bill #744**, relating to Property Insurance Appraisal Umpires and Property Insurance Appraisers, be placed on the:

committee agenda at your earliest possible convenience.



next committee agenda.

Senator Garrett Richter Florida Senate, District 23



LEGISLATIVE ACTION

Senate

House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (9) of section 517.021, Florida Statutes, is amended, subsections (13) through (23) are redesignated as subsections (14) through (24), respectively, and a new subsection (13) is added to that section, to read:

9 517.021 Definitions.-When used in this chapter, unless the10 context otherwise indicates, the following terms have the

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11	following respective meanings:
12	(9) "Federal covered adviser" means a person who is
13	registered or required to be registered under s. 203 of the
14	Investment Advisers Act of 1940. The term "federal covered
15	adviser" does not include any person who is excluded from the
16	definition of investment adviser under subparagraphs (14) (b) 1
17	8. <del>(13) (b)18</del> .
18	(13) "Intermediary" means a natural person residing in the
19	state or a corporation, trust, partnership, association, or
20	other legal entity registered with the Secretary of State to do
21	business in the state which represents an issuer in a
22	transaction involving the offer or sale of securities under s.
23	517.061.
24	Section 2. Section 517.061, Florida Statutes, is amended to
25	read:
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20 27	517.061 Exempt transactions Except as otherwise provided
	in s. 517.0611 for a transaction listed in subsection (21), the
28	exemption for each transaction listed below is self-executing
29	and does not require any filing with the office <u>before</u> <del>prior to</del>
30	claiming <u>the</u> such exemption. Any person who claims entitlement
31	to any of the exemptions bears the burden of proving such
32	entitlement in any proceeding brought under this chapter. The
33	registration provisions of s. 517.07 do not apply to any of the
34	following transactions; however, such transactions are subject
35	to the provisions of ss. 517.301, 517.311, and 517.312:
36	(1) At any judicial, executor's, administrator's,
37	guardian's, or conservator's sale, or at any sale by a receiver
38	or trustee in insolvency or bankruptcy, or any transaction
39	incident to a judicially approved reorganization in which a

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40 security is issued in exchange for one or more outstanding 41 securities, claims, or property interests.

(2) By or for the account of a pledgeholder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

47 (3) The isolated sale or offer for sale of securities when 48 made by or on behalf of a vendor not the issuer or underwriter 49 of the securities, who, being the bona fide owner of such 50 securities, disposes of her or his own property for her or his 51 own account, and such sale is not made directly or indirectly 52 for the benefit of the issuer or an underwriter of such 53 securities or for the direct or indirect promotion of any scheme 54 or enterprise with the intent of violating or evading any 55 provision of this chapter. For purposes of this subsection, 56 isolated offers or sales include, but are not limited to, an 57 isolated offer or sale made by or on behalf of a vendor of 58 securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1.,2., 3., and 4. and paragraph (11)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(1) of the Securities Act of 1933, as amended.

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with

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69 respect to any securities of the issuer which she or he has 70 owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

77 (5) The issuance of securities to such equity security 78 holders or other creditors of a corporation, trust, or 79 partnership in the process of a reorganization of such 80 corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in 81 82 exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in 83 84 exchange for the securities or claims of such equity security holders or creditors. 85

(6) Any transaction involving the distribution of the 86 87 securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction 88 89 is a holder of any convertible security, any nontransferable 90 warrant, or any transferable warrant which is exercisable within 91 not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in 92 93 connection with the sale or distribution of such additional 94 securities.

95 (7) The offer or sale of securities to a bank, trust
96 company, savings institution, insurance company, dealer,
97 investment company as defined by the Investment Company Act of

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98 1940, pension or profit-sharing trust, or qualified 99 institutional buyer as defined by rule of the commission in 100 accordance with Securities and Exchange Commission Rule 144A (17 101 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting 102 in its individual or fiduciary capacity; provided that such 103 offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of 104 105 violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is \$50,000 or more;and

(b) The buyer and seller corporations each have assets of \$500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

(10) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(11)(a) The offer or sale, by or on behalf of an issuer, of its own securities, which offer or sale is part of an offering made in accordance with all of the following conditions:

125 1. There are no more than 35 purchasers, or the issuer 126 reasonably believes that there are no more than 35 purchasers,

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127 of the securities of the issuer in this state during an offering 128 made in reliance upon this subsection or, if such offering 129 continues for a period in excess of 12 months, in any 130 consecutive 12-month period.

131 2. Neither the issuer nor any person acting on behalf of
132 the issuer offers or sells securities pursuant to this
133 subsection by means of any form of general solicitation or
134 general advertising in this state.

135 3. <u>Before</u> Prior to the sale, each purchaser or the 136 purchaser's representative, if any, is provided with, or given 137 reasonable access to, full and fair disclosure of all material 138 information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

153 1. Any relative or spouse, or relative of such spouse, of a
154 purchaser who has the same principal residence as such
155 purchaser.

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156 2. Any trust or estate in which a purchaser, any of the 157 persons related to such purchaser specified in subparagraph 1., 158 and any corporation specified in subparagraph 3. collectively 159 have more than 50 percent of the beneficial interest (excluding 160 contingent interest).

3. Any corporation or other organization of which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. Any purchaser who makes a bona fide investment of \$100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months <u>before</u> <del>prior to</del> an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

3 b. Offers or sales of securities occurring at any time4 after 6 months from an offer or sale made pursuant to this

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185 subsection shall not be considered part of the same offering, 186 provided there are no offers or sales by or for the issuer of 187 the same or a similar class of securities during such 6-month 188 period.

189 2. Offers or sales which do not satisfy the conditions of 190 any of the provisions of subparagraph 1. may or may not be part 191 of the same offering, depending on the particular facts and 192 circumstances in each case. The commission may adopt a rule or 193 rules indicating what factors should be considered in 194 determining whether offers and sales not qualifying for the 195 provisions of subparagraph 1. are part of the same offering for 196 purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of

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214 securities on order of, and as agent for, another by any person 215 other than a dealer so registered; and provided, further, that 216 such purchase or sale is not directly or indirectly for the 217 benefit of the issuer or an underwriter of such securities or 218 for the direct or indirect promotion of any scheme or enterprise 219 with the intent of violation or evading any provision of this 220 chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

(16) The sale by or through a registered dealer of any securities option if at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the federal Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b) Such options transactions are cleared by the OptionsClearing Corporation or any other clearinghouse recognized bythe office; and

(c) The option is not sold by or for the benefit of the
 issuer of the underlying security; and

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(d) The underlying security may be purchased or sold on a

recognized securities exchange or is quoted on the National 244 245 Association of Securities Dealers Automated Quotation System; and 246 247 (e) Such sale is not directly or indirectly for the purpose 248 of providing or furthering any scheme to violate or evade any 249 provisions of this chapter. 250 (17) (a) The offer or sale of securities, as agent or 251 principal, by a dealer registered pursuant to s. 517.12, when 252 such securities are offered or sold at a price reasonably 253 related to the current market price of such securities, provided 254 such securities are: 255 1. Securities of an issuer for which reports are required 256 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act 257 of 1934, as amended; 258 2. Securities of a company registered under the Investment 259 Company Act of 1940, as amended; 260 3. Securities of an insurance company, as that term is 261 defined in s. 2(a)(17) of the Investment Company Act of 1940, as 262 amended; 263 4. Securities, other than any security that is a federal 264 covered security pursuant to s. 18(b)(1) of the Securities Act 265 of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of 266 267 securities dealt in on any stock exchange registered pursuant to 268 the Securities Exchange Act of 1934, as amended, and which 269 securities have been listed or approved for listing upon notice 270 of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of 271

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272 issuance, or represented by subscription rights which have been 273 so listed or approved for listing upon notice of issuance, or 274 evidences of indebtedness guaranteed by companies any stock of 275 which is so listed or approved for listing upon notice of 276 issuance, such securities to be exempt only so long as such 277 listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from 278 279 listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or controlling persons of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) This exemption shall not be available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited



301 character of the offering. In conjunction with its adoption of 302 such rules, the commission may also provide in such rules that 303 persons selling or offering for sale the exempted securities are 304 exempt from the registration requirements of s. 517.12. No rule 305 so adopted may have the effect of narrowing or limiting any 306 exemption provided for by statute in the other subsections of 307 this section.

308 (20) Any nonissuer transaction by a registered associated 309 person of a registered dealer, and any resale transaction by a 310 sponsor of a unit investment trust registered under the 311 Investment Company Act of 1940, in a security of a class that 312 has been outstanding in the hands of the public for at least 90 313 days; provided, at the time of the transaction:

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any 319 unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

325 (d) A nationally recognized securities manual designated by 326 rule of the commission or order of the office or a document 327 filed with the Securities and Exchange Commission that is 328 publicly available through the commission's electronic data 329 gathering and retrieval system contains:

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330 1. A description of the business and operations of the 331 issuer;

332 2. The names of the issuer's officers and directors, if 333 any, or, in the case of an issuer not domiciled in the United 334 States, the corporate equivalents of such persons in the 335 issuer's country of domicile;

336 3. An audited balance sheet of the issuer as of a date 337 within 18 months before such transaction or, in the case of a 338 reorganization or merger in which parties to the reorganization 339 or merger had such audited balance sheet, a pro forma balance 340 sheet; and

4. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

2. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

3. The issuer of the security has total assets of at least \$2 million based on an audited balance sheet as of a date within

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359	18 months before such transaction or, in the case of a
360	reorganization or merger in which parties to the reorganization
361	or merger had such audited balance sheet, a pro forma balance
362	sheet.
363	(21) The offer or sale of a security by an issuer conducted
364	in accordance with s. 517.0611.
365	Section 3. Section 517.0611, Florida Statutes, is created
366	to read:
367	517.0611 Intrastate crowdfunding.—
368	(1) This section may be cited as the "Florida Intrastate
369	Crowdfunding Exemption."
370	(2) Notwithstanding any other provision of this chapter, an
371	offer or sale of a security by an issuer is an exempt
372	transaction under s. 517.061 if the offer or sale is conducted
373	in accordance with this section. The exemption provided in this
374	section may not be used in conjunction with any other exemption
375	<u>under s. 517.051 or s.517.061.</u>
376	(3) The offer or sale of securities under this section must
377	be conducted in accordance with the requirements of the federal
378	exemption for intrastate offerings in s. 3(a)(11) of the
379	Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
380	States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
381	230.147, adopted pursuant to the Securities Act of 1933.
382	(4) An issuer must:
383	(a) Be a for-profit business entity formed under the laws
384	of this state, be registered with the Secretary of State,
385	maintain its principal place of business in this state, and
386	derive its revenues primarily from operations in this state.
387	(b) Conduct transactions for the offering through a dealer

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388	registered with the office or an intermediary registered under
389	s. 517.12(20).
390	(c) Not be, either before or as a result of the offering,
391	an investment company as defined in s. 3 of the Investment
392	Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the
393	reporting requirements of s. 13 or s. 15(d) of the Securities
394	Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).
395	(d) Not be a company with an undefined business operation,
396	a company that lacks a business plan, a company that lacks a
397	stated investment goal for the funds being raised, or a company
398	that plans to engage in a merger or acquisition with an
399	unspecified business entity.
400	(e) Not be subject to a disqualification established by the
401	commission or office or a disqualification described in s.
402	517.1611 or United States Securities and Exchange Commission
403	Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the
404	Securities Act of 1933. Each director, officer, person occupying
405	a similar status or performing a similar function, or person
406	holding more than 20 percent of the shares of the issuer, is
407	subject to this requirement.
408	(f) Execute an escrow agreement with a federally insured
409	financial institution authorized to do business in this state
410	for the deposit of investor funds, and ensure that all offering
411	proceeds are provided to the issuer only when the aggregate
412	capital raised from all investors is equal to or greater than
413	the target offering amount.
414	(g) Allow investors to cancel a commitment to invest within
415	3 business days before the offering deadline, as stated in the
416	disclosure statement, and issue refunds to all investors if the
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417 target offering amount is not reached by the offering deadline. (5) The issuer must file a notice of the offering with the 418 office, in writing or in electronic form, in a format prescribed 419 420 by commission rule, together with a nonrefundable filing fee of 421 \$200. The commission may adopt rules establishing procedures for 422 the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information 423 424 and data required by this section. The office may revoke the 425 filing of a notice under this subsection if payment for the 426 filing fee is by check or electronic transmission of funds that 427 is dishonored by the financial institution upon which the funds 428 are drawn. A notice is effective upon receipt by the office of 429 the completed form and filing fee, and the notice may be 430 terminated by filing with the office a notice of termination. 431 The notice and offering expire 12 months after filing the notice 432 with the office and are not eligible for renewal. The notice 433 must: 434 (a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is 435 436 displayed on a website of an intermediary in reliance upon the 437 exemption provided by this section. 438 (b) Indicate that the issuer is conducting an offering in 439 reliance upon the exemption provided by this section. 440 (c) Contain the name and contact information of the issuer. 441 (d) Identify any predecessors, owners, officers, directors, 442 and control persons or any person occupying a similar status or 443 performing a similar function of the issuer, including that 444 person's title, his or her status as a partner, trustee, sole

445 proprietor or similar role, and his or her ownership percentage.

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446	(e) Identify the federally insured financial institution,
447	authorized to do business in this state, in which investor funds
448	will be deposited, in accordance with the escrow agreement.
449	(f) Require an attestation under oath that the issuer, its
450	predecessors, affiliated issuers, directors, officers, and
451	control persons, or any other person occupying a similar status
452	or performing a similar function, are not currently and have not
453	been within the past 10 years the subject of regulatory or
454	criminal actions involving fraud or deceit.
455	(g) Include documentation verifying that the issuer is
456	organized under the laws of this state and authorized to do
457	business in this state.
458	(h) Include the intermediary's website address.
459	(i) Include the target offering amount.
460	(6)(a) A notice filed by an issuer under this section shall
461	be summarily suspended by the office if the issuer fails to
462	provide to the office, within 30 days after a written request
463	from the office, information required by this section or rules
464	adopted under this section. The summary suspension shall remain
465	in effect until the issuer submits the requested information to
466	the office, pays a fine as prescribed by s. 517.221(3), and a
467	final order is entered. For purposes of s. 120.60(6), failure to
468	provide such information constitutes an immediate and serious
469	danger to the public health, safety, and welfare. If the issuer
470	fails to provide the requested information after 90 days, the
471	office shall revoke the filing of the notice.
472	(b) The issuer must amend the notice form within 30 days
473	after any information contained in the notice becomes inaccurate
474	for any reason. The commission may require, by rule, an issuer

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475	who has filed a notice under this section to file amendments
476	
	with the office.
477	(7) The issuer must provide to investors and the dealer or
478	intermediary, along with a copy to the office at the time the
479	notice is filed, and make available to potential investors
480	through the dealer or intermediary, a disclosure statement
481	containing material information about the issuer and the
482	offering, including:
483	(a) The name, legal status, physical address, and website
484	address of the issuer.
485	(b) The names of the directors, officers, and any person
486	occupying a similar status or performing a similar function, and
487	the name of each person holding more than 20 percent of the
488	shares of the issuer.
489	(c) A description of the business of the issuer and the
490	anticipated business plan of the issuer.
491	(d) A description of the stated purpose and intended use of
492	the proceeds of the offering.
493	(e) The target offering amount, the deadline to reach the
494	target offering amount, and regular updates regarding the
495	progress of the issuer in meeting the target offering amount.
496	(f) The price to the public of the securities or the method
497	for determining the price, provided that before the sale each
498	investor receives in writing the final price and all required
499	disclosures, with an opportunity to rescind the commitment to
500	purchase the securities.
501	(g) A description of the ownership and capital structure of
502	the issuer, including:
503	1. Terms of the securities being offered and each class of

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504	security of the issuer, including how those terms may be
505	modified, and a summary of the differences between such
506	securities, including how the rights of the securities being
507	offered may be materially limited, diluted, or qualified by
508	rights of any other class of security of the issuer;
509	2. A description of how the exercise of the rights held by
510	the principal shareholders of the issuer could negatively impact
511	the purchasers of the securities being offered;
512	3. The name and ownership level of each existing
513	shareholder who owns more than 20 percent of any class of the
514	securities of the issuer;
515	4. How the securities being offered are being valued, and
516	examples of methods of how such securities may be valued by the
517	issuer in the future, including during subsequent corporate
518	actions; and
519	5. The risks to purchasers of the securities relating to
520	minority ownership in the issuer, the risks associated with
521	corporate action, including additional issuances of shares, a
522	sale of the issuer or of assets of the issuer, or transactions
523	with related parties.
524	(h) A description of the financial condition of the issuer.
525	1. For offerings that, in combination with all other
526	offerings of the issuer within the preceding 12-month period,
527	have target offering amounts of \$100,000 or less, the
528	description must include the most recent income tax return filed
529	by the issuer, if any, and a financial statement that must be
530	certified by the principal executive officer of the issuer as
531	true and complete in all material respects.
532	2. For offerings that, in combination with all other

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533	offerings of the issuer within the preceding 12-month period,
534	have target offering amounts of more than \$100,000, but not more
535	than \$500,000, the description must include financial statements
536	prepared in accordance with generally accepted accounting
537	principles and reviewed by a certified public accountant, as
538	defined in s. 473.302, who is independent of the issuer, using
539	professional standards and procedures for such audit or
540	standards and procedures established by the office, by rule, for
541	such purpose.
542	3. For offerings that, in combination with all other
543	offerings of the issuer within the preceding 12-month period,
544	have target offering amounts of more than \$500,000, the
545	description must include audited financial statements prepared
546	in accordance with generally accepted accounting principles by a
547	certified public accountant, as defined in s. 473.302, who is
548	independent of the issuer, and other requirements as the
549	commission may establish by rule.
550	(i) The following statement in boldface, conspicuous type
551	on the front page of the disclosure statement:
552	
553	These securities are offered under and will be sold in reliance
554	upon an exemption from the registration requirements of federal
555	and Florida securities laws. Consequently, neither the Federal
556	Government nor the State of Florida has reviewed the accuracy or
557	completeness of any offering materials. In making an investment
558	decision, investors must rely on their own examination of the
559	issuer and the terms of the offering, including the merits and
560	risks involved. These securities are subject to restrictions on
561	transferability and resale and may not be transferred or resold

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562	except as specifically authorized by applicable federal and
563	state securities laws. Investing in these securities involves a
564	speculative risk, and investors should be able to bear the loss
565	of their entire investment.
566	(8) The sum of all cash and other consideration received
567	for sales of a security under this section may not exceed \$1
568	million, less the aggregate amount received for all sales of
569	securities by the issuer within the 12 months preceding the
570	first offer or sale made in reliance upon this exemption. Offers
571	or sales to a person owning 20 percent or more of the
572	outstanding shares of any class or classes of securities or to
573	an officer, director, partner, or trustee, or a person occupying
574	a similar status, do not count toward this limitation.
575	(9) Unless the investor is an accredited investor as
576	defined by Rule 501 of Regulation D, adopted pursuant to the
577	Securities Act of 1933, the aggregate amount sold by an issuer
578	to an investor in transactions exempt from registration
579	requirements under this subsection in a 12-month period may not
580	exceed:
581	(a) The greater of \$2,000 or 5 percent of the annual income
582	or net worth of such investor, if the annual income or the net
583	worth of the investor is less than \$100,000.
584	(b) Ten percent of the annual income or net worth of such
585	investor, not to exceed a maximum aggregate amount sold of
586	\$100,000, if either the annual income or net worth of the
587	investor is equal to or exceeds \$100,000.
588	(10) The issuer shall file with the office and provide to
589	investors free of charge an annual report of the results of
590	operations and financial statements of the issuer within 45 days

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591 of its fiscal year end, until no securities under this offering 592 are outstanding. The annual reports must meet the following 593 requirements: 594 (a) Include an analysis by management of the issuer of the 595 business operations and the financial condition of the issuer, 596 and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 597 percent or more of the issuer, including cash compensation 598 599 earned since the previous report and on an annual basis, and any 600 bonuses, stock options, other rights to receive securities of 601 the issuer, or any affiliate of the issuer, or other 602 compensation received. 603 (b) Disclose any material change to information contained 604 in the disclosure statements which was not disclosed in a 605 previous report. 606 (11) (a) A notice-filing under this section shall be 607 summarily suspended by the office if the payment for the filing 608 is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the 609 610 required notice filing fee constitutes an immediate and serious 611 danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the 612 613 payment for the filing is dishonored by the financial 614 institution upon which the funds are drawn. 615 (b) A notice-filing under this section shall be summarily 616 suspended by the office if the issuer made a material false 617 statement in the issuer's notice-filing. The summary suspension 618 shall remain in effect until a final order is entered by the 619 office. For purposes of s. 120.60(6), a material false statement

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620 made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an 621 622 issuer made a material false statement in the issuer's notice-623 filing, the office shall enter a final order revoking the 624 notice-filing, issue a fine as prescribed by s. 517.221(3), and 625 issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person 626 627 occupying a similar status or performing a similar function of 62.8 the issuer, including titles; status as a partner, trustee, sole 629 proprietor, or similar roles; and ownership percentage. 630

(12) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

(13) An intermediary must:

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(a)1. Be registered as a dealer in accordance with s. 517.12(6); or

2. Submit a nonrefundable filing fee of \$200 and submit an application for registration as an intermediary in accordance with s. 517.12(20), in a format prescribed by commission rule, specifying that the intermediary will conduct business as an intermediary in furtherance of an offering in reliance upon the exemption provided in this section.

(b) Take measures, as established by commission rule, to reduce the risk of fraud with respect to transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to

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649	adequately assess the risk of fraud of the issuer or its
650	potential offering.
651	(c) Provide basic information on its website regarding the
652	high risk of investment in and limitation on the resale of
653	exempt securities and the potential for loss of an entire
654	investment. The basic information must include:
655	1. A description of the escrow agreement that the issuer
656	has executed and the conditions for release of such funds to the
657	issuer in accordance with the agreement and subsection (4).
658	2. A description of whether financial information provided
659	by the issuer has been audited by an independent certified
660	public accountant, as defined in s. 473.302.
661	(d) Obtain a zip code or residence address from each
662	potential investor who seeks to view information regarding
663	specific investment opportunities, in order to confirm that the
664	potential investor is a resident of this state.
665	(e) Obtain and verify, pursuant to commission rule, a valid
666	Florida driver license number or official identification card
667	number from each investor before purchase of a security or other
668	information, as defined by commission rule, to confirm that the
669	investor is a resident of the state.
670	(f) Obtain an affidavit from each investor stating that the
671	investment being made by the investor is consistent with the
672	income requirements of subsection (9).
673	(g) Direct the release of investor funds in escrow in
674	accordance with subsection (4).
675	(h) Direct investors to transmit funds directly to the
676	financial institution designated in the escrow agreement to hold
677	the funds for the benefit of the investor.

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678	(i) Provide a monthly update for each offering, after the
679	first full month after the date of the offering. The update must
680	be accessible on the intermediary's website and must display the
681	date and amount of each sale of securities, and each
682	cancellation of commitment to invest in the previous calendar
683	month.
684	(j) Require each investor to certify in writing, including
685	as part of such certification his or her signature and his or
686	her initials next to each paragraph of the certification, as
687	follows:
688	
689	I understand and acknowledge that:
690	
691	I am investing in a high-risk, speculative business venture. I
692	may lose all of my investment, and I can afford the loss of my
693	investment.
694	
695	This offering has not been reviewed or approved by any state or
696	federal securities commission or other regulatory authority and
697	no regulatory authority has confirmed the accuracy or determined
698	the adequacy of any disclosure made to me relating to this
699	offering.
700	
701	The securities I am acquiring in this offering are illiquid and
702	are subject to possible dilution. There is no ready market for
703	the sale of the securities. It may be difficult or impossible
704	for me to sell or otherwise dispose of the securities, and I may
705	be required to hold the securities indefinitely.
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707	I may be subject to tax on my share of the taxable income and
708	losses of the issuer, whether or not I have sold or otherwise
709	disposed of my investment or received any dividends or other
710	distributions from the issuer.
711	
712	By entering into this transaction with the issuer, I am
713	affirmatively representing myself as being a Florida resident at
714	the time this contract is formed, and if this representation is
715	subsequently shown to be false, the contract is void.
716	
717	If I resell any of the securities I am acquiring in this
718	offering to a person that is not a Florida resident within 9
719	months after the closing of the offering, my contract with the
720	issuer for the purchase of these securities is void.
721	
722	(k) Require each investor to answer questions demonstrating
723	an understanding of the level of risk generally applicable to
724	investments in startups, emerging businesses, and small issuers,
725	and an understanding of the risk of illiquidity.
726	(1) Take reasonable steps to protect personal information
727	collected from investors, as required by s. 501.171.
728	(m) Prohibit its directors and officers from having any
729	financial interest in the issuer using its services.
730	(n) Implement written policies and procedures that are
731	reasonably designed to achieve compliance with federal and state
732	securities laws; comply with anti-money laundering requirements
733	of 31 C.F.R. ch. X applicable to registered brokers; and comply
734	with the privacy requirements of 17 C.F.R. 248 as they apply to
735	brokers.
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736	(14) An intermediary not registered as a dealer under s.
737	517.12(6) may not:
738	(a) Offer investment advice or recommendations. A refusal
739	by an intermediary to post an offering that it deems not
740	credible or that represents a potential for fraud may not be
741	construed as an offer of investment advice or recommendation.
742	(b) Solicit purchases, sales, or offers to buy securities
743	offered or displayed on its website.
744	(c) Compensate employees, agents, or other persons for the
745	solicitation or based on the sale of securities offered or
746	displayed on its website.
747	(d) Hold, manage, possess, or otherwise handle investor
748	funds or securities.
749	(e) Compensate promoters, finders, or lead generators for
750	providing the intermediary with the personal identifying
751	information of any potential investor.
752	(f) Engage in any other activities set forth by commission
753	<u>rule.</u>
754	(15) All funds received from investors must be directed to
755	the financial institution designated in the escrow agreement to
756	hold the funds and must be used in accordance with
757	representations made to investors by the intermediary. If an
758	investor cancels a commitment to invest, the intermediary must
759	direct the financial institution designated to hold the funds to
760	promptly refund the funds of the investor.
761	Section 4. Section 517.12, Florida Statutes, is amended to
762	read:
763	517.12 Registration of dealers, associated persons,
764	intermediaries, and investment advisers
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765 (1) No dealer, associated person, or issuer of securities 766 shall sell or offer for sale any securities in or from offices 767 in this state, or sell securities to persons in this state from 768 offices outside this state, by mail or otherwise, unless the 769 person has been registered with the office pursuant to the 770 provisions of this section. The office shall not register any 771 person as an associated person of a dealer unless the dealer 772 with which the applicant seeks registration is lawfully 773 registered with the office pursuant to this chapter.

(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).

(3) Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19), the registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(12), (14), and (15).

781 (4) No investment adviser or associated person of an 782 investment adviser or federal covered adviser shall engage in 783 business from offices in this state, or render investment advice 784 to persons of this state, by mail or otherwise, unless the 785 federal covered adviser has made a notice-filing with the office 786 pursuant to s. 517.1201 or the investment adviser is registered 787 pursuant to the provisions of this chapter and associated 788 persons of the federal covered adviser or investment adviser 789 have been registered with the office pursuant to this section. 790 The office shall not register any person or an associated person 791 of a federal covered adviser or an investment adviser unless the 792 federal covered adviser or investment adviser with which the 793 applicant seeks registration is in compliance with the notice-

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filing requirements of s. 517.1201 or is lawfully registered with the office pursuant to this chapter. A dealer or associated person who is registered pursuant to this section may render investment advice upon notification to and approval from the office.

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice-filed with the office pursuant to s. 517.1202.

802 (6) A dealer, associated person, or investment adviser, in 803 order to obtain registration, must file with the office a written application, on a form which the commission may by rule 804 805 prescribe. The commission may establish, by rule, procedures for 806 depositing fees and filing documents by electronic means 807 provided such procedures provide the office with the information 808 and data required by this section. Each dealer or investment 809 adviser must also file an irrevocable written consent to service 810 of civil process similar to that provided for in s. 517.101. The 811 application shall contain such information as the commission or 812 office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more



823 than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

827 (7) The application must also contain such information as 828 the commission or office may require about the applicant; any member, principal, or director of the applicant or any person 829 830 having a similar status or performing similar functions; any 831 person directly or indirectly controlling the applicant; or any 832 employee of a dealer or of an investment adviser rendering 833 investment advisory services. Each applicant and any direct 834 owners, principals, or indirect owners that are required to be 835 reported on Form BD or Form ADV pursuant to subsection (15) 836 shall submit fingerprints for live-scan processing in accordance 837 with rules adopted by the commission. The fingerprints may be 838 submitted through a third-party vendor authorized by the 839 Department of Law Enforcement to provide live-scan 840 fingerprinting. The costs of fingerprint processing shall be 841 borne by the person subject to the background check. The 842 Department of Law Enforcement shall conduct a state criminal 843 history background check, and a federal criminal history 844 background check must be conducted through the Federal Bureau of 845 Investigation. The office shall review the results of the state and federal criminal history background checks and determine 846 847 whether the applicant meets licensure requirements. The 848 commission may waive, by rule, the requirement that applicants, 849 including any direct owners, principals, or indirect owners that 850 are required to be reported on Form BD or Form ADV pursuant to 851 subsection (15), submit fingerprints or the requirement that

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852 such fingerprints be processed by the Department of Law 853 Enforcement or the Federal Bureau of Investigation. The 854 commission or office may require information about any such 855 applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he
or she may have been known, and his or her age, social security
number, photograph, qualifications, and educational and business
history.

860 (b) Any injunction or administrative order by a state or 861 federal agency, national securities exchange, or national 862 securities association involving a security or any aspect of the 863 securities business and any injunction or administrative order 864 by a state or federal agency regulating banking, insurance, 865 finance, or small loan companies, real estate, mortgage brokers, 866 or other related or similar industries, which injunctions or 867 administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(8) The commission or office may require the applicant or
one or more principals or general partners, or natural persons
exercising similar functions, or any associated person applicant
to successfully pass oral or written examinations. Because any
principal, manager, supervisor, or person exercising similar
functions shall be responsible for the acts of the associated

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881 persons affiliated with a dealer, the examination standards may 882 be higher for a dealer, office manager, principal, or person 883 exercising similar functions than for a nonsupervisory 884 associated person. The commission may waive the examination 885 process when it determines that such examinations are not in the 886 public interest. The office shall waive the examination 887 requirements for any person who has passed any tests as 888 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 889 that relates to the position to be filled by the applicant.

890 (9) (a) All dealers, except securities dealers who are 891 designated by the Federal Reserve Bank of New York as primary 892 government securities dealers or securities dealers registered 893 as issuers of securities, shall comply with the net capital and 894 ratio requirements imposed pursuant to the Securities Exchange 895 Act of 1934. The commission may by rule require a dealer to file 896 with the office any financial or operational information that is 897 required to be filed by the Securities Exchange Act of 1934 or 898 any rules adopted under such act.

899 (b) The commission may by rule require the maintenance of a 900 minimum net capital for securities dealers who are designated by 901 the Federal Reserve Bank of New York as primary government 902 securities dealers and securities dealers registered as issuers 903 of securities and investment advisers, or prescribe a ratio 904 between net capital and aggregate indebtedness, to assure 905 adequate protection for the investing public. The provisions of 906 this section shall not apply to any investment adviser that 907 maintains its principal place of business in a state other than 908 this state, provided such investment adviser is registered in 909 the state where it maintains its principal place of business and

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910 is in compliance with such state's net capital requirements. 911 (10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or 912 913 \$50, in the case of an associated person. An associated person 914 may be assessed an additional fee to cover the cost for the 915 fingerprints to be processed by the office. Such fee shall be 916 determined by rule of the commission. Such fees become the 917 revenue of the state, except for those assessments provided for 918 under s. 517.131(1) until such time as the Securities Guaranty 919 Fund satisfies the statutory limits, and are not returnable in 920 the event that registration is withdrawn or not granted.

921 (11) If the office finds that the applicant is of good 922 repute and character and has complied with the provisions of 923 this chapter and the rules made pursuant hereto, it shall 924 register the applicant. The registration of each dealer, 925 investment adviser, and associated person expires on December 31 926 of the year the registration became effective unless the 927 registrant has renewed his or her registration on or before that 928 date. Registration may be renewed by furnishing such information 929 as the commission may require, together with payment of the fee 930 required in subsection (10) for dealers, investment advisers, or 931 associated persons and the payment of any amount lawfully due 932 and owing to the office pursuant to any order of the office or 933 pursuant to any agreement with the office. Any dealer, 934 investment adviser, or associated person who has not renewed a 935 registration by the time the current registration expires may 936 request reinstatement of such registration by filing with the 937 office, on or before January 31 of the year following the year 938 of expiration, such information as may be required by the

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939 commission, together with payment of the fee required in 940 subsection (10) for dealers, investment advisers, or associated 941 persons and a late fee equal to the amount of such fee. Any 942 reinstatement of registration granted by the office during the 943 month of January shall be deemed effective retroactive to 944 January 1 of that year.

945 (12)(a) The office may issue a license to a dealer, 946 investment adviser, or associated person to evidence 947 registration under this chapter. The office may require the 948 return to the office of any license it may issue prior to 949 issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

959 (13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, 960 961 officers, or directors of any dealer or investment adviser or by 962 changes of any material fact or method of doing business shall 963 be reported by written amendment in such form and at such time 964 as the commission may specify. In any case in which a person or 965 a group of persons, directly or indirectly or acting by or 966 through one or more persons, proposes to purchase or acquire a 967 controlling interest in a registered dealer or investment

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968 adviser, such person or group shall submit an initial 969 application for registration as a dealer or investment adviser 970 prior to such purchase or acquisition. The commission shall 971 adopt rules providing for waiver of the application required by 972 this subsection where control of a registered dealer or 973 investment adviser is to be acquired by another dealer or 974 investment adviser registered under this chapter or where the 975 application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or 976 977 required to be registered or branch office notice-filed or 978 required to be notice-filed with the office shall keep records 979 of all currency transactions in excess of \$10,000 and shall file 980 reports, as prescribed under the financial recordkeeping 981 regulations in 31 C.F.R. part 103, with the office when 982 transactions occur in or from this state. All reports required 983 by this subsection to be filed with the office shall be 984 confidential and exempt from s. 119.07(1) except that any law 985 enforcement agency or the Department of Revenue shall have 986 access to, and shall be authorized to inspect and copy, such 987 reports.

988 (15) (a) In order to facilitate uniformity and streamline 989 procedures for persons who are subject to registration or 990 notification in multiple jurisdictions, the commission may adopt 991 by rule uniform forms that have been approved by the Securities 992 and Exchange Commission, and any subsequent amendments to such 993 forms, if the forms are substantially consistent with the 994 provisions of this chapter. Uniform forms that the commission 995 may adopt to administer this section include, but are not 996 limited to:

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997 1. Form BR, Uniform Branch Office Registration Form, 998 adopted October 2005. 999 2. Form U4, Uniform Application for Securities Industry 1000 Registration or Transfer, adopted October 2005. 1001 3. Form U5, Uniform Termination Notice for Securities 1002 Industry Registration, adopted October 2005. 4. Form ADV, Uniform Application for Investment Adviser 1003 1004 Registration, adopted October 2003. 1005 5. Form ADV-W, Notice of Withdrawal from Registration as an 1006 Investment Adviser, adopted October 2003. 1007 6. Form BD, Uniform Application for Broker-Dealer 1008 Registration, adopted July 1999. 1009 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, 1010 adopted August 1999. 1011 (b) In lieu of filing with the office the applications 1012 specified in subsection (6), the fees required by subsection 1013 (10), the renewals required by subsection (11), and the 1014 termination notices required by subsection (12), the commission 1015 may by rule establish procedures for the deposit of such fees 1016 and documents with the Central Registration Depository or the 1017 Investment Adviser Registration Depository of the Financial 1018 Industry Regulatory Authority, as developed under contract with 1019 the North American Securities Administrators Association, Inc. 1020 (16) Except for securities dealers who are designated by 1021 the Federal Reserve Bank of New York as primary government 1022 securities dealers or securities dealers registered as issuers 1023 of securities, every applicant for initial or renewal 1024 registration as a securities dealer and every person registered as a securities dealer shall be registered as a broker or dealer 1025

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1026 with the Securities and Exchange Commission and shall be subject 1027 to insurance coverage by the Securities Investor Protection 1028 Corporation.

1029 (17) (a) A dealer that is located in Canada, does not have 1030 an office or other physical presence in this state, and has made 1031 a notice-filing in accordance with this subsection is exempt 1032 from the registration requirements of this section and may effect transactions in securities with or for, or induce or 1033 1034 attempt to induce the purchase or sale of any security by:

1. A person from Canada who is present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States; or

2. A person from Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) A notice-filing under this subsection must consist of documents the commission by rule requires to be filed, together with a consent to service of process and a nonrefundable filing fee of \$200. The commission may establish by rule procedures for the deposit of fees and the filing of documents to be made by electronic means, if such procedures provide the office with the information and data required by this section.

(c) A Canadian dealer may make a notice-filing under this 1050 subsection if the dealer provides to the office:

1051 1. A notice-filing in the form the commission requires by 1052 rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a

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1055 dealer in the jurisdiction in which the dealer's main office is 1056 located.

4. Evidence that the Canadian dealer is a member of a selfregulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the effectiveness of a notice-filing for a Canadian dealer.

1061 (e) A notice-filing is effective upon receipt by the 1062 office. A notice-filing expires on December 31 of the year in 1063 which the filing becomes effective unless the Canadian dealer 1064 has renewed the filing on or before that date. A Canadian dealer 1065 may annually renew a notice-filing by furnishing to the office 1066 such information as the office requires together with a renewal 1067 fee of \$200 and the payment of any amount due and owing the 1068 office pursuant to any agreement with the office. Any Canadian 1069 dealer who has not renewed a notice-filing by the time a current 1070 notice-filing expires may request reinstatement of such notice-1071 filing by filing with the office, on or before January 31 of the 1072 year following the year the notice-filing expires, such 1073 information as the commission requires by rule, together with 1074 the payment of \$200 and a late fee of \$200. A reinstatement of a 1075 notice-filing granted by the office during the month of January 1076 is effective retroactively to January 1 of that year.

(f) An associated person who represents a Canadian dealer who has made a notice-filing under this subsection is exempt from the registration requirements of this section and may effect transactions in securities in this state as permitted for a dealer under paragraph (a) if such person is registered in the jurisdiction from which he or she is effecting transactions into this state.

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1084 (g) A Canadian dealer who has made a notice-filing under 1085 this subsection shall: 1. Maintain its provincial or territorial registration and 1086 1087 its membership in a self-regulatory organization or stock 1088 exchange in good standing. 1089 2. Provide the office upon request with its books and 1090 records relating to its business in this state as a dealer. 1091 3. Provide the office upon request notice of each civil, 1092 criminal, or administrative action initiated against the dealer. 1093 4. Disclose to its clients in this state that the dealer 1094 and its associated persons are not subject to the full 1095 regulatory requirements under this chapter. 1096 5. Correct any inaccurate information within 30 days after 1097 the information contained in the notice-filing becomes 1098 inaccurate for any reason. 1099 (h) An associated person representing a Canadian dealer who 1100 has made a notice-filing under this subsection shall: 1101 1. Maintain provincial or territorial registration in good 1102 standing. 1103 2. Provide the office upon request with notice of each 1104 civil, criminal, or administrative action initiated against such 1105 person. 1106 (i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is 1107 1108 specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office. 1109 1110 (j) All fees collected under this subsection become the 1111 revenue of the state, except those assessments provided for 1112 under s. 517.131(1), until the Securities Guaranty Fund has



1113 satisfied the statutory limits. Such fees are not returnable if 1114 a notice-filing is withdrawn.

(18) Every dealer or associated person registered or required to be registered with the office shall satisfy any continuing education requirements established by rule pursuant to law.

(19) The registration requirements of this section which apply to investment advisers and associated persons do not apply to a commodity trading adviser who:

(a) Is registered as such with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

(b) Advises or exercises trading discretion, with respect to foreign currency options listed and traded exclusively on the Philadelphia Stock Exchange, on behalf of an "appropriate person" as defined by the Commodity Exchange Act.

The exemption provided in this subsection does not apply to a commodity trading adviser who engages in other activities that require registration under this chapter.

(20) An intermediary may not engage in business in this state unless the intermediary is registered as a dealer under this section or has filed a registration application as an intermediary with the office to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and a registration fee of \$200. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the

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1142	information and data required by this costion. Each intermediary
	information and data required by this section. Each intermediary
1143	must also file an irrevocable written consent to service of
1144	civil process, as provided for in s. 517.101.
1145	(a) The application must contain such information as the
1146	commission or office may require concerning:
1147	1. The name of the applicant and address of its principal
1148	office and each office in this state.
1149	2. The applicant's form and place of organization; and if
1150	the applicant is a corporation, a copy of its articles of
1151	incorporation and amendments to the articles of incorporation
1152	or, if a partnership, a copy of the partnership agreement.
1153	3. The website address where securities of the issuer will
1154	be offered.
1155	4. Contact information.
1156	(b) The application must also contain such information as
1157	the commission may require by rule about the applicant; any
1158	member, principal, or director of the applicant or any person
1159	having a similar status or performing similar functions; or any
1160	persons directly or indirectly controlling the applicant. Each
1161	applicant and any direct owners, principals, or indirect owners
1162	that are required to be reported on a form adopted by commission
1163	rule shall submit fingerprints for live-scan processing in
1164	accordance with rules adopted by the commission. The
1165	fingerprints may be submitted through a third-party vendor
1166	authorized by the Department of Law Enforcement to provide live-
1167	scan fingerprinting. The costs of fingerprint processing shall
1168	be borne by the person subject to the background check. The
1169	Department of Law Enforcement shall conduct a state criminal
1170	history background check, and a federal criminal history

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1171	background check must be conducted through the Federal Bureau of
1172	Investigation. The office shall review the results of the state
1173	and federal criminal history background checks and determine
1174	whether the applicant meets licensure requirements. The
1175	commission may waive, by rule, the requirement that applicants,
1176	including any direct owners, principals, or indirect owners,
1177	that are required to be reported on a form adopted by commission
1178	rule submit fingerprints or the requirement that such
1179	fingerprints be processed by the Department of Law Enforcement
1180	or the Federal Bureau of Investigation. The commission, by rule,
1181	or the office may require information about any applicant or
1182	person concerning such matters as:
1183	1. His or her full name and any other names by which he or
1184	she may have been known and his or her age, social security
1185	number, photograph, qualifications, and educational and business
1186	history.
1187	2. Any injunction or administrative order by a state or
1188	federal agency, national securities exchange, or national
1189	securities association involving a security or any aspect of the
1190	securities business and any injunction or administrative order
1191	by a state or federal agency regulating banking, insurance,
1192	finance, or small loan companies, real estate, mortgage brokers,
1193	or other related or similar industries, which relate to such
1194	person.
1195	3. His or her conviction of, or plea of nolo contendere to,
1196	a criminal offense or his or her commission of any acts that
1197	would be grounds for refusal of an application under s. 517.161.
1198	(c) The application must be amended within 30 days if any
1199	information contained in the form becomes inaccurate for any

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1200 reason. 1201 (d) An intermediary or persons affiliated with the intermediary may not be subject to any disqualification 1202 1203 described in s. 517.1611 or the United States Securities and 1204 Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted 1205 pursuant to the Securities Act of 1933. Each director, officer, 1206 control person of the issuer, any person occupying a similar 1207 status or performing a similar function, and each person holding 1208 more than 20 percent of the shares of the intermediary is 1209 subject to this requirement. 1210 (e) If the office finds that the applicant is of good 1211 repute and character and has complied with the provisions of 1212 this chapter and the rules made pursuant hereto, it shall 1213 register the applicant. The registration of each intermediary 1214 expires on December 31 of the year the registration became 1215 effective unless the registrant has renewed his or her 1216 registration on or before that date. Registration may be renewed 1217 by furnishing such information as the commission may require by 1218 rule, together with payment of the fee of \$200 and the payment 1219 of any amount due to the office pursuant to any order of the 1220 office or pursuant to any agreement with the office. An 1221 intermediary who has not renewed a registration by filing with 1222 the office on or before January 31 of the year following the year of expiration must submit the information that may be 1223

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(21) (20) The registration requirements of this section do

required by the commission, together with payment of the \$200

fee and a late fee of \$200. Any reinstatement of registration

granted by the office during the month of January shall be

deemed effective retroactive to January 1 of that year.

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1229 not apply to any general lines insurance agent or life insurance 1230 agent licensed under chapter 626, for the sale of a security as 1231 defined in s. 517.021(22)(g) s. 517.021(21)(g), if the 1232 individual is directly authorized by the issuer to offer or sell 1233 the security on behalf of the issuer and the issuer is a 1234 federally chartered savings bank subject to regulation by the 1235 Federal Deposit Insurance Corporation. Actions under this 1236 subsection shall constitute activity under the insurance agent's 1237 license for purposes of ss. 626.611 and 626.621.

Section 5. Subsections (1) and (2) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.-

(1) A dealer, investment adviser, branch office, or associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, <u>intermediary</u>, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

Section 6. Section 517.161, Florida Statutes, is amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, <u>intermediary</u>, or associated person.-

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or

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1258 registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or 1259 performing similar functions; or any person directly or 1260 1261 indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule 1263 or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer, broker, intermediary, or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with the provisions of this chapter;

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(h) Has demonstrated unworthiness to transact the business



1287 of dealer, investment adviser, intermediary, or associated 1288 person;

1289 (i) Has exercised management or policy control over or 1290 owned 10 percent or more of the securities of any dealer, 1291 intermediary, or investment adviser that has been declared 1292 bankrupt, or had a trustee appointed under the Securities 1293 Investor Protection Act; or is, in the case of a dealer, 1294 intermediary, or investment adviser, insolvent;

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest 1303 dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

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(1) Is of bad business repute;

1308 (m) Has been the subject of any decision, finding, 1309 injunction, suspension, prohibition, revocation, denial, 1310 judgment, or administrative order by any court of competent 1311 jurisdiction, administrative law judge, or by any state or 1312 federal agency, national securities, commodities, or option 1313 exchange, or national securities, commodities, or option association, involving a violation of any federal or state 1314 1315 securities or commodities law or any rule or regulation



1316 promulgated thereunder, or any rule or regulation of any 1317 national securities, commodities, or options exchange or national securities, commodities, or options association, or has 1318 1319 been the subject of any injunction or adverse administrative 1320 order by a state or federal agency regulating banking, 1321 insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other 1322 1323 related or similar industries. For purposes of this subsection, 1324 the office may not deny registration to any applicant who has 1325 been continuously registered with the office for 5 years after 1326 the date of entry of such decision, finding, injunction, 1327 suspension, prohibition, revocation, denial, judgment, or 1328 administrative order provided such decision, finding, 1329 injunction, suspension, prohibition, revocation, denial, 1330 judgment, or administrative order has been timely reported to 1331 the office pursuant to the commission's rules; or

(n) Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution.

(2) The payment or anticipated payment of any amount from the Securities Guaranty Fund in settlement of a claim or in satisfaction of a judgment against an applicant or registrant constitutes prima facie grounds for the denial of the applicant's application for registration or the revocation of the registrant's registration.

(3) In the event the office determines to deny an
application or revoke a registration, it shall enter a final
order with its findings on the register of dealers and
associated persons; and denial, suspension, or revocation of the

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1345 registration of a dealer, intermediary, or investment adviser 1346 shall also deny, suspend, or revoke the registration of all her 1347 or his associated persons.

1348 (4) It shall be sufficient cause for denial of an 1349 application or revocation of registration, in the case of a 1350 partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate 1351 1352 equitable owner of the corporation or association has committed 1353 any act or omission which would be cause for denying, revoking, 1354 restricting, or suspending the registration of an individual 1355 dealer, investment adviser, intermediary, or associated person. 1356 As used in this subsection, the term "ultimate equitable owner" 1357 means a natural person who directly or indirectly owns or 1358 controls an ownership interest in the corporation, partnership, 1359 association, or other legal entity however organized, regardless 1360 of whether such natural person owns or controls such ownership 1361 interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, 1362 1363 joint stock companies, or other entities or devices, or any combination thereof. 1364

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act which would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

(6) Registration under s. 517.12 may be denied or any registration granted may be suspended or restricted if an applicant or registrant is charged, in a pending enforcement action or pending criminal prosecution, with any conduct that

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1374 would authorize denial or revocation under subsection (1). 1375 Registration under s. 517.12 may be suspended or restricted if a 1376 registrant is arrested for any conduct that would authorize 1377 revocation under subsection (1).

1378 (a) Any denial of registration ordered under this 1379 subsection shall be without prejudice to the applicant's ability 1380 to reapply for registration.

1381 (b) Any order of suspension or restriction under this 1382 subsection shall:

1. Take effect only after a hearing, unless no hearing is 1384 requested by the registrant or unless the suspension or 1385 restriction is made in accordance with s. 120.60(6).

2. Contain a finding that evidence of a prima facie case supports the charge made in the enforcement action or criminal prosecution.

3. Operate for no longer than 10 days beyond receipt of notice by the office of termination with respect to the registrant of the enforcement action or criminal prosecution.

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(c) For purposes of this subsection:

1. The term "enforcement action" means any judicial proceeding or any administrative proceeding where such judicial or administrative proceeding is brought by an agency of the United States or of any state to enforce or restrain violation of any state or federal law, or any disciplinary proceeding maintained by the Financial Industry Regulatory Authority, the National Futures Association, or any other similar selfregulatory organization.

2. An enforcement action is pending at any time after 1401 1402 notice to the applicant or registrant of such action and is

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1403	terminated at any time after entry of final judgment or decree
1404	in the case of judicial proceedings, final agency action in the
1405	case of administrative proceedings, and final disposition by a
1406	self-regulatory organization in the case of disciplinary
1407	proceedings.
1408	3. A criminal prosecution is pending at any time after
1409	criminal charges are filed and is terminated at any time after
1410	conviction, acquittal, or dismissal.
1411	Section 7. Paragraph (b) of subsection (4) of section
1412	626.9911, Florida Statutes, is amended to read:
1413	626.9911 DefinitionsAs used in this act, the term:
1414	(4) "Life expectancy provider" means a person who
1415	determines, or holds himself or herself out as determining, life
1416	expectancies or mortality ratings used to determine life
1417	expectancies:
1418	(b) In connection with a viatical settlement investment,
1419	pursuant to <u>s. 517.021(24)</u> <del>s. 517.021(23)</del> ; or
1420	Section 8. This act shall take effect October 1, 2015.
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1422	=========== T I T L E A M E N D M E N T =================================
1423	And the title is amended as follows:
1424	Delete everything before the enacting clause
1425	and insert:
1426	A bill to be entitled
1427	An act relating to intrastate crowdfunding; amending
1428	s. 517.021, F.S.; conforming a cross-reference;
1429	defining the term "intermediary" for purposes of the
1430	Florida Securities and Investor Protection Act;
1431	amending s. 517.061, F.S.; exempting offers or sales

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1432 of securities by certain issuers from registration 1433 requirements; creating s. 517.0611, F.S.; providing a 1434 short title; exempting the intrastate offering and 1435 sale of certain securities from certain regulatory 1436 requirements; providing applicability; providing 1437 registration and reporting requirements for issuers 1438 and intermediaries offering such securities; limiting 1439 the aggregate amount of sales of such securities 1440 within a specified period; limiting the aggregate 1441 amount of sales to specified investors; requiring an 1442 issuer to produce and distribute an annual report to 1443 investors; requiring a notice-filing to be suspended 1444 under certain circumstances; specifying that fees 1445 collected become revenue of the state; requiring a 1446 qualified third party to hold certain funds in escrow; 1447 amending s. 517.12, F.S.; providing registration 1448 requirements for an intermediary; conforming a crossreference; amending s. 517.121, F.S.; requiring an 1449 1450 intermediary to comply with specified recordkeeping 1451 requirements; amending s. 517.161, F.S.; including an 1452 intermediary in the disciplinary provisions; amending 1453 s. 626.9911, F.S.; conforming a cross-reference; 1454 providing an effective date.

	Prepared By:	The Professional Staff o	f the Committee on	Banking and Insurance
BILL:	SB 914			
INTRODUCER:	Senator Rich	ter		
SUBJECT:	Offer or Sale	of Securities		
DATE:	March 30, 20	15 REVISED:		
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTION
. Johnson		Knudson	BI	Pre-meeting
2			AGG	
3.			AP	

# I. Summary:

SB 914 authorizes intrastate crowdfunding as a mechanism for small businesses to raise up to \$1 million annually in crowdfunding securities. Issuers and intermediaries engaging in intrastate crowdfunding would be subject to specified requirements, as described below, under the Florida Securities and Investor Protection Act, which is administered by the Office of Financial Regulation (OFR). In recent years, crowdfunding websites have proliferated to raise money for charities, artistic endeavors and businesses. People may contribute money in the form of donations or in return for the product or other reward. These sites did not offer equity crowdfunding, such as an ownership interest or share of profits in a business, due to federal and state security laws. However, a growing interest in equity crowdfunding as a mechanism for capital formation has resulted in many states enacting laws exempting intrastate crowdfunding from securities registration.

The bill creates an intrastate exemption for securities meeting certain state and federal requirements. The issuer, intermediary, investor, and transaction must be located in Florida in accordance with the federal intrastate exemption. Like the federal Jumpstart Our Business Startups Act<sup>1</sup> (JOBS Act), as described below, the bill exempts an issuer and the offering for a 12-month period for an offering of up to \$1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with OFR, disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filing and registration forms, books and records, and investor protections.

The JOBS Act creates an interstate exemption from the registration requirements of the Securities Act of 1933 for the issuance, offer, and sale of crowdfunding securities subject to

<sup>&</sup>lt;sup>1</sup> Public Law 112-106.

certain conditions. Issuers can raise up to \$1 million per year. Issuers have to engage an intermediary that is registered with the Securities and Exchange Commission (SEC). The JOBS Act requires the SEC to adopt rules implementing the new exemption that allows crowdfunding. Since no rules have been adopted, interstate crowdfunding is not permitted. In response to this delay, many states have enacted intrastate crowdfunding exemptions, which combine elements of the federal JOBS Act with Section 3(a)(11) of the Securities Act of 1933. Under this exemption, the issuer is exempt from federal registration if the issuer, all purchasers, and the transactions are contained within the same state.

According to the OFR, costs to implement the bill would be \$245,823. The impact on state revenues is indeterminate at this time.

## II. Present Situation:

#### **Federal Regulation of Securities**

#### Securities Act of 1933

The federal Securities Act of 1933 (Securities Act), requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities & Exchange Commission (SEC), unless an exemption, (such as the intrastate exemption, is available). The Securities Act's emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.

### Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934 (act), Congress created the Securities and Exchange Commission. The act provides the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self regulatory organizations (SROs). The various securities exchanges, such as the New York Stock Exchange, the NASDAQ Stock Market, and the Chicago Board of Options are SROs. The Financial Industry Regulatory Authority (FINRA) is also an SRO.

The act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities.

Generally, any person acting as a "broker" or "dealer" as defined by Section 3(4), and 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a self-regulatory organization—the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. Broker-dealers must also comply with state laws relating to registration requirements.

## Intrastate Exemption

Section 3(a)(11) of the Securities Act of 1933 provides: "Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and business within or, if a corporation, incorporated by and doing business within, such State or Territory."<sup>2</sup> Prior to the enactment of the JOBS Act, states such as Kansas and Georgia had already enacted their own securities offering exemption pursuant to the federal intrastate exemption under Section 3(a)(11) of the Securities Act of 1933 and SEC Rule 147,<sup>3</sup> in an effort to stimulate state-based offerings.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on section 3 (a)(11) offerings. For example, Rule 147 specifies that at least 80 percent of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of section3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption of the JOBS Act, section 3(a)(11) does not limit the size of the offering, and unlike several other exemptions, section 3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that section 3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the Securities Act of 1933.<sup>4</sup> Broker-dealers that conduct their business on a purely intrastate basis are not required to register at the federal level.<sup>5</sup> Applicable SEC guidance provides that the intrastate exemption is narrowly construed and offerings advertised through the internet are deemed interstate, not intrastate, in nature:

The exception provided for intrastate broker-dealer activity is very narrow. To qualify, all aspects of all transactions must be done within the borders of one state. This means that, without SEC registration, a broker-dealer cannot participate in any transaction executed on a national securities exchange or NASDAQ. Also, information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration.<sup>6</sup>

 $<sup>^{2}</sup>$  15 USC s. 77c(a)(11). SEC Rule 147 (17 CFR s. 230.147) provides a "safe harbor" that guarantees compliance with Section 3(a)(11) if the conditions set forth in the rule are met.

<sup>&</sup>lt;sup>3</sup> 17 CFR s. 230.147.

<sup>&</sup>lt;sup>4</sup> U.S. SECURITIES & EXCHANGE COMMISSION, Small Business and the SEC,

http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate (last visited March 30, 2015).

<sup>&</sup>lt;sup>5</sup> Section 15(a)(1) of the Securities Exchange Act provides an exemption from broker-dealer registration for a broker-dealer whose business is "exclusively intrastate and who does not make use of any facility of a national securities exchange." 15 U.S.C. 78o(a)(1).

<sup>&</sup>lt;sup>6</sup> SEC Guide to Broker-Dealer Registration, available at http://www.sec.gov/divisions/marketreg/bdguide.htm (last visited March 29, 2015).

On April 10, 2014, the SEC issued interpretive guidance regarding section 3(a)(11) of the Securities Act of 1933 and the Internet.<sup>7</sup> The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.<sup>8</sup>

It is also important to note that section 3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

## JOBS Act and Crowdfunding

Title III of the JOBS Act ("Title III") provides an interstate exemption from the registration requirements for crowdfunding transactions. Unlike other securities exemptions, Title III permits the issuer (fundraiser) to advertise and solicit sales of securities from the public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows intermediaries - either registered broker-dealers or a new Internet-based platform entity (funding portals) – to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization" as defined in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.<sup>9</sup> If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and others as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

<sup>&</sup>lt;sup>7</sup> See Questions 141.03-141.05 (issued April 10, 2014), available at

http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm (last visited March 30, 2015).

<sup>&</sup>lt;sup>8</sup> Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), <u>http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte</u> (last visited March 30, 2015).

<sup>&</sup>lt;sup>9</sup> SEC Proposed Regulation Crowdfunding Section 227.400.

In addition to the requirements discussed above, to qualify for the exemption, crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet the following:

- The amount raised must not exceed \$1 million in a 12-month period.
- Individual investments in a 12-month period are limited to: the greater of \$2,000 or 5 percent of annual income or net worth, if annual income or net worth of the investor is less than \$100,000; and 10 percent of annual income or net worth (not to exceed an amount sold of \$100,000), if annual income or net worth of the investor is \$100,000 or more.
- An offering made in reliance on the exemption must be conducted through an intermediary that is either a registered broker or a registered "funding portal." Transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a "funding portal," which would be subject to an exemption from broker registration.
- Issuers and intermediaries that facilitate transactions between issuers and investors in reliance on the crowdfunding exemption must provide certain disclosures to investors and potential investors and provide notices and other information to the SEC.

The JOBS Act requires the SEC to adopt rules to implement interstate crowdfunding. On October 23, 2013, the SEC proposed rules that would implement Title III. The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.<sup>10</sup>

## **State Regulation of Securities**

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.<sup>11</sup> In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act and Chapter 69W, Florida Administrative Code.<sup>12</sup>

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.<sup>13</sup> Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in

<sup>&</sup>lt;sup>10</sup> U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at <u>http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm</u>. *See also* JOBS Act Frequently Asked Questions About Crowdfunding Intermediaries, at <u>http://www.sec.gov/divisions/marketreg/tmjobsact-</u> <u>crowdfundingintermediariesfaq.htm (last visited March 30, 2015)</u>.

<sup>&</sup>lt;sup>11</sup> U.S. Securities and Exchange Commission, *Blue Sky Laws*, <u>http://www.sec.gov/answers/bluesky.htm</u> (last visited March 30, 2015).

<sup>&</sup>lt;sup>12</sup> Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

<sup>&</sup>lt;sup>13</sup> Section. 517.12, F.S.

ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).<sup>14</sup> Failure to meet the precise requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.<sup>15</sup> Civil remedies under the act include rescission and damages.<sup>16</sup> In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the public, or for securities sold to the public to be sold by an unregistered dealer.

## III. Effect of Proposed Changes:

The bill creates an intrastate exemption for crowdfunding transactions from the registration requirements under s. 517.061, F.S., for the offer and sale of certain securities. The bill contains provisions from the JOBS Act and is limited to intrastate offerings under 15 U.S.C. s. 77c(a)(11). In contrast to other securities transactions under the OFR's jurisdiction that are exempt from registration, the securities in these crowdfunding transactions may be generally advertised and sold typically over the Internet and are not required to be sold through a registered broker-dealer when offered to the general public, but may be sold through an intermediary. The bill provides for the offer and sale of up to \$1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities.

**Section 1** defines an intermediary to mean a natural person residing in this state, or a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do business in this state, that represents an issuer in a transaction involving the offer or sale of securities under s. 517.061, F.S.

Section 2 provides that an issuer and each intermediary that represents an issuer is exempt from the registration requirements of s. 517.07, F.S., if the offer or sale of the security meets certain requirements:

### **Issuer Requirements:**

- Be a for-profit business entity formed under the laws of this state and be registered with the Secretary of State.
- Be represented by an intermediary.
- Submit a nonrefundable filing fee of \$200 and file a notice with the OFR in a form prescribed by commission rule, that:
  - Indicates that the issuer is conducting an offering in reliance upon this exemption.
  - Contains the contact information of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and the federally insured financial institution authorized to do business in this state in which investor funds will be deposited.

<sup>&</sup>lt;sup>14</sup> Section 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

<sup>&</sup>lt;sup>15</sup> Section 517.302(1), F.S.

<sup>&</sup>lt;sup>16</sup> Section 517.211(3-5), F.S.

- Include documentation verifying that the issuer is organized under the laws of Florida and authorized to do business in Florida.
- Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d).
- Execute an escrow agreement with a federally insured financial institution authorized to do business in this state for the deposit of investor funds.
- Not be subject to a disqualification established by the commission or office or a disqualification described in United States Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, under the Securities Act of 1933.

# **Intermediary Requirements:**

- Comply with any notice or filing requirements for exemption from registration as a brokerdealer established by rule or order of the Financial Services Commission or the OIR under this chapter, which shall include annual registration and submission of a nonrefundable \$200 registration fee.
- Facilitate the offer and sale of securities.
- Provide basic information on its platform regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:
  - A description of the escrow agreement that the issuer has executed and the conditions for the release of such funds to the issuer in accordance with the agreement.
  - A description of whether financial information provided by the issuer has been audited by an independent certified public accountant.
- Maintain records of the offers and sales of securities made through its platform, as prescribed by commission rule, and provide access to such records upon request by the OIR.
- Obtain evidence from each investor showing that the investor is a resident of Florida. An investor that provides a legible copy of a Florida driver license has provided evidence of state residency.
- Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements.
- Deposit and release investor funds in escrow pursuant to the escrow agreement executed by the issuer.
- Provide a monthly update for each offering, which is accessible on the intermediary's platform, and includes the date and amount of each sale of securities in the previous calendar month.
- Not be subject to a disqualification established by the commission or office or a disqualification described in SEC Rule 262, 17 C.F.R. s. 230.262, under the Securities Act of 1933.

# **Intermediary Prohibitions:**

- Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or representing a potential for fraud shall not be construed as an offer of investment advice or recommendation.
- Solicit purchases, sales, or offers to buy securities offered or displayed on its platform.

- Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to buy the securities offered or displayed on its platform.
- Hold, manage, possess, or otherwise handle investor funds or securities.

The transaction must meet the requirements of the federal exemption for intrastate offerings under s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United States Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, under the Securities Act of 1933.

SB 914 provides that the sum of all cash and other consideration received for all sales of the security in reliance upon this exemption must not exceed \$1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Unless the investor is an accredited investor as defined by Rule 501 of Regulation D under the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this section during a 12-month period may not exceed:

- If the annual income and net worth of the investor are less than \$100,000, the greater of \$2,000, 5 percent of the annual income of the investor, or 5 percent of the net worth of the investor.
- If the annual income or net worth of the investor is \$100,000 or more, the greater of \$100,000, 10 percent of the annual income of the investor, or 10 percent of the net worth of the investor.

The bill requires that all funds received from investors must be used in accordance with representations made to investors by the intermediary.

All offering materials must prominently state in bold, conspicuous print:

"These securities are offered and will be sold in reliance on an exemption from the registration requirements of federal and State of Florida securities laws and consequently neither the federal government nor the State of Florida have reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment."

The bill provides that exemptions from registration requirements may not be used in conjunction with any other exemption from registration requirements under this chapter, except for offers and sales to a person owning 10 percent or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee or a person occupying similar status or performing similar functions. Sales to such persons do not count toward the limitation provided in the bill.

Sections 3 and 4 provide technical, conforming changes.

Section 5 provides the act will take 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:

The bill requires issuers to pay notice filing fees of \$200 and intermediaries would be subject to a \$200 registration fee.

B. Private Sector Impact:

The bill will provide start-up and small companies with another option for raising capital that would not be subject to securities registration with the OFR if certain requirements were met.

### C. Government Sector Impact:

The OFR estimates<sup>17</sup> that it will need resources to implement the provisions of the bill. The OFR estimates the total staffing costs to be \$182,672.82, as described below:

- Two Financial Specialists within the Division of Securities, Bureau of Enforcement (BE 43900570) to process complaints, examine intermediaries and risk assess for potential crowdfunding operations acting outside the scope of the requirements [2 FTEs \$60,890.94 x 2 = \$121.781.88].
- One Financial Investigator/Criminal Enforcement within the Bureau of Financial Investigations (BE 43900540) to investigate unregistered and unlawful activity [1 FTE \$60,890.94].

The bill will require updates to the OFR's licensing and examination software as well as information technology support and increased data storage to integrate notice-filings by issuers and applications by intermediaries. The bill would likely require the OFR to create electronic forms for notice-filings and applications. The fiscal impact is estimated at \$63,150 (BE 43900550 – Executive Direction and Category 210016 – REAL). The

<sup>&</sup>lt;sup>17</sup> Office of Financial Regulation, 2015 Legislative Bill Analysis (Jan. 21, 2015) (on file with Banking and Insurance Committee).

services covered by the estimated costs include system configuration in the licensing, fiscal, transaction, and enforcement areas; correspondence and reports development; portal development for online application process and maintenance; modification to LiveScan interface and system testing.

### VI. Technical Deficiencies:

Some provisions of the JOBS Act and s. 3(a)(11) of the Securities Act of 1933 were not fully incorporated in the bill but are addressed in the delete-all amendment.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.061, 517.12, and 626.9911.

#### IX. Additional Information:

# A. Committee Substitute – Statement of Changes:

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

None.

#### B. Amendments:

None.

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

SB 914

By Senator Richter

23-00756-15 2015914 1 A bill to be entitled 2 An act relating to the offer or sale of securities; amending s. 517.021, F.S.; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting certain issuers and intermediaries from registration requirements relating to the offer or sale of certain securities; providing requirements ç for such issuers and intermediaries; providing 10 limitations on offers or sales of securities; 11 prohibiting the use of specified exemptions from 12 registration requirements in conjunction with another 13 exemption from registration requirements; providing 14 exceptions; requiring the Office of Financial 15 Regulation to provide certain information on its 16 website; amending s. 517.12, F.S.; exempting certain 17 intermediaries from registration requirements relating 18 to the offer or sale of certain securities; conforming 19 a cross-reference; amending s. 626.9911, F.S.; 20 conforming a cross-reference; providing an effective 21 date 22 23 Be It Enacted by the Legislature of the State of Florida: 24 25 Section 1. Present subsections (13) through (23) of section 26 517.021, Florida Statutes, are redesignated as subsections (14) 27 through (24), respectively, and a new subsection (13) is added 2.8 to that section, to read: 29 517.021 Definitions.-When used in this chapter, unless the Page 1 of 8

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23-00756-15 2015914 30 context otherwise indicates, the following terms have the 31 following respective meanings: 32 (13) "Intermediary" means a natural person residing in this 33 state, or a corporation, trust, partnership, association, or any other legal entity registered with the Secretary of State to do 34 35 business in this state, that represents an issuer in a 36 transaction involving the offer or sale of securities under s. 37 517.061. 38 Section 2. Subsection (21) is added to section 517.061, 39 Florida Statutes, to read: 40 517.061 Exempt transactions.-The exemption for each transaction listed below is self-executing and does not require 41 any filing with the office prior to claiming such exemption. Any 42 43 person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought 44 under this chapter. The registration provisions of s. 517.07 do 45 not apply to any of the following transactions; however, such 46 47 transactions are subject to the provisions of ss. 517.301, 48 517.311, and 517.312: 49 (21) (a) Notwithstanding any other provision of this section, the offer or sale of a security by an issuer is exempt 50 51 from the registration requirements of s. 517.07, and each 52 intermediary who represents an issuer in an offer or sale is 53 exempt from the registration requirements of s. 517.12, if the 54 offer or sale is conducted in accordance with this subsection. 55 1. An issuer must: 56 a. Be a for-profit business entity formed under the laws of 57 this state and be registered with the Secretary of State. 58 b. Be represented by an intermediary.

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59	c. Submit a nonrefundable filing fee of \$200 and file a
60	notice with the office in writing or in electronic form, in a
61	format prescribed by commission rule, that:
62	(I) Indicates that the issuer is conducting an offering in
63	reliance upon this exemption.
64	(II) Contains the names and addresses of the issuer, all
65	persons who will be involved in the offer or sale of securities
66	on behalf of the issuer, and the federally insured financial
67	institution authorized to do business in this state in which
68	investor funds will be deposited.
69	(III) Includes documentation verifying that the issuer is
70	organized under the laws of this state and authorized to do
71	business in this state.
72	d. Not be, either before or as a result of the offering, an
73	investment company as defined in s. 3 of the Investment Company
74	Act of 1940, 15 U.S.C. s. 80a-3, or subject to the reporting
75	requirements of s. 13 or s. 15(d) of the Securities Exchange Act
76	of 1934, 15 U.S.C. s. 78m or s. 78o(d).
77	e. Execute an escrow agreement with a federally insured
78	financial institution authorized to do business in this state
79	for the deposit of investor funds.
80	f. Not be subject to a disqualification established by the
81	commission or office or a disqualification described in United
82	States Securities and Exchange Commission Rule 262, 17 C.F.R. s.
83	230.262, under the Securities Act of 1933.
84	2.a. An intermediary must:
85	(I) Comply with any notice or filing requirements for
86	exemption from registration as a broker-dealer established by
87	rule or order of the commission or office under this chapter,

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88	which shall include annual registration and submission of a
89	nonrefundable \$200 registration fee.
90	(II) Facilitate the offer and sale of securities.
91	(III) Provide basic information on its platform regarding
92	the high risk of investment in and limitation on the resale of
93	exempt securities and the potential for loss of an entire
94	investment. The basic information shall include:
95	(A) A description of the escrow agreement that the issuer
96	has executed and the conditions for the release of such funds to
97	the issuer in accordance with the agreement.
98	(B) A description of whether financial information provided
99	by the issuer has been audited by an independent certified
100	public accountant.
101	(IV) Maintain records of the offers and sales of securities
102	made through its platform, as prescribed by commission rule, and
103	provide access to such records upon request by the office.
104	(V) Obtain evidence from each investor showing that the
105	investor is a resident of this state. An investor that provides
106	a legible copy of a Florida driver license has provided evidence
107	of state residency.
108	(VI) Obtain an affidavit from each investor stating that
109	the investment being made by the investor is consistent with the
110	income requirements of subparagraph (a)5.
111	(VII) Deposit and release investor funds in escrow pursuant
112	to the escrow agreement executed by the issuer.
113	(VIII) Provide a monthly update for each offering, after
114	the first full month following the date of the offering. The
115	update must be accessible on the intermediary's platform and
116	must display the date and amount of each sale of securities in
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117	the previous calendar month.
118	(IX) Not be subject to a disqualification established by
119	the commission or office or a disqualification described in
120	United States Securities and Exchange Commission Rule 262, 17
121	C.F.R. s. 230.262, under the Securities Act of 1933.
122	b. An intermediary may not:
123	(I) Offer investment advice or recommendations. A refusal
124	by an intermediary to post an offering that it deems not
125	credible or representing a potential for fraud shall not be
126	construed as an offer of investment advice or recommendation.
127	(II) Solicit purchases, sales, or offers to buy securities
128	offered or displayed on its platform.
129	(III) Compensate employees, agents, or other persons for
130	the solicitation of purchases, sales, or offers to buy the
131	securities offered or displayed on its platform.
132	(IV) Hold, manage, possess, or otherwise handle investor
133	funds or securities.
134	3. The transaction must meet the requirements of the
135	federal exemption for intrastate offerings under s. 3(a)(11) of
136	the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United
137	States Securities and Exchange Commission Rule 147, 17 C.F.R. s.
138	230.147, under the Securities Act of 1933.
139	$\underline{4}$ . The sum of all cash and other consideration received for
140	all sales of the security in reliance upon this exemption must
141	not exceed \$1 million, less the aggregate amount received for
142	all sales of securities by the issuer within the 12 months
143	preceding the first offer or sale made in reliance upon this
144	exemption.
145	5. Unless the investor is an accredited investor as defined
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146	by Rule 501 of Regulation D under the Securities Act of 1933,
147	the aggregate amount sold by an issuer to an investor in
148	transactions exempt from registration requirements under this
149	subsection during a 12-month period may not exceed:
150	a. If the investor's annual income and net worth are less
151	than \$100,000, the greater of \$2,000, 5 percent of the annual
152	income of the investor, or 5 percent of the net worth of the
153	investor.
154	b. If the investor's annual income or net worth is \$100,000
155	or more, the greater of \$100,000, 10 percent of the annual
156	income of the investor, or 10 percent of the net worth of the
157	investor.
158	6. All funds received from investors must be used in
159	accordance with representations made to investors by the
160	intermediary.
161	7. All offering materials must prominently state in bold,
162	conspicuous print:
163	These securities are offered and will be sold in
164	reliance on an exemption from the registration
165	requirements of federal and State of Florida
166	securities laws and consequently neither the federal
167	government nor the State of Florida have reviewed the
168	accuracy or completeness of any offering materials. In
169	making an investment decision, investors must rely on
170	their own examination of the issuer and the terms of
171	the offering, including the merits and risks involved.
172	These securities are subject to restrictions on
173	transferability and resale and may not be transferred
174	or resold except as specifically authorized by
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175	applicable federal and state securities laws.
176	Investing in these securities involves a speculative
177	risk, and investors should be able to bear the loss of
178	their entire investment.
179	(b) The exemptions from registration requirements provided
180	in this subsection may not be used in conjunction with any other
181	exemption from registration requirements under this chapter,
182	except for offers and sales to a person owning 10 percent or
183	more of the outstanding shares of any class or classes of
184	securities or to an officer, director, partner, or trustee or a
185	person occupying similar status or performing similar functions.
186	Sales to such persons do not count toward the limitation
187	provided in subparagraph (a)4.
188	(c) The office shall create and maintain on its website a
189	list of all intermediaries providing offerings under this
190	section.
191	Section 3. Subsection (20) of section 517.12, Florida
192	Statutes, is amended to read:
193	517.12 Registration of dealers, associated persons, and
194	investment advisers
195	(20) The registration requirements of this section do not
196	apply to <u>:</u>
197	(a) Any general lines insurance agent or life insurance
198	agent licensed under chapter 626, for the sale of a security as
199	defined in <u>s. 517.021(22)(g)</u> <del>s. 517.021(21)(g)</del> , if the
200	individual is directly authorized by the issuer to offer or sell
201	the security on behalf of the issuer and the issuer is a
202	federally chartered savings bank subject to regulation by the
203	Federal Deposit Insurance Corporation. Actions under this
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204	subsection shall constitute activity under the insurance agent's
205	license for purposes of ss. 626.611 and 626.621.
206	(b) An intermediary exempted from registration under s.
207	517.061.
208	Section 4. Paragraph (b) of subsection (4) of section
209	626.9911, Florida Statutes, is amended to read:
210	626.9911 DefinitionsAs used in this act, the term:
211	(4) "Life expectancy provider" means a person who
212	determines, or holds himself or herself out as determining, life
213	expectancies or mortality ratings used to determine life
214	expectancies:
215	(a) On behalf of a viatical settlement provider, viatical
216	settlement broker, life agent, or person engaged in the business
217	of viatical settlements;
218	(b) In connection with a viatical settlement investment,
219	pursuant to <u>s. 517.021(24)</u> <del>s. 517.021(23)</del> ; or
220	(c) On residents of this state in connection with a
221	viatical settlement contract or viatical settlement investment.
222	Section 5. This act shall take effect July 1, 2015.

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