SB 1306 by **Bradley**; (Compare to CS/H 1127) Insurance Fraud

716542	D		S	BI, Richter	Delete everything after	03/30 09:21 AM

SB 1138 by **Brandes**; (Similar to H 0887) Unclaimed Property

SB 1088 by **Brandes**; (Similar to CS/H 1197) Civil Remedies Against Insurers

SB 516 by **Bean, Garcia**; (Similar to CS/H 0681) Health Insurance Coverage for Emergency Services

773678	D		S	BI, Lee	Delete everything after	03/30 10:00 AM

SB 1250 by **Montford**; (Similar to CS/H 1053) Motor Vehicle Insurance

374116	A		S	BI, Montford	Before L.27:	03/30 09:18 AM
775650	A		S	BI, Montford	Delete L.68 - 81:	03/30 09:18 AM
353870	A		S L	BI, Montford	Delete L.183 - 192:	03/30 01:23 PM

CS/SB 872 by **JU, Hukill**; (Compare to CS/CS/H 0343) Estates

846148	A		S	BI, Hukill	Delete L.1198 - 1201:	03/30 08:10 AM

CS/SB 744 by **RI, Richter**; (Similar to CS/H 0491) Property Insurance Appraisal Umpires and Property Insurance Appraisers

892532	D		S	BI, Richter	Delete everything after	03/30 09:36 AM

SB 914 by **Richter**; (Compare to CS/H 0275) Offer or Sale of Securities

171858	D		S	BI, Richter	Delete everything after	03/30 08:19 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, March 31, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 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. BI 03/31/2015 CJ AP	
2	**SB 1138** 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	**SB 1088** 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	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 516** Bean / Garcia (Similar CS/H 681)	Health Insurance Coverage for Emergency Services; 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. BI 03/31/2015 HP AP	
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	**CS/SB 872** 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	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 744** Regulated Industries / Richter (Similar 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 AP	
8	**SB 914** Richter (Compare 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 AGG AP	
	Other Related Meeting Documents		

716542

LEGISLATIVE ACTION

Senate . House

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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. Section 400.993, 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 by or on behalf of a clinic that is required to be licensed

716542

under this part~~,~~ but that is not so licensed, or that is otherwise operating in violation of this part or rules of the agency, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an~~, are~~ unlawful charge ~~charges,~~ and is ~~therefore are~~ noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of, and punishable as provided in, s. 812.014.

(4)(a) Regardless of whether notification is provided by the agency under ~~In addition to the requirements of~~ s. 408.812, a ~~any~~ person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person knowingly:

1. Establishes, owns, operates, manages, or maintains ~~establishing, operating, or managing~~ an unlicensed clinic ~~otherwise~~ required to be licensed under this part or part II of chapter 408;~~,~~ or

2. Offers or advertises services that require licensure as a clinic under this part or part II of chapter 408 without a license.

(b) If the agency provides notification under s. 408.812 of, or if a person is arrested for, a violation of subparagraph (a)1. or subparagraph (a)2., each day during which a violation of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a separate offense.

(c) A person convicted of a second or subsequent violation of subparagraph (a)1. or subparagraph (a)2. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the agency provides notification of,

716542

or if a person is arrested for, a violation of this paragraph, each day that this paragraph is violated thereafter constitutes a separate offense. For purposes of this paragraph, the term "convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(d) In addition to the requirements of part II of chapter 408, a health care provider who is aware of the operation of an unlicensed clinic shall report the clinic to the agency. The agency shall report to the provider's licensing board a failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed.

(e) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the ~~any~~ person ~~who~~ knowingly:

1. Files a false or misleading license application or license renewal application~~,~~ or files false or misleading information related to such application or agency ~~department~~ rule; or

2. Fails to report information to the agency as required by 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~~.

Section 3. Subsection (5) of section 626.9894, Florida Statutes, is amended to read:

626.9894 Gifts and grants.—

(5) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at the end of any fiscal year is available for carrying out the

duties and responsibilities of the division. The department may request annual appropriations from the grants and donations received pursuant to this section ~~or s. 626.9895~~ and cash balances in the Insurance Regulatory Trust Fund for the purpose of carrying out its duties and responsibilities related to the division's anti-fraud efforts, including the funding of dedicated prosecutors and related personnel.

Section 4. Section 626.9895, Florida Statutes, is repealed.

Section 5. Paragraphs (c) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude

			law enforcement officer in patrol vehicle with siren and lights activated.
89			
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
90			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
91			
	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
92			
	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

			possess vessel with counterfeit or wrong ID number.
96			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
97			
	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.
98			
	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
99			
	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license ~~or filing false license application or other required~~

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

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
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.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.

716542

817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
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.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury,

			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 or identification cards.
125			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
126			
	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).

130			
	893.13(1)(d)2.	2nd	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.
131			
	893.13(1)(f)2.	2nd	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.
132			
	893.13(6)(a)	3rd	Possession of any controlled 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.
134			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud,

			forgery, misrepresentation, etc.
135			
	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.
137			
	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.
139			
	893.13(8)(a)3.	3rd	Knowingly write a prescription

716542

		for a controlled substance for a fictitious person.
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.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(f) LEVEL 6

Florida	Felony	Description

716542

Statute	Degree	
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other

716542

		detainee.
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.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
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.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

794.05(1)	2nd	Unlawful sexual activity with specified minor.
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.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.

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

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

716542

		harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
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.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county

716542

facility.

Section 6. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to insurance fraud; repealing s. 400.993, F.S., relating to criminal penalties applicable to unlicensed health care clinics and the reporting of unlicensed health care clinics; amending s. 400.9935, F.S.; revising provisions related to unlawful, noncompensable, and unenforceable health care clinic charges or reimbursement claims; revising and providing criminal 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; defining the term "convicted"; amending s. 626.9894, F.S.; conforming provisions to changes made by the act; repealing s. 626.9895, F.S., relating to the establishment of a motor vehicle insurance fraud direct-support organization; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1306
INTRODUCER:	Senator Bradley
SUBJECT:	Insurance Fraud
DATE:	March 30, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Pre-meeting**
2.			CJ	
3.			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,[1] 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.[2]

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[3] for a first offense and a second degree felony[4] for a second or subsequent offense.[5] 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.[6]

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.[7]

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").[8] 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

[1] *See* ss. 627.730–627.7405, F.S.
[2] *See* Department of Financial Services, *Agency Bill Analysis SB 1306*, March 13, 2015 (on file with the Banking and Insurance Committee).
[3] A third degree felony is punishable by up to 5 years imprisonment. *See* s. 775.082, F.S.
[4] A second degree felony is punishable by up to 15 years imprisonment. *See* s. 775.082, F.S.
[5] *See* s. 400.993, F.S.
[6] *See* s. 400.993(3), F.S.
[7] *See* Department of Financial Services, *Agency Bill Analysis SB 1306*, March 13, 2015 (on file with the Banking and Insurance Committee).
[8] *See* s. 626.9891(1), F.S.

plan for anti-fraud training for its personnel, and its organizational arrangement of anti-fraud personnel.[9].

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.

[9] *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.

By Senator Bradley

7-01123B-15 20151306__

A bill to be entitled

An act relating to insurance fraud; amending s. 400.9905, F.S.; revising requirements for a health 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 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; revising and providing penalties for violations of certificate of exemption requirements; requiring the Agency for Health Care Administration to adopt rules; amending s. 627.736, F.S.; requiring certain clinics to have a certificate of exemption to receive reimbursement under the Florida Motor Vehicle No-Fault Law under specified circumstances; amending s. 626.9891, F.S.; defining terms; requiring insurers to establish insurance fraud special investigative units; providing requirements for such units; revising insurance fraud detection requirements for insurers; providing penalties for failure to comply with such requirements; authorizing the Office of Insurance Regulation to adopt rules; amending ss. 627.351 and 641.3915, F.S.; requiring Citizens Property Insurance Corporation and health maintenance organizations, respectively, to comply

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7-01123B-15 20151306__

with certain insurance fraud detection provisions; amending s. 626.9894, F.S.; conforming provisions to changes made by the act; repealing s. 626.9895, F.S., relating to the establishment of a motor vehicle insurance fraud direct-support organization; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

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

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42

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

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

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

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

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

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

(f) A sole proprietorship, group practice, partnership, or

corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

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

(i) Entities that provide only oncology or radiation

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

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

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

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

(m) Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who

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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

clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless the entity is exempted under s. 627.736(5)(h)1. and, if required under s. 627.736(5)(h)2., has obtained a valid certificate of exemption ~~627.736(5)(h)~~.

Section 2. Section 400.993, Florida Statutes, is repealed.

Section 3. Subsections (3), (4), and (6) of section 400.9935, Florida Statutes, are amended to read:

400.9935 Clinic responsibilities.—

(3) A charge ~~All charges~~ or reimbursement claim ~~claims~~ made by or on behalf of a clinic that is required to be licensed under this part~~,~~ but that is not so licensed, or that is otherwise operating in violation of this part or rules of the agency, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an~~, are~~ unlawful charge ~~charges,~~ and is ~~therefore are~~ noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of, and punishable as provided in, s. 812.014.

(4)(a) Regardless of whether notification is provided by the agency under ~~In addition to the requirements of~~ s. 408.812, a ~~any~~ person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person knowingly:

1. Establishes, owns, operates, manages, or maintains ~~establishing, operating, or managing~~ an unlicensed clinic ~~otherwise~~ required to be licensed under this part or part II of chapter 408;~~,~~ or

2. Offers or advertises services that require licensure as

a clinic under this part or part II of chapter 408 without a license.

(b) If the agency provides notification under s. 408.812 of, or if a person is arrested for, a violation of subparagraph (a)1. or subparagraph (a)2., each day during which a violation of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a separate offense.

(c) A person convicted of a second or subsequent violation of subparagraph (a)1. or subparagraph (a)2. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the agency provides notification of, or if a person is arrested for, a violation of this paragraph, each day that this paragraph is violated thereafter constitutes a separate offense. For purposes of this paragraph, the term "convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(d) In addition to the requirements of part II of chapter 408, a health care provider who is aware of the operation of an unlicensed clinic shall report the clinic to the agency. 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.

(e) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the ~~any~~ person ~~who~~ knowingly:

1. Files a false or misleading license application or license renewal application~~,~~ or files false or misleading information related to such application or agency ~~department~~

rule; or

2. Fails to report information to the agency as required by 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~~.

(6)(a) A ~~Any~~ person or entity providing health care services which is not a clinic, as defined under s. 400.9905, may ~~voluntarily~~ apply, and an entity subject to s. 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 sets forth its name and the address of each physical location where services are provided ~~or names and addresses~~, a statement of the reasons ~~why~~ it cannot be defined as a clinic, and other information deemed necessary by the agency. An exemption is not transferable. The agency may charge an applicant for an initial ~~a~~ certificate of exemption or for a renewal certificate of exemption in an amount equal to $100 or the actual cost of processing the certificate, whichever is less. An entity seeking an initial or renewal ~~a~~ certificate of exemption must publish and maintain a schedule of charges for the medical services offered to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the entity and must include, but is not limited to, the 50 services most frequently provided by the entity. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. As a condition precedent to receiving an initial or renewal ~~a~~ certificate of exemption, an applicant must provide to the

agency documentation of compliance with this paragraph ~~these requirements~~.

(b) A separate certificate of exemption must be obtained for each physical location where services are provided regardless of whether the location is operated under the same business name or management as another location.

(c) A certificate of exemption issued on or before June 30, 2015, expires on June 30, 2017. An initial or renewal certificate of exemption issued on or after July 1, 2015, expires 2 years after the date of issuance.

(d) A clinic shall notify the agency of any change to information set forth in an application for an initial or renewal certificate of exemption at least 10 days before the change takes effect. A failure to comply with this paragraph renders the clinic unlicensed.

(e) If a change to a person's or entity's exempt status occurs which causes the person or entity to no longer qualify for an exemption from licensure as a clinic, the person's or entity's certificate of exemption expires on the date the disqualification occurs. In such case, the clinic must file with the agency an application for licensure under this part within 5 days after becoming a clinic. Failure to timely file an application for licensure within 5 days after becoming a clinic renders the clinic unlicensed and subject to sanctions under this part and part II of chapter 408.

(f) An entity subject to s. 627.736(5)(h)2. which does not have a valid certificate of exemption is deemed a clinic that must be licensed under this part to receive reimbursement under ss. 627.730-627.7405. Failure of such entity to have a valid

certificate of exemption or license under this part renders the entity an unlicensed clinic that is subject to sanctions under this part and part II of chapter 408.

(g) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person knowingly files a false or misleading initial or renewal application for a certificate of exemption or files false or misleading information related to such application or agency rule.

(h) The agency shall adopt rules to implement this subsection, including rules establishing initial and renewal application procedures.

Section 4. Paragraph (h) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

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

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(h)1. As provided in s. 400.9905, an entity excluded from the definition of a clinic shall be deemed a clinic and must be licensed under part X of chapter 400 in order to receive reimbursement under ss. 627.730-627.7405. However, this licensing requirement does not apply to:

a.~~1.~~ An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

b.~~2.~~ An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;

c.~~3.~~ An entity wholly owned by a chiropractic physician

licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;

d.~~4.~~ A hospital or ambulatory surgical center licensed under chapter 395;

e.~~5.~~ An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; or

f.~~6.~~ An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

2. An entity that is exempted from licensure under sub-subparagraph 1.a., sub-subparagraph 1.b., or sub-subparagraph 1.c. and that treats 10 or more patients, or seeks reimbursement of $100,000 or more, under ss. 627.730-627.7405 during any 12-month period may not receive reimbursement under those sections unless it has a valid certificate of exemption from licensure under s. 400.9935(6) and agency rule.

Section 5. Section 626.9891, Florida Statutes, is amended to read:

626.9891 Insurer special ~~anti-fraud~~ investigative units; reporting requirements; penalties for noncompliance.—

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

(a) "Division" means the Division of Insurance Fraud within the Department of Financial Services.

(b) "Insurance fraud" means a fraudulent insurance act as described in s. 626.989(1)(a) or any other act or practice that, upon conviction, constitutes a felony or misdemeanor under the Florida Insurance Code, chapter 440, s. 817.234, or s. 817.505.

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(c) "Red flag" means facts, circumstances, or events that, individually or in combination, support an inference that insurance fraud is being or has been committed.

(d) "Report of suspected insurance fraud" means the insurer's submission of reports or information pertinent to suspected insurance fraud to the division as required by ss. 440.105, 626.989, 627.351, 627.711, and 627.736.

(e) "SIU" means a special investigative unit.

(f) "Suspected insurance fraud" means having knowledge or a belief that insurance fraud is being or has been committed.

(2)~~(1)~~ Every insurer that is admitted to do business and that issues insurance policies in this state ~~who in the previous calendar year, at any time during that year, had $10 million or more in direct premiums written~~ shall:

(a) Establish and maintain ~~a unit or division~~ within the company, or contract for the establishment and maintenance of, an SIU that is responsible for the detection, investigation, and reporting of suspected insurance fraud. Each SIU shall:

1. Be separate from the insurer's underwriting, claims adjusting, and other units.

2. Establish written procedures for the:

a. Detection of suspected insurance fraud in applications, claims, and other documents or information, which includes the identification of red flags, by underwriting, claims adjusting, and SIU personnel.

b. Investigation and reporting of suspected insurance fraud by SIU personnel.

3. Be composed of personnel who have documented knowledge of:

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a. The insurer's procedures for underwriting, issuing, and renewing policies and handling insurance claims.

b. Insurance fraud law.

c. The written procedures required by subparagraph 3. ~~to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or~~

(b) Annually provide anti-fraud training for its underwriting, claims adjusting, and SIU personnel which addresses the detection, referral, investigation, and reporting of suspected insurance fraud for the types of insurance lines written by the insurer ~~Contract with others to investigate possible fraudulent claims for services or repairs against policies held by insureds~~.

(c) Electronically ~~An insurer subject to this subsection shall~~ file the following information with the division ~~of Insurance Fraud of the department~~ on or before September 1, 2015:

1. The name, title, telephone number, and e-mail address of the individual responsible for the management of the insurer's SIU.

2. A written description of the insurer's procedures required by subparagraph (a)2.

3. If the insurer has contracted for the establishment and maintenance of the SIU, ~~July 1, 1996, a detailed description of the unit or division established pursuant to paragraph (a) or~~ a copy of the contract and related documents ~~required by paragraph (b)~~. A contract for the establishment and maintenance of an SIU does not relieve the insurer of any obligation under this

section.

(d) Electronically file the following information with the division on or before September 1, 2016, and annually thereafter:

1. A copy of any change to the documents required to be filed under subparagraphs (c)1. and (c)2. or a written statement indicating that no changes have occurred.

2. A description of the anti-fraud training completed by the underwriting, claims adjusting, and SIU personnel of the insurer during the previous calendar year.

~~(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than $10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Insurance Fraud of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with the provisions of subsection (1).~~

~~(3) Each insurers anti-fraud plans shall include:~~

~~(a) A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;~~

~~(b) A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud of the department;~~

~~(c) A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and~~

~~(d) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of~~

~~possible fraudulent insurance acts.~~

(3)~~(4)~~ An ~~Any~~ insurer shall comply with this section within 3 months after receipt of its ~~who obtains a~~ certificate of authority ~~after July 1, 1995, shall have 18 months in which to comply with the requirements of this section~~.

(4)~~(5)~~ Additional costs incurred by ~~For purposes of this section, the term "unit or division" includes the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If~~ an insurer to establish and maintain or contract for the establishment and maintenance of an SIU ~~creates a distinct unit or division, hires additional employees, or contracts with another entity~~ to fulfill the requirements of this section~~, the additional cost incurred~~ must be included as an administrative expense for ratemaking purposes.

(5)~~(6)~~ Each insurer issuing ~~writing workers' compensation~~ insurance policies in this state shall electronically file a report with ~~to~~ the division ~~department~~, on or before September 1, 2017, and annually thereafter ~~August 1 of each year~~, on its experience in implementing an SIU ~~and maintaining an anti-fraud investigative unit or an anti-fraud plan~~. For the previous calendar year, the report must include, at a minimum, for each line of insurance for policies issued in this state:

(a) The number of policies in effect ~~dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other~~.

(b) The amount of direct premiums written for policies.

(c) The number of applications received for policies.

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(d) The number of claims filed.

(e) The number of applications and claims:

1. Referred to SIU personnel.

2. Investigated by SIU personnel.

3. Denied, withdrawn, or mitigated after investigation.

(f)~~(b)~~ The number of reports of suspected insurance fraud submitted to the division ~~referrals to the Bureau of Workers' Compensation Fraud for the prior year~~.

(g) The number of cases of suspected insurance fraud referred to:

1. Law enforcement agencies other than the division.

2. Other entities such as insurance fraud associations.

(h) The number of cases involving suspected insurance fraud which were civilly litigated.

(i) The dollar amounts:

1. Of the insurer's exposure for claims in which there was suspected insurance fraud.

2. Paid by the insurer for claims in which there was suspected insurance fraud.

3. Recovered by the insurer through restitution resulting from criminally prosecuted insurance fraud cases.

4. Recovered by the insurer through judgments or settlements resulting from civilly litigated insurance fraud cases.

5. Paid by the insurer for judgments or settlements resulting from civilly litigated insurance fraud cases.

~~(c) A description of the organization of the anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing.~~

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(j) ~~(d)~~ The rationale for the level of staffing and resources being provided for the SIU ~~anti-fraud investigative unit~~, which may include objective criteria such as number of policies written, number of applications and claims received on an annual basis, volume of suspected fraudulent applications and claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis.

~~(c) The inservice education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities.~~

(k) ~~(f)~~ A description of a public awareness program provided by the insurer which is focused on the costs and frequency of insurance fraud and methods by which the public can prevent it.

(6)(a) The division shall review the electronic filings received under this section to determine whether an insurer is in compliance with paragraphs (2)(c) and (2)(d) and subsection (5), and the office shall conduct examinations pursuant to s. 624.3161 to determine whether an insurer is compliant with paragraphs (2)(a) and (2)(b).

(b) ~~(7)~~ If an insurer fails to:

1. Timely file with the division information in compliance with paragraph (2)(c) or paragraph (2)(d) or a report in compliance with subsection (5), the division shall impose an administrative fine of not more than $2,000 per day for such failure until the division determines that the insurer is in compliance.

2. ~~Submit a final acceptable anti-fraud plan or anti-fraud~~

~~investigative unit description, fails to~~ Implement the requirements for its SIU in compliance with paragraph (2)(a) or paragraph (2)(b) ~~provisions of a plan or an anti-fraud investigative unit description, or otherwise refuses to comply with the provisions of this section~~, the ~~department,~~ office shall~~, or commission may:~~

~~(a)~~ impose an administrative fine of not more than $2,000 per day for such failure ~~by an insurer to submit an acceptable anti-fraud plan or anti-fraud investigative unit description,~~ until the ~~department,~~ office determines that~~, or commission deems~~ the insurer is ~~to be~~ in compliance~~;~~

~~(b) Impose an administrative fine for failure by an insurer to implement or follow the provisions of an anti-fraud plan or anti-fraud investigative unit description; or~~

~~(c) Impose the provisions of both paragraphs (a) and (b)~~.

(7) An insurer claiming that documents or other information submitted to the division or office under this section contain a trade secret shall comply with s. 624.4213.

(8) The department and office may adopt rules to administer this section.

Section 6. Paragraph (k) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(k)1. The corporation shall comply with the requirements for an insurer that is admitted to do business and that issues insurance policies in this state as set forth in ~~establish and maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or~~

~~repairs against policies held by insureds; or it may contract with others to investigate possible fraudulent claims for services or repairs against policies held by the corporation pursuant to~~ s. 626.9891. ~~The corporation must comply with reporting requirements of s. 626.9891.~~ An employee of the corporation shall notify the corporation's Office of the Inspector General and the Division of Insurance Fraud within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

2. The corporation shall establish a unit or division responsible for receiving and responding to consumer complaints, which unit or division is the sole responsibility of a senior manager of the corporation.

Section 7. Section 641.3915, Florida Statutes, is amended to read:

641.3915 Health maintenance organization special ~~anti-fraud~~ plans and investigative units.—Each authorized health maintenance organization and applicant for a certificate of authority shall comply with ~~the provisions of~~ ss. 626.989 and 626.9891 as though such organization or applicant were an ~~authorized~~ insurer that is admitted to do business and that issues insurance policies in this state. ~~For purposes of this section, the reference to the year 1996 in s. 626.9891 means the year 2000 and the reference to the year 1995 means the year 1999.~~

Section 8. Subsection (5) of section 626.9894, Florida Statutes, is amended to read:

626.9894 Gifts and grants.—

(5) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at the end of any fiscal year is available for carrying out the duties and responsibilities of the division. The department may request annual appropriations from the grants and donations received pursuant to this section ~~or s. 626.9895~~ and cash balances in the Insurance Regulatory Trust Fund for the purpose of carrying out its duties and responsibilities related to the division's anti-fraud efforts, including the funding of dedicated prosecutors and related personnel.

Section 9. Section 626.9895, Florida Statutes, is repealed.

Section 10. Paragraphs (c) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
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.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
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.
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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		sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
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.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license ~~or filing false license application or~~

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~~other required information~~.

400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
400.9935(6)(g)	3rd	Filing a false application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
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.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to

		defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
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.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent

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		to inflict intense pain, serious physical injury, or death.
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.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
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.,

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		(2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	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.
893.13(1)(f)2.	2nd	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.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
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	Obtain or attempt to obtain controlled substance by fraud,

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		forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
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.
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.
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.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(f) LEVEL 6

Florida Statute	Felony Degree	Description

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

316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.

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784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.

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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.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
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.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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794.05(1)	2nd	Unlawful sexual activity with specified minor.
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.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of

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		others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

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valued at less than $10,000.

827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
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.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 11. This act shall take effect July 1, 2015.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1138
INTRODUCER:	Senator Brandes
SUBJECT:	Unclaimed Property
DATE:	March 30, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Pre-meeting**
2.			AGG	
3.			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).[1] 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.[2] 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

[1] Ch. 87-105, L.O.F. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (Last visited March 26, 2014)
[2] 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.[3] 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.[4] 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.[5] 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.[6]

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.[7] 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.[8] 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.[9]

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[10] 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.[11]

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.[12]

U.S. Savings Bonds[13]

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

[3] s. 717.102(1), F.S.
[4] s. 717.117(4), F.S.
[5] s. 717.117, F.S.
[6] s. 717.119, F.S.
[7] s. 717.1201, F.S.
[8] ss.717.117 and 717.124, F.S.
[9] s.717.124, F.S.
[10] s. 717.123, F.S.
[11] Id.
[12] 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.
[13] 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).
[14] U.S. CONST. art. I, s. 8, cl. 2.

approval of the President, to issue savings bonds "for expenditures authorized by law."[15] U.S. savings bonds are debt securities issued by Treasury to help pay for the federal government's borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond's owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.[16]

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.[17]

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.[18] 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.[19]

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[15] 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*, http://www.treasurydirect.gov/timeline.htm (Last visited March 26, 2014)

[16] 91 C.J.S. United States s. 249 (Government bonds, generally).

[17] TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, 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.

[18] TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), http://www.treasurydirect.gov/foia/foia_mud.htm. (Last visited March 26, 2014)

[19] TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm. (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.[20]

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.[21] 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.[22] A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.[23]

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),[24] 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.[25]

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.[26] In 2000, Treasury published online guidance consistent with the 1952 Escheat Decision.[27] 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.[28] 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.

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[20] Department of Financial Services Agency Analysis, March 17, 2015. (On file with the Banking and Insurance Committee.)
[21] 31 C.F.R. ss. 315.15, 353.15.
[22] 31 C.F.R. ss. 315.20(b), 353.20(b).
[23] 31 C.F.R. ss. 315.15, 353.15.
[24] 31 U.S.C. s. 3105.
[25] 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.
[26] *New Jersey v. Treasury*, at 390-391.
[27] TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm (Last visited March 26, 2014)
[28] 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,[29] 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).[30]

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.[31] 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.[32]

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,[33] seeking payment for $151 million in unclaimed absent bonds and for records identifying the original owners.[34] This lawsuit is still pending. The parties recently completed

[29] Kan. Stat. Ann. ss. 58-3979 and 3980 (2014).
[30] 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: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php. (Last visited March 26, 2014)
[31] The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.
[32] *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.
[33] *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.
[34] 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: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php. (Last visited March 26, 2014)

supplemental briefing on Treasury's motion to dismiss, but a final ruling has not yet been issued.[35]

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,[36] 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.[37]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[35] Supplemental briefs in *Estes v. United States* (On file with the Banking and Insurance committee).
[36] Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).
[37] 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.

By Senator Brandes

22-00806A-15 20151138__

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in the possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2)(a) After a United States savings bond is abandoned and

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22-00806A-15 20151138__

unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant

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is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond. Proceeds received by the department shall be deposited in accordance with s. 717.123.

Section 2. Section 717.1383, Florida Statutes, is created to read:

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

Section 3. This act applies to any United States savings bond that reaches maturity on, before, or after the effective date of this act.

Section 4. This act shall take effect July 1, 2015.

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1138

The Florida Senate

Committee Agenda Request

To: 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.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1088
INTRODUCER:	Senator Brandes
SUBJECT:	Civil Remedies Against Insurers
DATE:	March 20, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	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.[1] 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.[2]

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.[3] 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.[4]

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.[5] 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.[6] 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.[7] 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

[1] *See* 16 Williston on Contracts s. 49:103 (4th Ed.).
[2] *See State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[3] *See State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[4] *Id*.
[5] *See Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).
[6] *See Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).
[7] *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.[8]

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.[9] The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[10] 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.[11] 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.[12]

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.[13] If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.[14] 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.[15]

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.[16] 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

[8] *See* s. 624.155(1)(b)1.-3., F.S.
[9] *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 https://apps.fldfs.com/CivilRemedy/ (last accessed on March 29, 2014).
[10] *See* s. 624.155(3)(d), F.S.
[11] *See Talat Emterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).
[12] *See Macola v. Government Employees Insurance Company*, 953 So.2d 451 (Fla. 2006).
[13] *See Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
[14] *Id*.
[15] *See DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).
[16] *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.[17]

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.[18] 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.[19]

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.[20] 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."[21] 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."[22] 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

[17] *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).
[18] *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").
[19] *See Berges*, 896 So.2d at 680 (internal quotations and citations omitted).
[20] *See Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).
[21] *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).
[22] *Berges*, 896 So.2d at 685 (Wells, J., dissenting).

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

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."[25] 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."[26]

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

[23] *Id.* at 692 (Cantero, J., dissenting).
[24] *Id*. at 686 (Wells, J., dissenting).
[25] *Berges*, 896 So.2d at 627.
[26] *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__

A bill to be entitled

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 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 s. 766.1185(3), F.S., relating to bad faith actions, to incorporate the amendment made to s. 624.155, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 624.155, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

(3)(a) Except as provided in subsection (10), as a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period does ~~shall~~ not begin until a proper notice is filed.

(10) As a condition precedent to bringing a third-party statutory or common-law bad faith action for failure to settle a

liability insurance claim, the insured, the claimant, or any person on behalf of the insured or the claimant must have provided the insurer with a written notice of loss. An insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for a bad faith failure to settle under this section or common law if the insurer:

(a) Complies with a request for a disclosure statement as described in s. 627.4137.

(b) Offers, within 45 days after receipt of the written notice of loss, to pay the claimant the lesser of the amount that the claimant is willing to accept or the limits of liability coverage applicable to the claimant's insurance claim in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss.

Section 2. For the purpose of incorporating the amendment made by this act to section 624.155, Florida Statutes, in a reference thereto, subsection (3) of section 766.1185, Florida Statutes, is reenacted to read:

766.1185 Bad faith actions.—In all actions for bad faith against a medical malpractice insurer relating to professional liability insurance coverage for medical negligence, and in determining whether the insurer could and should have settled the claim within the policy limits had it acted fairly and honestly towards its insured with due regard for her or his interest, whether under statute or common law:

(3) The provisions of s. 624.155 shall be applicable in all cases brought pursuant to that section unless specifically controlled by this section.

Section 3. This act shall take effect July 1, 2015.

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

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LEGISLATIVE ACTION

Senate . House

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

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 provided by a health insurance policy for emergency services.

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(b) "Emergency services" means emergency services and care, as defined in s. 641.47, which are provided within the emergency department of a hospital with respect to an emergency medical condition as defined in s. 641.47.

(c) "Participating provider" means a preferred provider as defined in s. 627.6471 or an exclusive provider as defined in s. 627.6472.

(2) Coverage for emergency services:

(a) May not require a prior authorization determination.

(b) Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider.

(c) May impose a requirement for a coinsurance amount, a copayment, or a limitation of benefits for a nonparticipating provider only if the same requirement applies to a participating provider.

(3) An insurer must reimburse a nonparticipating provider of emergency services the greater of:

(a) The amount negotiated with a nonparticipating provider, reduced only by a coinsurance amount or copayment that applies to a participating provider.

(b) The usual and customary reimbursement amount received by a participating provider for the same service in the same geographic area of this state, reduced only by a coinsurance amount or copayment that applies to a participating provider. Evidence of the usual and customary reimbursement amount may include the average amount reimbursed to the nonparticipating provider for the same service in the same geographic region of this state from other insurers with which such provider participates.

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(c) 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.

A nonparticipating provider of emergency services may be reimbursed only up to the amount of reimbursement required to be paid by the insurer under this subsection and may not collect or attempt to collect, directly or indirectly, from the insured or insurer any excess amount.

(4) A provider of emergency services or a representative of such provider, regardless of whether the provider is a participating or nonparticipating provider, may not collect or attempt to collect money from, maintain any action at law against, or report to a credit agency an insured for payment of services for which the insurer is liable, if the provider in good faith knows or should know that the insurer is liable. This prohibition applies during the pendency of a claim for payment made by the provider to the insurer for payment of the services and any legal proceeding or dispute resolution process to determine whether the insurer is liable for the services if the provider is informed that such proceeding is taking place. It is presumed that a provider does not know and should not know that an insurer is liable unless:

(a) The provider is informed by the insurer that the insurer accepts liability;

(b) A court of competent jurisdiction determines that the insurer is liable; or

(c) The office or Agency for Health Care Administration makes a final determination that the insurer is required to pay

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for such services.

(5) An insurer, the office, and the department shall report any suspected violation of this section by a participating or nonparticipating provider to the Department of Health and by a facility to the Agency for Health Care Administration. Based on the report, the Department of Health or the Agency for Health Care Administration shall take action as authorized by law.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to health insurance coverage for emergency services; creating s. 627.42392, F.S.; defining terms; prohibiting coverage for emergency services from requiring a prior authorization determination; requiring such coverage to be provided regardless of whether the emergency services are furnished by a participating or nonparticipating provider; specifying coinsurance, copayment, limitation of benefits, and reimbursement requirements for nonparticipating providers of emergency services; prohibiting a nonparticipating provider of emergency services from collecting or attempting to collect an amount in excess of specified amounts; prohibiting participating and nonparticipating providers of emergency services from collecting or attempting to


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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 516
INTRODUCER:	Senators Bean and Garcia
SUBJECT:	Health Insurance Coverage for Emergency Services
DATE:	March 30, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Pre-meeting**
2.			HP	
3.			AP	

I. Summary:

SB 516 establishes a payment schedule for emergency services and care provided by out-of-network 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 non-participating 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.[1] 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[2] 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.[3] A licensee may not deny a person needed prehospital treatment or transport for an emergency medical condition.[4] A violation may result in denial, suspension, or revocation of a license; reprimand; or fine.[5]

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

[1] *See* section 395.1041, F.S.
[2] Part III of chapter 401, F.S. (ss. 401.2101 – 401.465, F.S.)
[3] Section 401.25(2)(d), F.S.
[4] Section 401.45, F.S.
[5] Section 401.411, F.S.

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

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[8] (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.[9]

Emergency Room Coverage[10]

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,

[6] Section 395.3041(3), F.S.
[7] Section 395.4045, F.S.
[8] 42 U.S.C. 300gg-6.
[9] 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.
[10] 42 U.S.C. s. 300gg-19A.

and cost-sharing. Regulations specify minimum reimbursement that plans must pay a non-network provider for emergency services.[11] 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.[12] 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 would apply if the services were provided in network.[13]

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.[14] 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.[15]

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.[16] 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

[11] 45 C.F.R. s. 147.138(b).
[12] *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).
[13] *Id.*
[14] Section 20.121(3)(a), F.S.
[15] Sections 641.21(1) and 641.48, F.S.
[16] Section 641.513, F.S.

subscriber is not liable for payment of fees to the provider.[17] 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.[18] 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.[19]

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.[20] 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.[21] 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. [22] The HMOs must pay non-contract providers specified minimum reimbursement for emergency services.[23]

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

[17] Section 641.3154(1), F.S.
[18] 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.
[19] Section 641.3154(4), F.S.
[20] Section 627.6471, F.S.
[21] Section 627.6472, F.S.
[22] Sections 627.6405 and 641.31(12), F.S.
[23] 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.[24] 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.[25]

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.[26]

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.[27] 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

[24] Sections 641.315(1) and 641.3154(1), F.S.
[25] *See also* FLORIDA MEDICAL ASSOCIATION, *Balance Billing*, http://www.flmedical.org/LRC_Balance_billing.aspx (last visited March 28, 2015).
[26] Chapter 2000-252, Laws of Florida.
[27] 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.

By Senators Bean and Garcia

4-00341C-15 2015516__

A bill to be entitled

An act relating to health insurance coverage for emergency services; creating s. 627.64194, F.S.; 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 reimbursement requirements for nonparticipating providers; prohibiting a nonparticipating provider from collecting or attempting to collect an amount in excess of specified amounts; providing an effective date.

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

Section 1. Section 627.64194, Florida Statutes, is created to read:

627.64194 Coverage for emergency services.—

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

(a) "Coverage for emergency services" means the coverage provided by a health insurance policy for "emergency services and care" as that term is defined in s. 641.47 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.

(b) "Participating provider" means a "preferred provider" as defined in s. 627.6471 and an "exclusive provider" as defined in s. 627.6472.

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

4-00341C-15 2015516__

(2) Coverage for emergency services:

(a) May not require a prior authorization determination.

(b) Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider.

(c) 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.

(d) Must reimburse a nonparticipating provider the greater of the following:

1. 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.

2. 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.

3. 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.

(3) A nonparticipating provider may not be reimbursed an amount greater than that provided under paragraph (2)(d) and may not collect or attempt to collect, directly or indirectly, any excess amount.

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

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

374116

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Before line 27
insert:
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.—
(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a

374116

joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the 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 cancellation is the issuance of a check for the premium which is 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 period as required by the plan, after the effective date of the policy or binder, except:

1. Upon total destruction of the insured motor vehicle;

2. Upon transfer of ownership of the insured motor vehicle; or

3. After purchase of another policy or binder covering the motor vehicle that was covered under the policy being canceled.

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

374116

And the title is amended as follows:

Delete line 3

and insert:

s. 627.311, F.S.; authorizing a joint underwriting plan and the Florida Automobile Joint Underwriting Association to cancel certain insurance policies within a specified period under certain circumstances; prohibiting an insured from canceling certain insurance policies within a specified period; providing exceptions; amending s. 627.727. F.S.; authorizing insurers to

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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 must ~~shall~~ fully advise the named insured ~~applicant~~ of the nature of the coverage and must ~~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

775650

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." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The form may be provided electronically to and may be signed electronically by the named insured. The requirement for 12-point bold type does not

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

And the title is amended as follows:

Delete lines 6 - 7

and insert:

coverage to a named insured; authorizing the named insured to sign the form electronically; amending s.

353870

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:

schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during ~~throughout the remainder of~~ that service year,

353870

notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

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

And the title is amended as follows:

Delete line 11

and insert:

injury protection insurance coverage; defining the term "service year"; deleting an

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1250
INTRODUCER:	Senator Montford
SUBJECT:	Motor Vehicle Insurance
DATE:	March 30, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Pre-meeting**
2.			TR	
3.			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.[1]

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.

[1] 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."[2]

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[3] Insurance is specifically included in E-SIGN.[4] 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")[5] 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

[2] Id.
[3] 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.
[4] Id.
[5] Sections 627.730-627.7405, F.S.

$20,000 per incident, of bodily injury coverage, and $10,000 of property damage liability coverage.[6,7]

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[8] 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.

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[6] Section 627.7275, F.S.

[7] 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.

[8] 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,[9] 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,[10] 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.[11] 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.

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[9] Ch. 2012-151, L.O.F.

[10] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: March 26, 2015).

[11] 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 http://www.thomasphinney.com/2011/03/point-size/. (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 is added to the prohibition on suspending coverage due to the insured's failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if 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.

By Senator Montford

3-00627A-15 20151250__

A bill to be entitled

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 applicable fee schedule or payment limitation under Medicare applies with respect to certain personal injury protection insurance coverage; deleting an obsolete date; amending s. 627.744, F.S.; revising the exemption from the preinsurance inspection requirements for private passenger motor vehicles to include certain leased vehicles; revising the list of documents that an insurer may require for purposes of the exemption; 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; authorizing a payment of a claim to be conditioned if the insurer requires a document under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured

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

3-00627A-15 20151250__

vehicle coverage; insolvent insurer protection.—

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to a ~~any~~ specifically insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured by the policy ~~thereunder~~ who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when, or to the extent that,~~ an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. If ~~When~~ a motor vehicle is leased for a period of 1 year or longer and the lessor of the ~~such~~ vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of the ~~such~~ vehicle has ~~shall have~~ the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to s. 324.171. Unless an insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or the ~~such~~ higher uninsured motorist limits are ~~need~~ not required to be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected

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

the coverage. If ~~When~~ an insured or lessee ~~has~~ initially selected limits of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage are ~~need~~ not required to be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits must ~~shall~~ be made on a form approved by the office. The form must ~~shall~~ fully advise the applicant of the nature of the coverage and must ~~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 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." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The form may be provided electronically to and may be signed electronically by the applicant. The requirement for 12-point bold type does not apply to a form that is provided electronically; however, the type for the heading of the form must be larger than the type used for the surrounding text. The insurer must ~~shall~~ notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice must ~~shall~~ be part of, and attached to, the notice of premium, must ~~shall~~

provide for a means to allow the insured to request such coverage, and must ~~shall~~ be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage where the insured has not signed a selection or rejection form. The coverage described under this section must ~~shall~~ be over and above, but may ~~shall~~ not duplicate, the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or similar law; under any automobile medical expense coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident; and such coverage must ~~shall~~ cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section may ~~shall~~ not be reduced by a setoff against any coverage, including liability insurance. Such coverage may ~~shall~~ not inure directly or indirectly to the benefit of a ~~any~~ workers' compensation or disability benefits carrier or a ~~any~~ person or organization qualifying as a self-insurer under a ~~any~~ workers' compensation or disability benefits law or similar law.

Section 2. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

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

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

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

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

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

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

and customary charges.

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

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

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

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

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

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

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

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

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

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the 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 from March 1 until the last day of February ~~throughout the remainder~~ of the following ~~that~~ year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

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

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

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

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

Section 3. Paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

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

verifies the previous coverage.

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

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

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

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

Section 4. This act shall take effect July 1, 2015.

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

846148

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete lines 1198 - 1201
and insert:
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.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 872
INTRODUCER:	Judiciary Committee and Senator Hukill
SUBJECT:	Estates
DATE:	March 30, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Billmeier	Knudson	BI	**Pre-meeting**
3.			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.[1] 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[2] and trust[3] 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[4] or trust[5] those fees, as well as costs,[6] 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.[7] 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.[8] 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."[9]

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

[1] 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.
[2] Section 733.106(3), F.S.
[3] Section 736.1005(1), F.S.
[4] Section 733.106(4), F.S.
[5] Section 736.1005(2), F.S.
[6] 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.
[7] *Levin v. Levin*, 67 So.3d 429 (Fla. 4th DCA 2011).
[8] *Williams v. King*, 711 So.2d 1285 (Fla. 5th DCA 1998).
[9] *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.[11] 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.[12]

Personal Representatives and Notice of Administration

Personal Representatives

A personal representative is a person or business entity[13] 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,[14] and be a resident of Florida[15] at the time of the death of the person whose estate he or she is administering.[16] 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.[17]

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

[10] 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).
[11] Section 733.617(6), F.S.
[12] 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).
[13] 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.
[14] 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.
[15] 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.
[16] Section 733.302, F.S.
[17] 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*,[18] 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[19] 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."[20] 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.[21]

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.[22] 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.

[18] *Hill v. Davis*, 70 So.3d 572 (Fla. 2011).
[19] 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.
[20] *Id*., at 573.
[21] 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).
[22] 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.[23]

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.[24]

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[25] 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[26] 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.

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[23] http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-Tax. Last visited March 7, 2015.
[24] 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).
[25] Those sections are ss. 733.106, 733.6171, 736.1005, or 736.1006, F.S.
[26] 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,[27] 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,[28] 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.

[27] Sections 736.1005(1), 726.1007(5)(a), or 733.106(4)(a), F.S.

[28] 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.[29]

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

[29] 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[30] 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[31] 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,[32] his or her gross estate also includes the portion of such contributions properly allocable to periods after the date of death.[33]

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.

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[30] "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.

[31] 26 U.S.C s. 2035(b).

[32] 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.

[33] 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 devise or interest included in the measure of the tax bears to the total of all nonresiduary 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 tax in the proportion that the value of each residuary devise 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.[34] 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[35] property is apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order of priority:[36]

- 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.

[34] Section 733.817(5)(a) and (b), F.S.

[35] "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.

[36] 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 whether attributable to 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.[37] 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.[38]

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

[37] Section 733.817(5)(h)3., F.S.
[38] 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.[39]

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.[40] That federal legislation phased out over a 5-year period, starting in 2002, the credit for state

[39] *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).
[40] 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.[41] 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.[42]

The bill provides that the generation-skipping transfer tax be apportioned in accordance with s. 2603 of the Internal Revenue Code.[43] 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

[41] 26 U.S.C. s. 2058.
[42] 26 U.S.C. ss. 2611-2612 and 26 U.S.C s. 2044.
[43] 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[44] 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.[45]

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.

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[44] *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).
[45] *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

590-02148-15 2015872c1

A bill to be entitled

An act relating to estates; amending s. 733.106, F.S.; 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; authorizing costs and fees to be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such costs and fees; authorizing a court to assess costs and fees without finding that the person engaged in specified wrongful acts; amending s. 733.212, F.S.; revising the required content for a notice of administration; revising provisions that require an interested person, who has been served a notice of administration, to file specified objections in an estate matter within 3 months after service of such notice; providing that the 3-month period may only be extended for certain estoppel; providing that objections that are not barred by the 3-month period must be filed no later than a specified date; deleting references to objections based upon the qualifications of a personal representative; amending s. 733.2123, F.S.; conforming provisions to changes made by the act; amending s. 733.3101, F.S.; requiring a personal representative to resign immediately if he or she knows that he or she was not qualified to act at the time of appointment;

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

590-02148-15 2015872c1

requiring a personal representative who was qualified to act at such appointment to file a notice if no longer qualified; authorizing an interested person within a specified period to request the removal of a personal representative who files such notice; providing that a personal representative is liable for costs and attorney fees incurred in a removal proceeding if he or she is removed and should have known of the facts supporting the removal; defining the term "qualified"; amending s. 733.504, F.S.; requiring a personal representative to be removed and the letters of administration revoked if he or she was not qualified to act at the time of appointment; amending s. 733.617, F.S.; 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; specifying the disclosures that must be acknowledged; specifying when an attorney is deemed to have prepared or supervised the execution of a will; specifying when a person is "related" to another individual; specifying when an attorney or person related to the attorney is deemed to be nominated as personal representative; providing that the provisions do not limit an interested person's rights or remedies at law or equity except for compensation payable to a personal representative;

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

providing that the failure to obtain a written acknowledgment of the disclosure does not disqualify a personal representative from serving or affect the validity of a will; providing a form for the written acknowledgment; providing applicability; amending s. 733.817, F.S.; defining and redefining terms; deleting a provision that exempts an interest in protected homestead from the apportionment of taxes; providing for the payment of taxes on protected homestead family allowance and exempt property by certain other property to the extent such other property is sufficient; revising the allocation of taxes; revising the apportionment of the net tax attributable to specified interests; authorizing a court to assess liability in an equitable manner under certain circumstances; providing that a governing instrument may not direct that taxes be paid from property other than property passing under the governing instrument, except under specified conditions; requiring that direction in a governing instrument be express to apportion taxes under certain circumstances; requiring that the right of recovery provided in the Internal Revenue Code for certain taxes be expressly waived in the decedent's will or revocable trust with certain specificity; specifying the property upon which certain tax is imposed for allocation and apportionment of certain tax; providing that a general statement in the decedent's will or revocable trust waiving all rights of reimbursement or recovery under

the Internal Revenue Code is not an express waiver of certain rights of recovery; requiring direction to specifically reference the generation-skipping transfer tax imposed by the Internal Revenue Code to direct its apportionment; authorizing, under certain circumstances, the decedent to direct by will the amount of net tax attributable to property over which the decedent held a general power of appointment under certain circumstances; providing that an express direction in a revocable trust is deemed to be a direction contained in the decedent's will as well as the revocable trust under certain circumstances; providing that an express direction in the decedent's will to pay tax from the decedent's revocable trust by specific reference to the revocable trust is effective unless a contrary express direction is contained in the revocable trust; revising the resolution of conflicting directions in governing instruments with regard to payment of taxes; providing that the later express direction in the will or other governing instrument controls; providing that the date of an amendment to a will or other governing instrument is the date of the will or trust for conflict resolution only if the codicil or amendment contains an express tax apportionment provision or an express modification of the tax apportionment provision; providing that a will is deemed executed after another governing instrument if the decedent's will and another governing instrument were executed on the same date;

providing that an earlier conflicting governing instrument controls as to any tax remaining unpaid after the application of the later conflicting governing instrument; providing that a grant of permission or authority in a governing instrument to request payment of tax from property passing under another governing instrument is not a direction apportioning the tax to the property passing under the other governing instrument; providing a grant of permission or authority in a governing instrument to pay tax attributable to property not passing under the governing instrument is not a direction apportioning the tax to property passing under the governing instrument; providing application; prohibiting the requiring of a personal representative or fiduciary to transfer to a recipient property that may be used for payment of taxes; amending s. 736.0708, F.S.; prohibiting an attorney or person related to the attorney from receiving compensation for serving as a trustee if the attorney prepared or supervised execution of the trust instrument unless the attorney or person is related to the settlor or the settlor acknowledges in writing the receipt of certain disclosures; specifying the disclosures that must be acknowledged; specifying when an attorney is deemed to have prepared or supervised the execution of a trust instrument; specifying when a person is "related" to another individual; specifying when an attorney or person related to the attorney is deemed to be

appointed as trustee; providing that the provisions do not limit an interested person's rights or remedies at law or equity except for compensation payable to a trustee; providing that the failure to obtain a written acknowledgment of the disclosure does not disqualify a trustee from serving or affect the validity of a trust instrument; providing a form for the written acknowledgment; providing applicability; amending s. 736.1005, F.S.; authorizing the court, if attorney fees are to be paid from the trust under specified sections of law, to direct payment from a certain part of the trust; providing that fees may be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such fees; providing that a court may assess fees without finding that a person engaged specified wrongful acts; amending s. 736.1006, F.S.; authorizing the court, if costs are to be paid from the trust under specified sections of law, to direct payment from a certain part of the trust; providing that costs may be assessed against one or more persons' part of the trust in such proportions as the court finds just and proper; specifying factors that the court may consider in directing the assessment of such costs; providing that specified sections of the act are remedial and intended to clarify existing law; providing for retroactive and prospective application of specified

portions of the act; providing effective dates.

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

Section 1. Section 733.106, Florida Statutes, is amended to read:

733.106 Costs and attorney ~~attorney's~~ fees.—

(1) In all probate proceedings, costs may be awarded as in chancery actions.

(2) A person nominated as personal representative, or any proponent of a will if the person so nominated does not act within a reasonable time, if in good faith justified in offering the will in due form for probate, shall receive costs and attorney ~~attorney's~~ fees from the estate even though probate is denied or revoked.

(3) Any attorney who has rendered services to an estate may be awarded reasonable compensation from the estate.

(4) If ~~When~~ costs and attorney ~~attorney's~~ fees are to be paid from the estate under this section, s. 733.6171(4), s. 736.1005, or s. 736.1006, the court, in its discretion, may direct from what part of the estate they shall be paid.

(a) If the court directs an assessment against a person's part of the estate and such part is insufficient to fully pay the assessment, the court may direct payment from the person's part of a trust, if any, if a pourover will is involved and the matter is interrelated with the trust.

(b) All or any part of the costs and attorney fees to be paid from the estate may be assessed against one or more persons' part of the estate in such proportions as the court

finds to be just and proper.

(c) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the estate.

2. The amount of costs and attorney fees to be assessed against a person's part of the estate.

3. The extent to which a person whose part of the estate is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the estate expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the estate is to be assessed.

6. Whether a person whose part of the estate is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the estate is to be assessed unjustly caused an increase in the amount of costs and attorney fees incurred by the personal representative or another interested person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(d) The court may assess a person's part of the estate without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

Section 2. Paragraph (c) of subsection (2) and subsection (3) of section 733.212, Florida Statutes, are amended to read:

733.212 Notice of administration; filing of objections.—

(2) The notice shall state:

(c) That any interested person on whom a copy of the notice of administration is served must file on or before the date that is 3 months after the date of service of a copy of the notice of administration on that person any objection that challenges the validity of the will, ~~the qualifications of the personal representative,~~ the venue, or the jurisdiction of the court. The 3-month time period may only be extended for estoppel based upon a misstatement by the personal representative regarding the time period within which an objection must be filed. 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. Unless sooner barred by subsection (3), all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than 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.

(3) Any interested person on whom a copy of the notice of administration is served must object to the validity of the will, ~~the qualifications of the personal representative,~~ the venue, or the jurisdiction of the court by filing a petition or other pleading requesting relief in accordance with the Florida Probate Rules on or before the date that is 3 months after the date of service of a copy of the notice of administration on the objecting person, or those objections are forever barred. The 3-month time period may only be extended for estoppel based upon a misstatement by the personal representative regarding the time period within which an objection must be filed. 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. Unless sooner barred by this subsection, all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than 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.

Section 3. Section 733.2123, Florida Statutes, is amended to read:

733.2123 Adjudication before issuance of letters.—A petitioner may serve formal notice of the petition for administration on interested persons. A person who is served with such notice before the issuance of letters or who has waived notice may not challenge the validity of the will, testacy of the decedent, ~~qualifications of the personal representative,~~ venue, or jurisdiction of the court, except in the proceedings before issuance of letters.

Section 4. Section 733.3101, Florida Statutes, is amended to read:

733.3101 Personal representative not qualified.—

(1) A personal representative shall resign immediately if the personal representative knows that he or she was not qualified to act at the time of appointment.

(2) Any time a personal representative, who was qualified to act at the time of appointment, knows ~~or should have known~~ that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve a notice setting

forth the reasons. The personal representative's notice shall state that any interested person may petition to remove the personal representative. An interested person on whom a copy of the personal representative's notice is served may file a petition requesting the personal representative's removal within 30 days after the date on which such notice is served.

(3) A personal representative who fails to comply with this section shall be personally liable for costs, including attorney ~~attorney's~~ fees, incurred in any removal proceeding~~,~~ if the personal representative is removed. This liability extends to a personal representative who does not know, but should have known, of the facts that would have required him or her to resign under subsection (1) or to file and serve notice under subsection (2). This liability shall be cumulative to any other provided by law.

(4) As used in this section, the term "qualified" means that the personal representative is qualified under ss. 733.302-733.305.

Section 5. Section 733.504, Florida Statutes, is amended to read:

733.504 Removal of personal representative; causes for removal.—A personal representative shall be removed and the letters revoked if he or she was not qualified to act at the time of appointment. A personal representative may be removed and the letters revoked for any of the following causes~~, and the removal shall be in addition to any penalties prescribed by law~~:

(1) Adjudication that the personal representative is incapacitated.

(2) Physical or mental incapacity rendering the personal

representative incapable of the discharge of his or her duties.

(3) Failure to comply with any order of the court, unless the order has been superseded on appeal.

(4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.

(5) Wasting or maladministration of the estate.

(6) Failure to give bond or security for any purpose.

(7) Conviction of a felony.

(8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.

(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.

(10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the personal representative.

(11) Removal of domicile from Florida, if domicile was a requirement of initial appointment.

(12) The personal representative was qualified to act at the time of appointment, but is ~~would~~ not now ~~be~~ entitled to appointment.

Removal under this section is in addition to any penalties prescribed by law.

Section 6. Effective October 1, 2015, subsection (6) of section 733.617, Florida Statutes, is amended, and subsection

(8) is added to that section, to read:

733.617 Compensation of personal representative.—

(6) Except as provided in subsection (8), a ~~If the~~ personal representative who is a member of The Florida Bar and who has rendered legal services in connection with the administration of the estate~~, then in addition to a fee as personal representative, there also~~ shall be allowed a fee for the legal services rendered in addition to a fee as personal representative.

(8)(a) An attorney, or a person related to the attorney, is not entitled to compensation for serving as personal representative if the attorney prepared or supervised the execution of the will that nominates the attorney or person related to the attorney as personal representative, unless the attorney or person nominated is related to the testator or the attorney makes the following disclosures to the testator in writing before the will is executed:

1. Subject to certain statutory limitations, most family members regardless of their residence, other persons who are residents of Florida, including friends, and corporate fiduciaries are eligible to serve as a personal representative.

2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as personal representative.

3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

(b) The testator must execute a written statement

acknowledging that the disclosures required by this subsection were made prior to the execution of the will. The written acknowledgment must be in a separate writing from the will, but may be annexed to the will. The written acknowledgment may be executed before or after the execution of the will in which the attorney or related person is nominated as the personal representative.

(c) For purposes of this subsection:

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

2.a. A person is "related" to an individual if, at the time the attorney prepared or supervised the execution of the will, the person is:

(I) A spouse of the individual;

(II) A lineal ascendant or descendant of the individual;

(III) A sibling of the individual;

(IV) A relative of the individual or of the individual's spouse with whom the attorney maintains a close, familial relationship;

(V) A spouse of a person described in sub-sub-subparagraphs (I)-(IV); or

(VI) A person who cohabits with the individual.

b. An employee or attorney employed by the same firm as the attorney at the time the will is executed is deemed to be related to the attorney.

3. An attorney or person related to the attorney is deemed

to be nominated in the will if the will provided the attorney or a person related to the attorney with the power to nominate the personal representative and the attorney or person related to the attorney was nominated using that power.

(d) This subsection applies to provisions nominating an attorney or a person related to the attorney as personal representative, copersonal representative, or successor or alternate personal representative if the person nominated is unable or unwilling to serve.

(e) Other than compensation payable to the personal representative, this subsection does not limit any rights or remedies that an interested person may have at law or equity.

(f) The failure to obtain a written acknowledgment from the testator under this subsection does not disqualify a personal representative from serving and does not affect the validity of a will.

(g) A written acknowledgment signed by the testator that is in substantially the following form is deemed to comply with the disclosure requirements of this subsection:

I, ... (Name)..., declare that:

I have designated ...(my attorney, an attorney employed in the same law firm as my attorney, or a person related to my attorney)... as a nominated personal representative in my will (or codicil) dated ...(Date)..._.

Before executing the will (or codicil), I was informed that:

(1) Subject to certain statutory limitations, most family members regardless of their residence, other persons who are

residents of Florida, including friends, and corporate fiduciaries are eligible to serve as a personal representative.

(2) Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as personal representative.

(3) Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

...(Testator)...

...(Dated)...

(h) This subsection applies to each nomination made pursuant to a will that is:

1. Executed by a resident of this state on or after October 1, 2015.

2. Republished by a resident of this state on or after October 1, 2015, if the republished will nominates the attorney who prepared or supervised the execution of the instrument that republished the will, or a person related to such attorney, as personal representative.

Section 7. Section 733.817, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 733.817, F.S., for present text.)

733.817 Apportionment of estate taxes.—

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

(a) "Fiduciary" means a person, other than the personal representative in possession of property included in the measure of the tax, who is liable to the applicable taxing authority for payment of the entire tax to the extent of the value of the property in possession.

(b) "Generation-skipping transfer tax" means the generation-skipping transfer tax imposed by chapter 13 of the Internal Revenue Code on direct skips of interests includible in the federal gross estate or a corresponding tax imposed by any state or country or political subdivision of the foregoing. The term does not include the generation-skipping transfer tax on 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, or any other document that controls the transfer of property on the occurrence of the event with respect to which the tax is being levied.

(d) "Gross estate" means the gross estate, as determined by the Internal Revenue Code with respect to the federal estate tax and the Florida estate tax, and as that concept is otherwise determined by the estate, inheritance, or death tax laws of the particular state, country, or political subdivision whose tax is being apportioned.

(e) "Included in the measure of the tax" means for each separate tax that an interest may incur, only interests included in the measure of that particular tax are considered. As used in this section, the term does not include:

1. 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. If an election is required for deductibility, an interest is not initially deductible unless the election for deductibility is allowed.

2. 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 pursuant to s. 2001 of the Internal Revenue Code.

3. Gift taxes included in the gross estate pursuant to s. 2035 of the Internal Revenue Code and the portion of any inter vivos transfer included in the gross estate pursuant to s. 529 of the Internal Revenue Code, notwithstanding inclusion in the gross estate.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(g) "Net tax" means the net tax payable to the particular state, country, or political subdivision whose tax is being apportioned, after taking into account all credits against the applicable tax except as provided in this section. With respect to the federal estate tax, net tax is determined after taking into account all credits against the tax except for the credit for foreign death taxes and except for the credit or deduction for state taxes imposed by states other than this state.

(h) "Nonresiduary devise" means any devise that is not a residuary devise.

(i) "Nonresiduary interest," in connection with a trust,

means any interest in a trust which is not a residuary interest.

(j) "Recipient" means, with respect to property or an interest in property included in the gross estate, an heir at law in an intestate estate, devisee in a testate estate, beneficiary of a trust, beneficiary of a life insurance policy, annuity, or other contractual right, surviving tenant, taker as a result of the exercise or in default of the exercise of a general power of appointment, person who receives or is to receive the property or an interest in the property, or person in possession of the property, other than a creditor.

(k) "Residuary devise" has the meaning in s. 731.201.

(l) "Residuary interest," in connection with a trust, means an interest in the assets of a trust which remain after provision for any distribution that is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount.

(m) "Revocable trust" means a trust as described in s. 733.707(3).

(n) "Section 2044 interest" means an interest included in the measure of the tax by reason of s. 2044 of the Internal Revenue Code.

(o) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(p) "Tax" means any estate tax, inheritance tax, generation-skipping transfer tax, or other tax levied or assessed under the laws of this or any other state, the United States, any other country, or any political subdivision of the foregoing, as finally determined, which is imposed as a result

of the death of the decedent. The term also includes any interest or penalties imposed in addition to the tax. Unless the context indicates otherwise, the term means each separate tax. The term does not include any additional estate tax imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a corresponding tax imposed by any state or country or political subdivision of the foregoing. The additional estate tax imposed shall be apportioned as provided in s. 2032A or s. 2057 of the Internal Revenue Code.

(q) "Temporary interest" means an interest in income or an estate for a specific period of time, for life, or for some other period controlled by reference to extrinsic events, whether or not in trust.

(r) "Tentative Florida tax" with respect to any property means the net Florida estate tax that would have been attributable to that property if no tax were payable to any other state in respect of that property.

(s) "Value" means the pecuniary worth of the interest involved as finally determined for purposes of the applicable tax after deducting any debt, expense, or other deduction chargeable to it for which a deduction was allowed in determining the amount of the applicable tax. A lien or other encumbrance is not regarded as chargeable to a particular interest to the extent that it will be paid from other interests. The value of an interest is not reduced by reason of the charge against it of any part of the tax, except as provided in paragraph (3)(a).

(2) ALLOCATION OF TAX.—Except as effectively directed in the governing instrument pursuant to subsection (4), the net tax

attributable to the interests included in the measure of each tax shall be 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. Notwithstanding the foregoing provision of this subsection and except as effectively directed in the governing instrument:

(a) The net tax attributable to section 2044 interests shall be determined in the manner provided for the federal estate tax in s. 2207A of the Internal Revenue Code, and the amount so determined shall be deducted from the tax to determine the net tax attributable to all other interests included in the measure of the tax.

(b) The foreign tax credit allowed with respect to the federal estate tax shall be allocated among the recipients of interests finally charged with the payment of the foreign tax in reduction of any federal estate tax chargeable to the recipients of the foreign interests, whether or not any federal estate tax is attributable to the foreign interests. Any excess of the foreign tax credit shall be applied to reduce proportionately the net amount of federal estate tax chargeable to the remaining recipients of the interests included in the measure of the federal estate tax.

(c) The reduction in the net tax attributable to the deduction for state death taxes allowed by s. 2058 of the Internal Revenue Code shall be allocated to the recipients of the interests that produced the deduction. For this purpose, the reduction in the net tax shall be calculated in the manner provided for interests other than those described in paragraph (a).

(d) The reduction in the Florida tax, if one is imposed, on the estate of a Florida resident for tax paid to another state shall be allocated as follows:

1. If the net tax paid to another state is greater than or equal to the tentative Florida tax attributable to the property subject to tax in the other state, none of the Florida tax shall be attributable to that property.

2. If the net tax paid to another state is less than the tentative Florida tax attributable to the property subject to tax in the other state, the net Florida tax attributable to the property subject to tax in the other state shall be the excess of the amount of the tentative Florida tax attributable to the property over the net tax payable to the other state with respect to the property.

3. Any remaining net Florida tax shall be attributable to property included in the measure of the Florida tax exclusive of the property subject to tax in another state.

4. The net federal tax attributable to the property subject to tax in the other state shall be determined as if the property were located in that state.

(e) The net tax attributable to a temporary interest, if any, is regarded as attributable to the principal that supports the temporary interest.

(3) APPORTIONMENT OF TAX.—Except as otherwise effectively directed in the governing instrument pursuant to subsection (4), the net tax attributable to each interest shall be apportioned as follows:

(a) Generation-skipping transfer tax.—Any federal or state generation-skipping transfer tax shall be apportioned as

provided in s. 2603 of the Internal Revenue Code after the application of the remaining provisions of this subsection to taxes other than the generation-skipping transfer tax.

(b) Section 2044 interests.—The net tax attributable to section 2044 interests shall be apportioned among the recipients of the section 2044 interests in the proportion that the value of each section 2044 interest bears to the total of all section 2044 interests. The net tax apportioned by this paragraph to section 2044 interests that pass in the manner described in paragraph (c) or paragraph (d) shall be apportioned to the section 2044 interests in the manner described in those paragraphs before the apportionment of the net tax attributable to the other interests passing as provided in those paragraphs. The net tax attributable to the interests other than the section 2044 interests which pass in the manner described in paragraph (c) or paragraph (d) shall be apportioned only to such other interests pursuant to those paragraphs.

(c) Wills.—The net tax attributable to property passing under the decedent's will shall be apportioned in the following order of priority:

1. The net tax attributable to nonresiduary devises shall be charged to and paid from the residuary estate, whether or not all interests in the residuary estate are included in the measure of the tax. If the residuary estate is insufficient to pay the net tax attributable to all nonresiduary devises, the balance of the net tax attributable to nonresiduary devises shall be apportioned among the recipients of the nonresiduary devises in the proportion that the value of each nonresiduary devise included in the measure of the tax bears to the total of

all nonresiduary devises included in the measure of the tax.

2. The net tax attributable to residuary devises shall be apportioned among the recipients of the residuary devises included in the measure of the tax in the proportion that the value of each residuary devise included in the measure of the tax bears to the total of all residuary devises included in the measure of the tax. If the residuary estate is insufficient to pay the net tax attributable to all residuary devises, the balance of the net tax attributable to residuary devises shall be apportioned among the recipients of the nonresiduary devises in the proportion that the value of each nonresiduary devise included in the measure of the tax bears to the total of all nonresiduary devises included in the measure of the tax.

(d) Trusts.—The net tax attributable to property passing under the terms of any trust other than a trust created in the decedent's will shall be apportioned in the following order of priority:

1. The net tax attributable to nonresiduary interests of the trust shall be charged to and paid from the residuary portion of the trust, whether or not all interests in the residuary portion are included in the measure of the tax. If the residuary portion is insufficient to pay the net tax attributable to all nonresiduary interests, the balance of the net tax attributable to nonresiduary interests shall be apportioned among the recipients of the nonresiduary interests in the proportion that the value of each nonresiduary interest included in the measure of the tax bears to the total of all nonresiduary interests included in the measure of the tax.

2. The net tax attributable to residuary interests of the

trust shall be apportioned among the recipients of the residuary interests of the trust included in the measure of the tax in the proportion that the value of each residuary interest included in the measure of the tax bears to the total of all residuary interests of the trust included in the measure of the tax. If the residuary portion is insufficient to pay the net tax attributable to all residuary interests, the balance of the net tax attributable to residuary interests shall be apportioned among the recipients of the nonresiduary interests in the proportion that the value of each nonresiduary interest included in the measure of the tax bears to the total of all nonresiduary interests included in the measure of the tax.

Except as provided in paragraph (g), this paragraph applies separately for each trust.

(e) Protected homestead, exempt property, and family allowance.—

1. The net tax attributable to an interest in protected homestead, exempt property, and the family allowance determined under s. 732.403 shall be apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order of priority:

a. Class I.—Recipients of interests passing by intestacy that are included in the measure of the federal estate tax.

b. Class II.—Recipients of residuary devises, residuary interests, and pretermitted shares under ss. 732.301 and 732.302 that are included in the measure of the federal estate tax.

c. Class III.—Recipients of nonresiduary devises and nonresiduary interests that are included in the measure of the

federal estate tax.

2. Any net tax apportioned to a class pursuant to this paragraph shall be apportioned among each recipient in the class in the proportion that the value of the interest of each bears to the total value of all interests included in that class. A tax may not be apportioned under this paragraph to the portion of any interest applied in satisfaction of the elective share whether or not included in the measure of the tax. For purposes of this paragraph, if the value of the interests described in s. 732.2075(1) exceeds the amount of the elective share, the elective share shall be treated as satisfied first from interests other than those described in classes I, II, and III, and to the extent that those interests are insufficient to satisfy the elective share, from the interests passing to or for the benefit of the surviving spouse described in classes I, II, and III, beginning with those described in class I, until the elective share is satisfied. This paragraph has priority over paragraphs (a) and (h).

3. The balance of the net tax attributable to any interest in protected homestead, exempt property, and the family allowance determined under s. 732.403 which is not apportioned under the preceding provisions of this paragraph shall be apportioned to the recipients of those interests included in the measure of the tax in the proportion that the value of each bears to the total value of those interests included in the measure of the tax.

(f) Construction.—For purposes of this subsection:

1. If the decedent's estate is the beneficiary of a life insurance policy, annuity, or contractual right included in the

decedent's gross estate, or is the taker as a result of the exercise or default in exercise of a general power of appointment held by the decedent, that interest shall be regarded as passing under the terms of the decedent's will for the purposes of paragraph (c) or by intestacy if not disposed of by will. Additionally, any interest included in the measure of the tax by reason of s. 2041 of the Internal Revenue Code passing to the decedent's creditors or the creditors of the decedent's estate shall be regarded as passing to the decedent's estate for the purpose of this subparagraph.

2. If a trust is the beneficiary of a life insurance policy, annuity, or contractual right included in the decedent's gross estate, or is the taker as a result of the exercise or default in exercise of a general power of appointment held by the decedent, that interest shall be regarded as passing under the trust for purposes of paragraph (d).

(g) Common instrument construction.—In the application of this subsection, paragraphs (b)-(f) shall be applied to apportion the net tax to the recipients under certain governing instruments as if all recipients under those instruments, other than the estate or revocable trust itself, were taking under a common instrument. This construction applies to the following:

1. The decedent's will and revocable trust if the estate is a beneficiary of the revocable trust or if the revocable trust is a beneficiary of the estate.

2. A revocable trust of the decedent and another revocable trust of the decedent if either trust is the beneficiary of the other trust.

(h) Other interests.—The net tax that is not apportioned to

interests under paragraphs (b)-(g), including, but not limited to, the net tax attributable to interests passing by intestacy, interests applied in satisfaction of the elective share pursuant to s. 732.2075(2), interests passing by reason of the exercise or nonexercise of a general power of appointment, jointly held interests passing by survivorship, life insurance, properties in which the decedent held a reversionary or revocable interest, annuities, and contractual rights, shall be apportioned among the recipients of the remaining interests included in the measure of the tax in the proportion that the value of each such interest bears to the total value of all remaining interests included in the measure of the tax.

(i) Assessment of liability by court.—If the court finds that:

1. It is inequitable to apportion interest or penalties, or both, in the manner provided in paragraphs (a)-(h), the court may assess liability for the payment thereof in the manner that the court finds equitable.

2. The payment of any tax was not effectively directed in the governing instrument pursuant to subsection (4) and that such tax is not apportioned by this subsection, the court may assess liability for the payment of such tax in the manner that the court finds equitable.

(4) DIRECTION AGAINST APPORTIONMENT.—

(a) Except as provided in this subsection, a governing instrument may not direct that taxes be paid from property other than that passing under the governing instrument.

(b) For a direction in a governing instrument to be effective to direct payment of taxes attributable to property

passing under the governing instrument in a manner different from that provided in this section, the direction must be express.

(c) 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 direct that the property passing under the governing instrument bear the burden of taxation for property not passing under the governing instrument. Except as provided in paragraph (d), a direction in the governing instrument 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 shall be effective to direct payment from property passing under the governing instrument of taxes attributable to property not passing under the governing instrument.

(d) In addition to satisfying the other provisions of this subsection:

1.a. For a direction in the decedent's will or revocable trust to be effective in waiving the right of recovery provided in s. 2207A of the Internal Revenue Code for the tax attributable to section 2044 interests, and for any tax imposed by Florida based upon such section 2044 interests, the direction must expressly waive that right of recovery. An express direction that property passing under the will or revocable trust bear the tax imposed by s. 2044 of the Internal Revenue Code is deemed an express waiver of the right of recovery provided in s. 2207A of the Internal Revenue Code. A reference

to "qualified terminable interest property," "QTIP," or property in which the decedent had a "qualifying income interest for life" is deemed to be a reference to property upon which tax is imposed by s. 2044 of the Internal Revenue Code which is subject to the right of recovery provided in s. 2207A of the Internal Revenue Code.

b. If property is included in the gross estate pursuant to ss. 2041 and 2044 of the Internal Revenue Code, the property is deemed included under s. 2044, and not s. 2041, for purposes of allocation and apportionment of the tax.

2. For a direction in the decedent's will or revocable trust to be effective in waiving the right of recovery provided in s. 2207B of the Internal Revenue Code for tax imposed by reason of s. 2036 of the Internal Revenue Code, and any tax imposed by Florida based upon s. 2036 of the Internal Revenue Code, the direction must expressly waive that right of recovery. An express direction that property passing under the will or revocable trust bear the tax imposed by s. 2036 of the Internal Revenue Code is deemed an express waiver of the right of recovery provided in s. 2207B of the Internal Revenue Code. If property is included in the gross estate pursuant to ss. 2036 and 2038 of the Internal Revenue Code, the property is deemed included under s. 2038, not s. 2036, for purposes of allocation and apportionment of the tax, and there is no right of recovery under s. 2207B of the Internal Revenue Code.

3. A general statement in the decedent's will or revocable trust waiving all rights of reimbursement or recovery under the Internal Revenue Code is not an express waiver of the rights of recovery provided in s. 2207A or s. 2207B of the Internal

Revenue Code.

4. For a direction in a governing instrument to be effective to direct payment of generation-skipping transfer tax in a manner other than as provided in s. 2603 of the Internal Revenue Code, and any tax imposed by Florida based on s. 2601 of the Internal Revenue Code, the direction must specifically reference the tax imposed by s. 2601 of the Internal Revenue Code. A reference to the generation-skipping transfer tax or s. 2603 of the Internal Revenue Code is deemed to be a reference to property upon which tax is imposed by reason of s. 2601 of the Internal Revenue Code.

(e) If the decedent expressly directs by will, the net tax attributable to property over which the decedent held a general power of appointment may be determined in a manner other than as provided in subsection (2) if the net tax attributable to that property does not exceed the difference between the total net tax determined pursuant to subsection (2), determined without regard to this paragraph, and the total net tax that would have been payable if the value of the property subject to such power of appointment had not been included in the decedent's gross estate. If tax is attributable to one or more section 2044 interests pursuant to subsection (2), the net tax attributable to the section 2044 interests shall be calculated before the application of this paragraph unless the decedent expressly directs otherwise by will.

(f) If the decedent's will expressly provides that the tax is to be apportioned as provided in the decedent's revocable trust by specific reference to the revocable trust, an express direction in the revocable trust is deemed to be a direction

contained in the will as well as the revocable trust.

(g) An express direction in the decedent's will to pay tax from the decedent's revocable trust by specific reference to the revocable trust is effective unless a contrary express direction is contained in the revocable trust.

(h) If governing instruments contain effective directions that conflict as to payment of taxes, the most recently executed tax apportionment provision controls to the extent of the conflict. For the purpose of this subsection, if a will or other governing instrument is amended, the date of the codicil to the will or amendment to the governing instrument is regarded as the date of the will or other governing instrument only if the codicil or amendment contains an express tax apportionment provision or an express modification of the tax apportionment provision. A general statement ratifying or republishing all provisions not otherwise amended does not meet this condition. If the decedent's will and another governing instrument were executed on the same date, the will is deemed executed after the other governing instrument. The earlier conflicting governing instrument controls as to any tax remaining unpaid after the application of the later conflicting governing instrument.

(i) A grant of permission or authority in a governing instrument to request payment of tax from property passing under another governing instrument is not a direction apportioning the tax to the property passing under the other governing instrument. A grant of permission or authority in a governing instrument to pay tax attributable to property not passing under the governing instrument is not a direction apportioning the tax to property passing under the governing instrument.

(j) This section applies to any tax remaining to be paid after the application of any effective express directions. An effective express direction for payment of tax on specific property or a type of property in a manner different from that provided in this section is not effective as an express direction for payment of tax on other property or other types of property included in the measure of the tax.

(5) TRANSFER OF PROPERTY.—A personal representative or fiduciary shall not be required to transfer to a recipient any property reasonably anticipated to be necessary for the payment of taxes. Further, the personal representative or fiduciary is not required to transfer any property to the recipient until the amount of the tax due from the recipient is paid by the recipient. If property is transferred before final apportionment of the tax, the recipient shall provide a bond or other security for his or her apportioned liability in the amount and form prescribed by the personal representative or fiduciary.

(6) ORDER OF APPORTIONMENT.—

(a) The personal representative may petition at any time for an order of apportionment. If administration of the decedent's estate has not commenced at any time after 90 days from the decedent's death, any fiduciary may petition for an order of apportionment in the court in which venue would be proper for administration of the decedent's estate. Notice of the petition for order of apportionment must be served on all interested persons in the manner provided for service of formal notice. At any time after 6 months from the decedent's death, any recipient may petition the court for an order of apportionment.

(b) The court shall determine all issues concerning apportionment. If the tax to be apportioned has not been finally determined, the court shall determine the probable tax due or to become due from all interested persons, apportion the probable tax, and retain jurisdiction over the parties and issues to modify the order of apportionment as appropriate until after the tax is finally determined.

(7) DEFICIENCY.—

(a) If the personal representative or fiduciary does not have possession of sufficient property otherwise distributable to the recipient to pay the tax apportioned to the recipient, whether under this section, the Internal Revenue Code, or the governing instrument, if applicable, the personal representative or fiduciary shall recover the deficiency in tax so apportioned to the recipient:

1. From the fiduciary in possession of the property to which the tax is apportioned, if any; and

2. To the extent of any deficiency in collection from the fiduciary, or to the extent collection from the fiduciary is excused pursuant to subsection (8) and in all other cases, from the recipient of the property to which the tax is apportioned, unless relieved of this duty as provided in subsection (8).

(b) In any action to recover the tax apportioned, the order of apportionment is prima facie correct.

(c) In any action for the enforcement of an order of apportionment, the court shall award taxable costs as in chancery actions, including reasonable attorney fees, and may award penalties and interest on the unpaid tax in accordance with equitable principles.

(d) This subsection does not authorize the recovery of any tax from a company issuing life insurance included in the gross estate, or from a bank, trust company, savings and loan association, or similar institution with respect to any account in the name of the decedent and any other person which passed by operation of law at the decedent's death.

(8) RELIEF FROM DUTY.—

(a) A personal representative or fiduciary who has the duty under this section of collecting the apportioned tax from recipients may be relieved of the duty to collect the tax by an order of the court finding that:

1. The estimated court costs and attorney fees in collecting the apportioned tax from a person against whom the tax has been apportioned will approximate or exceed the amount of the recovery;

2. The person against whom the tax has been apportioned is a resident of a foreign country other than Canada and refuses to pay the apportioned tax on demand; or

3. It is impracticable to enforce contribution of the apportioned tax against a person against whom the tax has been apportioned in view of the improbability of obtaining a judgment or the improbability of collection under any judgment that might be obtained, or otherwise.

(b) A personal representative or fiduciary is not liable for failure to attempt to enforce collection if the personal representative or fiduciary reasonably believes that collection would have been economically impracticable.

(9) UNCOLLECTED TAX.—Any apportioned tax that is not collected shall be reapportioned in accordance with this section

as if the portion of the property to which the uncollected tax had been apportioned had been exempt.

(10) CONTRIBUTION.—This section does not limit the right of any person who has paid more than the amount of the tax apportionable to that person, calculated as if all apportioned amounts would be collected, to obtain contribution from those who have not paid the full amount of the tax apportionable to them, calculated as if all apportioned amounts would be collected, and that right is hereby conferred. In any action to enforce contribution, the court shall award taxable costs as in chancery actions, including reasonable attorney fees.

(11) FOREIGN TAX.—This section does not require the personal representative or fiduciary to pay any tax levied or assessed by a foreign country unless specific directions to that effect are contained in the will or other instrument under which the personal representative or fiduciary is acting.

Section 8. Effective October 1, 2015, subsection (4) is added to section 736.0708, Florida Statutes, to read:

736.0708 Compensation of trustee.—

(4)(a) An attorney, or a person related to the attorney, is not entitled to compensation for serving as trustee if the attorney prepared or supervised the execution of the trust instrument that appoints the attorney or person related to the attorney as trustee, unless the attorney or person appointed is related to the settlor or the attorney makes the following disclosures to the settlor in writing before the trust instrument is executed:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of his or her

residence, including a family member, friend, or corporate fiduciary is eligible to serve as a trustee.

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee.

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

(b) The settlor must execute a written statement acknowledging that the disclosures required by this subsection were made before the execution of the trust instrument. The written acknowledgment must be in a separate writing from the trust instrument, but may be annexed to the trust instrument. The written acknowledgment may be executed before or after the execution of the trust instrument in which the attorney or related person is appointed as the trustee.

(c) For purposes of this subsection:

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

2.a. A person is "related" to an individual if, at the time the attorney prepared or supervised the execution of the trust instrument, the person is:

(I) A spouse of the individual;

(II) A lineal ascendant or descendant of the individual;

(III) A sibling of the individual;

(IV) A relative of the individual or of the individual's

spouse with whom the lawyer maintains a close, familial relationship;

(V) A spouse of a person described in sub-sub-subparagraphs (I)-(IV); or

(VI) A person who cohabitates with the individual.

b. An employee or attorney employed by the same firm as the attorney at the time the trust instrument is executed is deemed to be related to the attorney.

3. An attorney or person related to the attorney is deemed to be appointed in the trust instrument if the trust instrument provided the attorney or a person related to the attorney with the power to appoint the trustee and the attorney or person related to the attorney was appointed using that power.

(d) This subsection applies to provisions appointing an attorney or a person related to the attorney as trustee, cotrustee, or as successor or alternate trustee if the person appointed is unable or unwilling to serve.

(e) Other than compensation payable to the trustee, this subsection does not limit any rights or remedies that an interested person may have at law or equity.

(f) The failure to obtain a written acknowledgment from the settlor under this subsection does not disqualify a trustee from serving and does not affect the validity of a trust instrument.

(g) A written acknowledgment signed by the settlor that is in substantially the following form is deemed to comply with the disclosure requirements of this subsection:

I, ...(Name)... declare that:

I have designated ...(my attorney, an attorney employed in

the same law firm as my attorney, or a person related to my attorney)... as a trustee in my trust instrument dated ...(Date)....

Before executing the trust, I was informed that:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of his or her residence, including a family member, friend, or corporate fiduciary is eligible to serve as a trustee.

2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee.

3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

...(Settlor)...

...(Dated)...

(h) This subsection applies to each appointment made pursuant to a trust instrument that is:

1. Executed by a resident of this state on or after October 1, 2015.

2. Amended by a resident of this state on or after October 1, 2015, if the trust instrument appoints the attorney who prepared or supervised the execution of the amendment, or a person related to such attorney, as trustee.

Section 9. Section 736.1005, Florida Statutes, is amended to read:

736.1005 Attorney ~~attorney's~~ fees for services to the trust.—

(1) Any attorney who has rendered services to a trust may be awarded reasonable compensation from the trust. The attorney may apply to the court for an order awarding attorney ~~attorney's~~ fees and, after notice and service on the trustee and all beneficiaries entitled to an accounting under s. 736.0813, the court shall enter an order on the fee application.

(2) If attorney ~~Whenever attorney's~~ fees are to be paid from ~~out of~~ the trust under subsection (1), s. 736.1007(5)(a), or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the fees shall be paid.

(a) All or any part of the attorney fees to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper.

(b) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the trust.

2. The amount of attorney fees to be assessed against a person's part of the trust.

3. The extent to which a person whose part of the trust is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the trust expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person

whose part of the trust is to be assessed.

6. Whether a person whose part of the trust is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the trust is to be assessed unjustly caused an increase in the amount of attorney fees incurred by the trustee or another person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(c) The court may assess a person's part of the trust without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

(3) Except when a trustee's interest may be adverse in a particular matter, the attorney shall give reasonable notice in writing to the trustee of the attorney's retention by an interested person and the attorney's entitlement to fees pursuant to this section. A court may reduce any fee award for services rendered by the attorney prior to the date of actual notice to the trustee, if the actual notice date is later than a date of reasonable notice. In exercising this discretion, the court may exclude compensation for services rendered after the reasonable notice date but before ~~prior to~~ the date of actual notice.

Section 10. Section 736.1006, Florida Statutes, is amended to read:

736.1006 Costs in trust proceedings.—

(1) In all trust proceedings, costs may be awarded as in chancery actions.

(2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust

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under subsection (1) or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the costs shall be paid. All or any part of the costs to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper. In the exercise of its discretion, the court may consider the factors set forth in s. 736.1005(2).

Section 11. The amendments made by this act to ss. 733.212, 733.2123, 733.3101, and 733.504, Florida Statutes, are remedial in nature, are intended to clarify existing law, and apply retroactively to all proceedings pending or commenced on or after July 1, 2015.

Section 12. (1) The amendment made by this act to s. 733.817(1)(g) and (2)(c), Florida Statutes, is remedial in nature, is intended to clarify existing law, and applies retroactively to all proceedings pending or commenced on or after July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed for the estates of decedents who die after December 31, 2004.

(2) The amendment made by this act to s. 733.817(1)(e)3., (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and (6), Florida Statutes, applies to the estates of decedents who die on or after July 1, 2015.

(3) Except as provided in subsections (1) and (2), the amendment made by this act to s. 733.817, Florida Statutes, is remedial in nature, is intended to clarify existing law, and applies retroactively to all proceedings pending or commenced on or after July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed and without regard to the

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date of the decedent's death.

Section 13. The amendments made by this act to ss. 733.106, 736.1005, and 736.1006, 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.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2015.

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872

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Finance and Tax, *Chair*
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Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

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,

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

REPLY TO:
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Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

892532

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. Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, is created to read:

PART XVII

PROPERTY INSURANCE APPRAISAL UMPIRES

468.85 Property insurance appraisal umpire licensing

892532

program; legislative purpose; scope of part.—

(1) The property insurance appraisal umpire licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as property insurance appraisal umpires.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) A person acting as a property insurance appraisal umpire on or after October 1, 2016, must be licensed pursuant to this part.

(5) The department may adopt rules to administer this part.

468.851 Definitions.—As used in this part, the term:

(1) "Appraisal" means 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.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and

892532

Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party. An independent umpire shall conduct his or her investigation, evaluation, and estimation without instruction by an appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means 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.

(6) "Property insurance appraiser" or "appraiser" means 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.

(7) "Uniform application" means 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.

468.8511 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education.

892532

The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department’s costs for each background check.

468.85115 Application for license as a property insurance

892532

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 application for a nonresident property insurance appraisal umpire. 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 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

892532

course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8511. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance,

892532

denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

468.8512 Examinations.-

(1) A person desiring to be licensed as a property insurance appraisal umpire must apply to the department after satisfying the examination requirements of this part. The following persons are exempt from the examination requirements of this part:

(a) Retired county, circuit, and appellate judges.

(b) Circuit court civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules for Certified and Court-Appointed Mediators.

(c) Mediators who are on the list of approved mediators pursuant to rule 69J-166.031, Florida Administrative Code.

(2) An applicant may practice in this state as a property insurance appraisal umpire if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005, or as a retired professional engineer as defined in s. 471.005, and has 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.

892532

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 5 years

892532

immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster’s license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 5 years to qualify for a property insurance appraisal umpire’s license.

(i) The applicant 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.

(j) The applicant 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.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisal umpires.

(4) The department may not issue a license as a property insurance appraisal umpire to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements of this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) 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.

892532

468.8513 Licensure.-

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8511, 468.85115, and 468.8512.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraisal umpire license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8514 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8515 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department 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. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours by the end of the renewal period.

(3) Each umpire course provider, instructor, and classroom

892532

course must be approved by and registered with the department before prelicensure courses for property insurance appraisal umpires may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 percent on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8516 Inactive license.-

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for

892532

reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8517 Certification of partnerships, corporations, and other business entities.—The practice of, or the offer to practice as, a property insurance appraisal umpire by licensees through a partnership, corporation, or other business entity offering property insurance appraisal umpire services to the public, or by a partnership, corporation, or other business entities through licensees under this part as agents, employees, officers, or partners is permitted, subject to the provisions of this part. This section does not allow a corporation or other business entity to 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 by reason of its compliance with this section. An individual practicing as a property insurance appraisal umpire is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8518 Grounds for compulsory refusal, suspension, or revocation of an umpire’s license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue

892532

the license or appointment of any applicant, property insurance appraisal umpire or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this chapter.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this chapter.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraisal umpire.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this chapter.

(9) 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 the law of the United States or of any state thereof or under the law of any other

892532

country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10)(a) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal;

(b) Has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or

(c) Has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11)(a) Had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against;

(b) Has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or

(c) Has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other

892532

state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an umpire if the appointment is contingent upon the umpire reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the umpire is contingent upon the opinion, conclusion, or valuation reached by the umpire.

468.85185 Grounds for discretionary denial, suspension, or revocation of an umpire's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraisal umpire if the applicant or licensee has:

(1) Failed to timely communicate with the appraisers without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the appraisers.

(3) Violated any ethical standard for property insurance appraisal umpires set forth in s. 468.8519.

(4) Failed 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.

(5) Failed to timely notify the department of any change in

892532

business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraisal umpire.

468.8519 Ethical standards for property insurance appraisal umpires.—

(1) CONFIDENTIALITY.—An umpire shall maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law.

(2) RECORDKEEPING.—An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An umpire shall be guided by the following in determining fees:

(a) All charges for services as an umpire based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(c) An umpire may not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage basis, or that is contingent upon arriving at a particular value or any future happening or outcome of the assignment.

(4) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An umpire licensed under this part shall retain original or true copies of any contracts engaging the umpire’s services, appraisal reports, and supporting data

892532

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 must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An 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 in any business, provide any service, or perform any act that would 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 are beyond the umpire's skill or experience.

(8) GIFTS AND SOLICITATION.—An 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. During the appraisal process, an umpire may not solicit or otherwise attempt to procure future professional services.

892532

Section 2. Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, is created to read:

PART XVIII

PROPERTY INSURANCE APPRAISERS

468.86 Property insurance appraiser licensing program; legislative purpose; scope of part.—

(1) The property insurance appraiser licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary and in the interest of the public safety and welfare, to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as a property insurance appraiser.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) A person acting as a property insurance appraiser on or after October 1, 2016, must be licensed pursuant to this part.

(5) The department may adopt rules to administer the requirements of this part.

468.861 Definitions.—As used in this part, the term:

(1) "Appraisal" means 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

892532

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.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means 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.

(6) "Property insurance appraiser" or "appraiser" means 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.

(7) "Uniform application" means 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.

468.8611 Fees.—

892532

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing

892532

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.

892532

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department, and he or she must pay the fingerprint processing fee in s. 468.8611. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the

892532

Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisers.

468.8612 Examinations.-

(1) A person desiring to be licensed as a property insurance appraiser must apply to the department after satisfying the examination requirements of this part. The following persons are exempt from the examination requirements of this part:

(a) Retired county, circuit, and appellate judges.

(b) Circuit court civil certified mediators approved by the Florida Supreme Court pursuant to the Florida Rules for Certified and Court-Appointed Mediators.

(c) Mediators who are on the list of approved mediators pursuant to rule 69J-166.031, Florida Administrative Code.

(2) An applicant may practice in this state as a property insurance appraiser if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005, or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to

892532

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

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal

892532

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

(e) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster’s license must include the

892532

property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 3 years to qualify for a property insurance appraiser's license.

(i) The applicant 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.

(j) The applicant 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.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisers.

(4) The department may not issue a license as a property insurance appraiser to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 468.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements in this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

892532

(6) 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.

468.8613 Licensure.—

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8611, 468.86115, and 468.8612.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraiser license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8614 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8615 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department 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. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25


892532

percent of the total required hours, for failure to complete the required hours for renewal by the end of the renewal period.

(3) Each appraiser course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisers may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 percent on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8616 Inactive license.—

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

892532

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8617 Certification of partnerships, corporations, and other business entities.—The practice of, or the offer to practice as, a property insurance appraiser by licensees through a partnership, corporation, or other business entity offering property insurance appraiser services to the public, or by a partnership, corporation, or other business entity through licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. This section does not allow a corporation or other business entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraiser is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

892532

468.8618 Grounds for compulsory refusal, suspension, or revocation of an appraiser's license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraiser, or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this act.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this code.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraiser.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(9) Having been found guilty of or having pled guilty or

892532

nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11) Had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any

892532

possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an appraiser if the appointment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the appraiser is contingent upon the opinion, conclusion, or valuation reached by the appraiser.

468.86185 Grounds for discretionary denial, suspension, or revocation of an appraiser's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraiser if the applicant or licensee has:

(1) Failed to timely communicate with the opposing party's appraiser without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the opposing party's appraiser.

(3) Violated any ethical standard for property insurance appraisers set forth in s. 468.8619.

(4) Failed 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.

(5) Failed to timely notify the department of any change in business location or has failed to fully disclose all business

892532

locations from which he or she operates as a property insurance appraiser.

468.8619 Ethical standards for property insurance appraisers.—

(1) CONFIDENTIALITY.—An appraiser shall maintain confidentiality of all information revealed during an appraisal except to the party that hired the appraiser and except where disclosure is required by law.

(2) RECORDKEEPING.—An appraiser shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An appraiser shall be guided by the following in determining fees:

(a) All charges for services as an appraiser based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(4) MAINTENANCE OF RECORDS.—An appraiser shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An appraiser licensed under this part shall retain for at least 5 years original or true copies of any contracts engaging the appraiser’s services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports. 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

892532

must be made available by the appraiser for inspection and copying by the department upon reasonable notice to the appraiser. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An appraiser may not engage in marketing practices that contain false or misleading information. An appraiser shall ensure that any advertisements of the appraiser's qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An appraiser may not accept any engagement, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality.

(a) An appraiser may not accept an appointment unless he or she can:

1. Serve impartially;

2. Serve independently from the party appointing him or her;

3. Serve competently; and

4. Be available to promptly commence the appraisal, and thereafter devote the time and attention to its completion in a manner expected by all involved parties.

(b) An appraiser shall conduct the appraisal process in a manner that advances the fair and efficient resolution of the matters submitted for decision. A licensed appraiser shall make all reasonable efforts to prevent delays in the appraisal

892532

process, the harassment of parties or other participants, or other abuse or disruption of the appraisal process.

(c) Once a licensed appraiser has accepted an appointment, the appraiser may not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue.

(d) The licensed appraiser shall, after careful deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters justly, exercising independent judgment, and may not allow outside pressure to affect the decision. An appraiser may not delegate the duty to decide to any other person.

(7) SKILL AND EXPERIENCE.—An appraiser shall 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.

(8) GIFTS AND SOLICITATION.—An appraiser may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee. During the appraisal process, an appraiser may not solicit or otherwise attempt to procure future professional services.

(9) COMMUNICATIONS WITH PARTIES.—

(a) If an agreement of the parties establishes the manner or content of the communications between the appraisers, the parties, and the umpire, the appraisers shall abide by such agreement. In the absence of agreement, an appraiser may not discuss a proceeding with any party or with the umpire in the absence of any other party, except in the following circumstances:

892532

1. If the appointment of the appraiser or umpire is being considered, the prospective appraiser or umpire may ask about the identities of the parties, counsel, and the general nature of the case, and may respond to inquiries from a party, its counsel or an umpire designed to determine his or her suitability and availability for the appointment;

2. To consult with the party who appointed the appraiser concerning the selection of a neutral umpire;

3. To make arrangements for any compensation to be paid by the party who appointed the appraiser; or

4. To make arrangements for obtaining materials and inspection of the property with the party who appointed the appraiser. Such communication is limited to scheduling and the exchange of materials.

(b) There may be no communications whereby a party dictates to an appraiser what the result of the proceedings must be, what matters or elements may be included or considered by the appraiser, or what actions the appraiser may take.

Section 3. This act shall take effect July 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to property insurance appraisal umpires and property insurance appraisers; creating part XVII of chapter 468, F.S., relating to property insurance appraisal umpires; creating the property

892532

insurance appraisal umpire licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; requiring a person acting as a property insurance appraisal umpire on or after a certain date to be licensed under the act; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; specifying exemptions from such requirements; providing application requirements for licensure as a property insurance appraisal umpire; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraisal umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's license; providing grounds for discretionary denial, suspension, or revocation of an umpire's license; providing ethical standards for property insurance appraisal umpires; creating part XVIII of chapter 468, F.S., relating to property insurance appraisers;

892532

creating the property insurance appraiser licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; requiring a person acting as a property insurance appraiser on or after a certain date to be licensed under the act; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; limiting fee amounts; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; specifying exemptions from such requirements; providing application requirements for licensure as a property insurance appraiser; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; 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; providing grounds for discretionary denial, suspension, or revocation of an appraiser’s license; providing ethical standards; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 744
INTRODUCER:	Regulated Industries Committee and Senator Richter
SUBJECT:	Property Insurance Appraisal Umpires and Property Insurance Appraisers
DATE:	March 30, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Billmeier	Knudson	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.[1] 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.[2] . 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.[3]

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.[4] 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.[5] The conduct of a public adjuster is governed by statute and by rule.[6] 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.[7]

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:

[1] *See* Fla.Jur. Insurance s. 3292.
[2] *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.
[3] Section 627.70151, F.S.
[4] Section 626.854(1), F.S.
[5] Section 626.865, F.S.
[6] *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.
[7] 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),[8] 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 non-insurance 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.

[8] More information about the Insurance Appraisers and Umpires Association is available at: http://www.iaua.us/about-iaua.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.[9] 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.[10] 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.

[9] Chapter 93-220, L.O.F.
[10] 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[11] and the Regulatory Council of Community Managers[12] 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

[11] Section 548.003, F.S.
[12] 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[13] 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

[13] 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.

By the Committee on Regulated Industries; and Senator Richter

580-02529-15 2015744c1

A bill to be entitled

An act relating to property insurance appraisal 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 applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraisal umpire; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraisal umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's license; providing grounds for discretionary denial, suspension, or revocation of an umpire's license; providing ethical standards for property insurance appraisal umpires;

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creating part XVIII of chapter 468, F.S., relating to property insurance appraisers; creating the property insurance appraiser licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; limiting fee amounts; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraiser; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; 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; providing grounds for discretionary denial, suspension, or revocation of an appraiser's license; providing ethical standards; providing an effective date.

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

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Section 1. Part XVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, is created to read:

PART XVII

PROPERTY INSURANCE APPRAISAL UMPIRES

468.85 Property insurance appraisal umpire licensing program; legislative purpose; scope of part.—

(1) The property insurance appraisal umpire licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as property insurance appraisal umpires.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer this part.

468.851 Definitions.—As used in this part, the term:

(1) "Appraisal" means 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.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party. An independent umpire shall conduct his or her investigation, evaluation, and estimation without instruction by an appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means 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.

(6) "Property insurance loss appraiser" or "appraiser" means 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.

(7) "Uniform application" means 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.

468.8511 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(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 each background check.

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 application for a nonresident property insurance appraisal umpire. 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 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.

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(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 course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8511. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the

Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

468.8512 Examinations.-

(1) A person desiring to be licensed as a property insurance appraisal umpire must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraisal umpire if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005, or as a retired professional engineer as defined in s. 471.005, and has 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.

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or

residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved

by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster’s license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 5 years to qualify for a property insurance appraisal umpire’s license.

(i) The applicant 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.

(j) The applicant 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.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisal umpires.

(4) The department may not issue a license as a property insurance appraisal umpire to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements of this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) 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.

468.8513 Licensure.-

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8511, 468.85115, and 468.8512.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraisal umpire license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8514 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8515 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department 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. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours by the end of the renewal period.

(3) Each umpire course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisal umpires may be offered. Each classroom course must include a written examination at the conclusion of the course and must

cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 percent on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8516 Inactive license.-

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses

that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8517 Certification of partnerships, corporations, and other business entities.-The practice of, or the offer to practice as, a property insurance appraisal umpire by licensees through a partnership, corporation, or other business entity offering property insurance appraisal umpire services to the public, or by a partnership, corporation, or other business entities through licensees under this part as agents, employees, officers, or partners is permitted, subject to the provisions of this part. This section does not allow a corporation or other business entity to 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 by reason of its compliance with this section. An individual practicing as a property insurance appraisal umpire is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8518 Grounds for compulsory refusal, suspension, or revocation of an umpire's license.-The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraisal umpire or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable

grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this chapter.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this chapter.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraisal umpire.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this chapter.

(9) 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 the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10)(a) Violated a duty imposed upon her or him by law or

by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal;

(b) Has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or

(c) Has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11)(a) Had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against;

(b) Has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or

(c) Has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an umpire if the appointment is contingent upon the umpire reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the umpire is contingent upon the opinion, conclusion, or valuation reached by the umpire.

468.85185 Grounds for discretionary denial, suspension, or revocation of an umpire's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraisal umpire if the applicant or licensee has:

(1) Failed to timely communicate with the appraisers without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the appraisers.

(3) Violated any ethical standard for property insurance appraisal umpires set forth in s. 468.8519.

(4) Failed 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.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraisal umpire.

468.8519 Ethical standards for property insurance appraisal

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umpires.—

(1) CONFIDENTIALITY.—An umpire shall maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law.

(2) RECORDKEEPING.—An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An umpire shall be guided by the following in determining fees:

(a) All charges for services as an umpire based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(c) An umpire may not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage basis, or that is contingent upon arriving at a particular value or any future happening or outcome of the assignment.

(4) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An umpire licensed under this part shall retain original or true copies of any contracts engaging the umpire's services, appraisal reports, and supporting data 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

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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 must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An 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 in any business, provide any service, or perform any act that would 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 are beyond the umpire's skill or experience.

(8) GIFTS AND SOLICITATION.—An 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. During the appraisal process, an umpire may not solicit or otherwise attempt to procure future professional services.

Section 2. Part XVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.8619, is created to read:

PART XVIII

PROPERTY INSURANCE APPRAISERS

468.86 Property insurance appraiser licensing program; legislative purpose; scope of part.—

(1) The property insurance appraiser licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary and in the interest of the public safety and welfare, to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as a property insurance appraiser.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer the requirements of this part.

468.861 Definitions.—As used in this part, the term:

(1) "Appraisal" means 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.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and

Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means 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.

(6) "Property insurance loss appraiser" or "appraiser" means 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.

(7) "Uniform application" means 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.

468.8611 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue

required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing 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.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any

applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department, and he or she must pay the fingerprint processing fee in s. 468.8611. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisers.

468.8612 Examinations.-

(1) A person desiring to be licensed as a property insurance appraiser must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraiser if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005, or as a retired professional engineer as defined in s. 471.005, and has 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.

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years

immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom

coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 3 years to qualify for a property insurance appraiser's license.

(i) The applicant 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.

(j) The applicant 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.

(3) The department shall review and approve courses of study for the continuing education of property insurance

appraisers.

(4) The department may not issue a license as a property insurance appraiser to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 468.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements in this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) 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.

468.8613 Licensure.—

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8611, 468.86115, and 468.8612.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraiser license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8614 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8615 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department 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. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours for renewal by the end of the renewal period.

(3) Each appraiser course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisers may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 percent on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that

instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8616 Inactive license.—

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8617 Certification of partnerships, corporations, and other business entities.—The practice of, or the offer to practice as, a property insurance appraiser by licensees through

a partnership, corporation, or other business entity offering property insurance appraiser services to the public, or by a partnership, corporation, or other business entity through licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. This section does not allow a corporation or other business entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraiser is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8618 Grounds for compulsory refusal, suspension, or revocation of an appraiser's license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraiser, or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department

any examination required under this act.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this code.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraiser.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(9) Having been found guilty of or having pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to a finding that a licensee has committed a violation of this

subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11) Had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an appraiser if the appointment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the appraiser is contingent upon the opinion, conclusion, or valuation reached by the appraiser.

468.86185 Grounds for discretionary denial, suspension, or

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

revocation of an appraiser's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraiser if the applicant or licensee has:

(1) Failed to timely communicate with the opposing party's appraiser without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the opposing party's appraiser.

(3) Violated any ethical standard for property insurance appraisers set forth in s. 468.8619.

(4) Failed 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.

(5) Failed to timely notify the department of any change in business location or has failed to fully disclose all business locations from which he or she operates as a property insurance appraiser.

468.8619 Ethical standards for property insurance appraisers.—

(1) CONFIDENTIALITY.—An appraiser shall maintain confidentiality of all information revealed during an appraisal except to the party that hired the appraiser and except where disclosure is required by law.

(2) RECORDKEEPING.—An appraiser shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case.

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

An appraiser shall be guided by the following in determining fees:

(a) All charges for services as an appraiser based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(4) MAINTENANCE OF RECORDS.—An appraiser shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An appraiser licensed under this part shall retain for at least 5 years original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports. 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 appraiser for inspection and copying by the department upon reasonable notice to the appraiser. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An appraiser may not engage in marketing practices that contain false or misleading information. An appraiser shall ensure that any advertisements of the appraiser's qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An appraiser may not accept

any engagement, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality.

(a) An appraiser may not accept an appointment unless he or she can:

1. Serve impartially;

2. Serve independently from the party appointing him or her;

3. Serve competently; and

4. Be available to promptly commence the appraisal, and thereafter devote the time and attention to its completion in a manner expected by all involved parties.

(b) An appraiser shall conduct the appraisal process in a manner that advances the fair and efficient resolution of the matters submitted for decision. A licensed appraiser shall make all reasonable efforts to prevent delays in the appraisal process, the harassment of parties or other participants, or other abuse or disruption of the appraisal process.

(c) Once a licensed appraiser has accepted an appointment, the appraiser may not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue.

(d) The licensed appraiser shall, after careful deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters justly, exercising independent judgment, and may not allow outside pressure to affect the decision. An appraiser may not delegate the duty to decide to any other person.

(7) SKILL AND EXPERIENCE.—An appraiser shall 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.

(8) GIFTS AND SOLICITATION.—An appraiser may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee. During the appraisal process, an appraiser may not solicit or otherwise attempt to procure future professional services.

(9) COMMUNICATIONS WITH PARTIES.—

(a) If an agreement of the parties establishes the manner or content of the communications between the appraisers, the parties, and the umpire, the appraisers shall abide by such agreement. In the absence of agreement, an appraiser may not discuss a proceeding with any party or with the umpire in the absence of any other party, except in the following circumstances:

1. If the appointment of the appraiser or umpire is being considered, the prospective appraiser or umpire may ask about the identities of the parties, counsel, and the general nature of the case, and may respond to inquiries from a party, its counsel or an umpire designed to determine his or her suitability and availability for the appointment;

2. To consult with the party who appointed the appraiser concerning the selection of a neutral umpire;

3. To make arrangements for any compensation to be paid by the party who appointed the appraiser; or

4. To make arrangements for obtaining materials and inspection of the property with the party who appointed the appraiser. Such communication is limited to scheduling and the exchange of materials.

(b) There may be no communications whereby a party dictates to an appraiser what the result of the proceedings must be, what matters or elements may be included or considered by the appraiser, or what actions the appraiser may take.

Section 3. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: 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

File signed original with committee office

S-020 (03/2004)

171858

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:

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

171858

following respective meanings:

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8. ~~(13)(b)1.-8.~~.

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state which represents an issuer in a transaction involving the offer or sale of securities under s. 517.061.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before ~~prior to~~ claiming the ~~such~~ exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a

security is issued in exchange for one or more outstanding 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.

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

respect to any securities of the issuer which she or he has 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.

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

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

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

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

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers,

of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before ~~Prior to~~ the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material 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.:

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

2. Any trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any corporation specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest (excluding 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 before ~~prior to~~ 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.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale 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.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for 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

171858

securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this 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 Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended;

4. Securities, other than any security that is a federal covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of


171858

issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from 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

character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

(20) Any nonissuer transaction by a registered associated person of a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 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 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;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission’s electronic data gathering and retrieval system contains:

171858

1. A description of the business and operations of the issuer;

2. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance 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

18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

Section 3. Section 517.0611, Florida Statutes, is created to read:

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Exemption."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s.517.061.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in 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, adopted pursuant to the Securities Act of 1933.

(4) An issuer must:

(a) Be a for-profit business entity formed under the laws of this state, be registered with the Secretary of State, maintain its principal place of business in this state, and derive its revenues primarily from operations in this state.

(b) Conduct transactions for the offering through a dealer

171858

registered with the office or an intermediary registered under s. 517.12(20).

(c) 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).

(d) Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

(e) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20 percent of the shares of the issuer, is subject to this requirement.

(f) Execute an escrow agreement with a federally insured financial institution authorized to do business in this state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

(g) Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the

171858

target offering amount is not reached by the offering deadline.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. The office may revoke the filing of a notice under this subsection if payment for the filing fee is by check or electronic transmission of funds that is dishonored by the financial institution upon which the funds are drawn. A notice is effective upon receipt by the office of the completed form and filing fee, and the notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information of the issuer.

(d) Identify any predecessors, owners, officers, directors, and control persons or any person occupying a similar status or performing a similar function of the issuer, including that person’s title, his or her status as a partner, trustee, sole proprietor or similar role, and his or her ownership percentage.

(e) Identify the federally insured financial institution, authorized to do business in this state, in which investor funds will be deposited, in accordance with the escrow agreement.

(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.

(g) Include documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

(h) Include the intermediary's website address.

(i) Include the target offering amount.

(6)(a) A notice filed by an issuer under this section shall be summarily suspended by the office if the issuer fails to provide to the office, within 30 days after a written request from the office, information required by this section or rules adopted under this section. The summary suspension shall remain in effect until the issuer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and a final order is entered. For purposes of s. 120.60(6), failure to provide such information constitutes an immediate and serious danger to the public health, safety, and welfare. If the issuer fails to provide the requested information after 90 days, the office shall revoke the filing of the notice.

(b) The issuer must amend the notice form within 30 days after any information contained in the notice becomes inaccurate for any reason. The commission may require, by rule, an issuer

171858

who has filed a notice under this section to file amendments with the office.

(7) The issuer must provide to investors and the dealer or intermediary, along with a copy to the office at the time the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, including:

(a) The name, legal status, physical address, and website address of the issuer.

(b) The names of the directors, officers, and any person occupying a similar status or performing a similar function, and the name of each person holding more than 20 percent of the shares of the issuer.

(c) A description of the business of the issuer and the anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

(f) The price to the public of the securities or the method for determining the price, provided that before the sale each investor receives in writing the final price and all required disclosures, with an opportunity to rescind the commitment to purchase the securities.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of

171858

security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer;

2. A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.

(h) A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

2. For offerings that, in combination with all other


171858

offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures for such audit or standards and procedures established by the office, by rule, for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $500,000, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(i) The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered under and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida has 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

171858

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.

(8) The sum of all cash and other consideration received for sales of a security under this section may 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. Offers or sales to a person owning 20 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 a similar status, do not count toward this limitation.

(9) Unless the investor is an accredited investor as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection in a 12-month period may not exceed:

(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.

(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000.

(10) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days

171858

of its fiscal year end, until no securities under this offering are outstanding. The annual reports must meet the following requirements:

(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.

(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.

(11)(a) A notice-filing under this section shall be summarily suspended by the office if the payment for the filing is dishonored by the financial institution upon which the funds are drawn. For purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn.

(b) A notice-filing under this section shall be summarily suspended by the office if the issuer made a material false statement in the issuer's notice-filing. The summary suspension shall remain in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement


171858

made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office shall enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.221(3), and issue permanent bars under s. 517.221(4) to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including titles; status as a partner, trustee, sole proprietor, or similar roles; and ownership percentage.

(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:

(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

171858

adequately assess the risk of fraud of the issuer or its potential offering.

(c) Provide basic information on its website 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 must include:

1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and subsection (4).

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(d) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of this state.

(e) Obtain and verify, pursuant to commission rule, a valid Florida driver license number or official identification card number from each investor before purchase of a security or other information, as defined by commission rule, to confirm that the investor is a resident of the state.

(f) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (9).

(g) Direct the release of investor funds in escrow in accordance with subsection (4).

(h) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor.

171858

(i) Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest in the previous calendar month.

(j) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:

I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.

171858

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.

(k) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.

(l) Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(m) Prohibit its directors and officers from having any financial interest in the issuer using its services.

(n) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with anti-money laundering requirements of 31 C.F.R. ch. X applicable to registered brokers; and comply with the privacy requirements of 17 C.F.R. 248 as they apply to brokers.

(14) An intermediary not registered as a dealer under s. 517.12(6) may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation or based on the sale of securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

(15) All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor.

Section 4. Section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully 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).

(4) No investment adviser or associated person of an investment adviser or federal covered adviser shall engage in business from offices in this state, or render investment advice to persons of this state, by mail or otherwise, unless the federal covered adviser has made a notice-filing with the office pursuant to s. 517.1201 or the investment adviser is registered pursuant to the provisions of this chapter and associated persons of the federal covered adviser or investment adviser have been registered with the office pursuant to this section. The office shall not register any person or an associated person of a federal covered adviser or an investment adviser unless the federal covered adviser or investment adviser with which the applicant seeks registration is in compliance with the notice-

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.

(6) A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or 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

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.

(7) The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15) shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (15), submit fingerprints or the requirement that


171858

such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such 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.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or 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

persons affiliated with a dealer, the examination standards may be higher for a dealer, office manager, principal, or person exercising similar functions than for a nonsupervisory associated person. The commission may waive the examination process when it determines that such examinations are not in the public interest. The office shall waive the examination requirements for any person who has passed any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 that relates to the position to be filled by the applicant.

(9)(a) All dealers, except securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, shall comply with the net capital and ratio requirements imposed pursuant to the Securities Exchange Act of 1934. The commission may by rule require a dealer to file with the office any financial or operational information that is required to be filed by the Securities Exchange Act of 1934 or any rules adopted under such act.

(b) The commission may by rule require the maintenance of a minimum net capital for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers and securities dealers registered as issuers of securities and investment advisers, or prescribe a ratio between net capital and aggregate indebtedness, to assure adequate protection for the investing public. The provisions of this section shall not apply to any investment adviser that maintains its principal place of business in a state other than this state, provided such investment adviser is registered in the state where it maintains its principal place of business and


171858

is in compliance with such state's net capital requirements.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees 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 registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the

commission, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to 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.

(13) Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers, or directors of any dealer or investment adviser or by changes of any material fact or method of doing business shall be reported by written amendment in such form and at such time as the commission may specify. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a registered dealer or investment


171858

adviser, such person or group shall submit an initial application for registration as a dealer or investment adviser prior to such purchase or acquisition. The commission shall adopt rules providing for waiver of the application required by this subsection where control of a registered dealer or investment adviser is to be acquired by another dealer or investment adviser registered under this chapter or where the application is otherwise unnecessary in the public interest.

(14) Every dealer or investment adviser registered or required to be registered or branch office notice-filed or required to be notice-filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection (10), the renewals required by subsection (11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(16) Except for securities dealers who are designated by the Federal Reserve Bank of New York as primary government securities dealers or securities dealers registered as issuers of securities, every applicant for initial or renewal registration as a securities dealer and every person registered as a securities dealer shall be registered as a broker or dealer

171858

with the Securities and Exchange Commission and shall be subject to insurance coverage by the Securities Investor Protection Corporation.

(17)(a) A dealer that is located in Canada, does not have an office or other physical presence in this state, and has made a notice-filing in accordance with this subsection is exempt from the registration requirements of this section and may effect transactions in securities with or for, or induce or 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 subsection if the dealer provides to the office:

1. A notice-filing in the form the commission requires by rule.

2. A consent to service of process.

3. Evidence that the Canadian dealer is registered as a


171858

dealer in the jurisdiction in which the dealer's main office is located.

4. Evidence that the Canadian dealer is a member of a self-regulatory 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.

(e) A notice-filing is effective upon receipt by the office. A notice-filing expires on December 31 of the year in which the filing becomes effective unless the Canadian dealer has renewed the filing on or before that date. A Canadian dealer may annually renew a notice-filing by furnishing to the office such information as the office requires together with a renewal fee of $200 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any Canadian dealer who has not renewed a notice-filing by the time a current notice-filing expires may request reinstatement of such notice-filing by filing with the office, on or before January 31 of the year following the year the notice-filing expires, such information as the commission requires by rule, together with the payment of $200 and a late fee of $200. A reinstatement of a notice-filing granted by the office during the month of January 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.


171858

(g) A Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing.

2. Provide the office upon request with its books and records relating to its business in this state as a dealer.

3. Provide the office upon request notice of each civil, criminal, or administrative action initiated against the dealer.

4. Disclose to its clients in this state that the dealer and its associated persons are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days after the information contained in the notice-filing becomes inaccurate for any reason.

(h) An associated person representing a Canadian dealer who has made a notice-filing under this subsection shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

(i) A notice-filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(1), until the Securities Guaranty Fund has

satisfied the statutory limits. Such fees are not returnable if 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


171858

information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided for in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. 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.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history

171858

background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, that are required to be reported on a form adopted by commission rule submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person concerning such matters as:

1. 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.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any


171858

reason.

(d) An intermediary or persons affiliated with the intermediary may not be subject to any disqualification described in s. 517.1611 or the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(e) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of the fee of $200 and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by filing with the office on or before January 31 of the year following the year of expiration must submit the information that may be 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.

(21) ~~(20)~~ The registration requirements of this section do

171858

not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's 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, intermediary, 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, intermediary, 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

registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule 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, <u>intermediary,</u> 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;

(h) Has demonstrated unworthiness to transact the business

of dealer, investment adviser, intermediary, or associated person;

(i) Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, 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 dealing;

(k) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

(l) Is of bad business repute;

(m) Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation

promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to 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

registration of a dealer, intermediary, or investment adviser shall also deny, suspend, or revoke the registration of all her or his associated persons.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, or unincorporated association, if any member of the partnership or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(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

171858

would authorize denial or revocation under subsection (1). Registration under s. 517.12 may be suspended or restricted if a registrant is arrested for any conduct that would authorize revocation under subsection (1).

(a) Any denial of registration ordered under this subsection shall be without prejudice to the applicant's ability to reapply for registration.

(b) Any order of suspension or restriction under this subsection shall:

1. Take effect only after a hearing, unless no hearing is requested by the registrant or unless the suspension or 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.

(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 self-regulatory organization.

2. An enforcement action is pending at any time after notice to the applicant or registrant of such action and is

171858

terminated at any time after entry of final judgment or decree in the case of judicial proceedings, final agency action in the case of administrative proceedings, and final disposition by a self-regulatory organization in the case of disciplinary proceedings.

3. A criminal prosecution is pending at any time after criminal charges are filed and is terminated at any time after conviction, acquittal, or dismissal.

Section 7. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

Section 8. This act shall take effect October 1, 2015.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to intrastate crowdfunding; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales

of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring an issuer to produce and distribute an annual report to investors; requiring a notice-filing to be suspended under certain circumstances; specifying that fees collected become revenue of the state; requiring a qualified third party to hold certain funds in escrow; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements; amending s. 517.161, F.S.; including an intermediary in the disciplinary provisions; amending s. 626.9911, F.S.; conforming a cross-reference; providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 914
INTRODUCER:	Senator Richter
SUBJECT:	Offer or Sale of Securities
DATE:	March 30, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	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[1] (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

[1] 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."[2] 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,[3] 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.[4] Broker-dealers that conduct their business on a purely intrastate basis are not required to register at the federal level.[5] 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.[6]

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[2] 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.

[3] 17 CFR s. 230.147.

[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate (last visited March 30, 2015).

[5] 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).

[6] 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.[7] 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.[8]

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.[9] 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.

[7] *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).
[8] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte (last visited March 30, 2015).
[9] 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.[10]

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.[11] 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. [12]

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[13] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in

[10] U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm. *See also* JOBS Act Frequently Asked Questions About Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm (last visited March 30, 2015).

[11] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited March 30, 2015).

[12] 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.

[13] 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).[14] 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.[15] Civil remedies under the act include rescission and damages.[16] 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.

[14] 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.
[15] Section 517.302(1), F.S.
[16] 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 broker-dealer 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[17] 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

[17] 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.

By Senator Richter

23-00756-15 2015914__

A bill to be entitled

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 for such issuers and intermediaries; 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; providing exceptions; requiring the Office of Financial Regulation to provide certain information on its website; amending s. 517.12, F.S.; exempting certain intermediaries from registration requirements relating to the offer or sale of certain securities; conforming a cross-reference; amending s. 626.9911, F.S.; conforming a cross-reference; providing an effective date.

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

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

517.021 Definitions.—When used in this chapter, unless the

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23-00756-15 2015914__

context otherwise indicates, the following terms have the following respective meanings:

(13) "Intermediary" means 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.

Section 2. Subsection (21) is added to section 517.061, Florida Statutes, to read:

517.061 Exempt transactions.—The exemption for each transaction listed below is self-executing and does not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(21)(a) Notwithstanding any other provision of this section, the offer or sale of a security by an issuer is exempt from the registration requirements of s. 517.07, and each intermediary who represents an issuer in an offer or sale is exempt from the registration requirements of s. 517.12, if the offer or sale is conducted in accordance with this subsection.

1. An issuer must:

a. Be a for-profit business entity formed under the laws of this state and be registered with the Secretary of State.

b. Be represented by an intermediary.

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c. Submit a nonrefundable filing fee of $200 and file a notice with the office in writing or in electronic form, in a format prescribed by commission rule, that:

(I) Indicates that the issuer is conducting an offering in reliance upon this exemption.

(II) Contains the names and addresses 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.

(III) Includes documentation verifying that the issuer is organized under the laws of this state and authorized to do business in this state.

d. 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).

e. Execute an escrow agreement with a federally insured financial institution authorized to do business in this state for the deposit of investor funds.

f. 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.

2.a. An intermediary must:

(I) Comply with any notice or filing requirements for exemption from registration as a broker-dealer established by rule or order of the commission or office under this chapter,

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which shall include annual registration and submission of a nonrefundable $200 registration fee.

(II) Facilitate the offer and sale of securities.

(III) 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) 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.

(B) A description of whether financial information provided by the issuer has been audited by an independent certified public accountant.

(IV) 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 office.

(V) Obtain evidence from each investor showing that the investor is a resident of this state. An investor that provides a legible copy of a Florida driver license has provided evidence of state residency.

(VI) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subparagraph (a)5.

(VII) Deposit and release investor funds in escrow pursuant to the escrow agreement executed by the issuer.

(VIII) Provide a monthly update for each offering, after the first full month following the date of the offering. The update must be accessible on the intermediary's platform and must display the date and amount of each sale of securities in

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the previous calendar month.

(IX) 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.

b. An intermediary may not:

(I) 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.

(II) Solicit purchases, sales, or offers to buy securities offered or displayed on its platform.

(III) Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to buy the securities offered or displayed on its platform.

(IV) Hold, manage, possess, or otherwise handle investor funds or securities.

3. 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.

4. 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.

5. Unless the investor is an accredited investor as defined

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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 subsection during a 12-month period may not exceed:

a. If the investor's annual income and net worth 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.

b. If the investor's annual income or net worth 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.

6. All funds received from investors must be used in accordance with representations made to investors by the intermediary.

7. 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

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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.

(b) The exemptions from registration requirements provided in this subsection 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 subparagraph (a)4.

(c) The office shall create and maintain on its website a list of all intermediaries providing offerings under this section.

Section 3. Subsection (20) of section 517.12, Florida Statutes, is amended to read:

517.12 Registration of dealers, associated persons, and investment advisers.—

(20) The registration requirements of this section do not apply to:

(a) Any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~s. 517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this

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subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(b) An intermediary exempted from registration under s. 517.061.

Section 4. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(a) On behalf of a viatical settlement provider, viatical settlement broker, life agent, or person engaged in the business of viatical settlements;

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~s. 517.021(23)~~; or

(c) On residents of this state in connection with a viatical settlement contract or viatical settlement investment.

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

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