

**Tab 1** CS/SB 1052 by IS, Lee (CO-INTRODUCERS) Rouson; (Compare to H 00733) Motor Vehicle Insurance

**Tab 2** SB 1208 by Baxley; (Identical to H 00975) Aircraft Liens

**Tab 3** SB 1252 by Gruters; (Similar to CS/H 00977) Public Accountancy

337902 A S RCS BI, Gruters Delete L.59 - 85: 04/01 06:18 PM

**Tab 4** SB 1466 by Gibson (CO-INTRODUCERS) Broxson, Rouson; (Similar to CS/H 00143) Protection for Vulnerable Investors

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**Tab 5** SB 1560 by Flores; (Similar to CS/H 00935) Price Transparency in Contracts

**Tab 6** SB 1632 by Taddeo; Mortgage Lending

**Tab 7** SB 1636 by Perry; (Compare to H 01399) Workers' Compensation

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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Broxson, Chair**  
**Senator Rouson, Vice Chair**

**MEETING DATE:** Monday, April 1, 2019  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 1052</b> Infrastructure and Security / Lee (Compare H 733, CS/H 765, S 896, S 1232)	Motor Vehicle Insurance; Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising minimum liability coverage requirements for motor vehicle owners or operators; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; revising the minimum net worth requirements to qualify certain persons as self-insurers, etc.  IS 03/12/2019 Fav/CS BI 04/01/2019 Favorable AP	Favorable Yeas 5 Nays 3
2	<b>SB 1208</b> Baxley (Identical H 975)	Aircraft Liens; Specifying that a lienor is not required to possess an aircraft to perfect certain liens, etc.  BI 04/01/2019 Favorable JU RC	Favorable Yeas 8 Nays 0
3	<b>SB 1252</b> Gruters (Similar CS/H 977)	Public Accountancy; Revising the percentage of total hours of accounting-related and auditing-related continuing education required by the Board of Accountancy for license renewal; updating provisions relating to license reactivation; prohibiting a person from performing or offering to perform certain services without a license, etc.  IT 03/19/2019 Favorable BI 04/01/2019 Fav/CS RC	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Monday, April 1, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1466</b> Gibson (Similar CS/H 143)	Protection for Vulnerable Investors; Requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe exploitation of specified adults has occurred, is occurring, has been attempted, or will be attempted, etc.  CF 03/25/2019 Favorable BI 04/01/2019 Fav/CS RC	Fav/CS Yeas 8 Nays 0
5	<b>SB 1560</b> Flores (Similar CS/H 935, Compare S 7078)	Price Transparency in Contracts; Defining the term "health insurer"; providing that a contract between a health insurer and a health care provider may not limit certain disclosures and must prohibit the insurer from requiring payments for services from an insured which exceed certain amounts, etc.  BI 04/01/2019 Temporarily Postponed HP RC	Temporarily Postponed
6	<b>SB 1632</b> Taddeo (Compare CS/S 1730)	Mortgage Lending; Revising the definition of the term "mortgage loan" to remove a condition that residential loans be primarily for personal, family, or household use, etc.  BI 04/01/2019 Temporarily Postponed CM RC	Temporarily Postponed
7	<b>SB 1636</b> Perry (Compare H 1399)	Workers' Compensation; Revising a prohibition against persons receiving certain fees, consideration, or gratuities under the Workers' Compensation Law; increasing the maximum number of weeks of benefits payable for temporary total disability, temporary partial disability, and temporary total disability; requiring injured employees and other claimants to sign and attest to a specified statement relating to the payment of attorney fees before engaging an attorney or other representative for certain purposes, etc.  BI 03/25/2019 Temporarily Postponed BI 04/01/2019 Temporarily Postponed JU RC	Temporarily Postponed

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1052

INTRODUCER: Infrastructure and Security Committee and Senator Lee and others

SUBJECT: Motor Vehicle Insurance

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	<b>Fav/CS</b>
2.	Knudson/Matuyow	Knudson	BI	<b>Favorable</b>
3.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1052 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain Personal Injury Protection (PIP) coverage. Beginning January 1, 2020, the bill enacts financial responsibility requirements for liability for damages that result from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle, as follows:

- For bodily injury (BI) or death of one person in any one crash, \$25,000, and
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

The bill retains the existing \$10,000 financial responsibility requirement for property damage (PD).

The bill also revises required coverage amounts for garage liability and commercial motor vehicle insurance, and increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.



The bill replaces the PIP coverage mandate with optional medical payments coverage which must provide coverage of at least \$5,000 for medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage also includes a death benefit of at least \$5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

The insurer must offer medical payments coverage at limits of \$5,000 and \$10,000, with an option for no deductible or a \$500 deductible. Insurers may also offer other limits greater than \$5,000, and other deductibles less than \$500. Policies are presumed to include medical payments coverage with a limit of \$10,000 with no deductible unless the insured declines medical payments coverage or selects coverage at a different limit or with a deductible.

The bill also requires the insurer to reserve \$5,000 of benefits for payment to specified physicians or dentists who provide emergency services and care or who provide hospital inpatient care for 30 days after the date the insurer receives notice of the accident.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury.

Additionally, the bill authorizes the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, with the written consent of the policyholder.

The bill appropriates \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act.

The bill takes effect January 1, 2020, except as otherwise provided and except that provisions relating to application of the laws during the transition from PIP coverage to the new financial responsibility requirements and the effective date section, take effect upon becoming a law.

## **II. Present Situation:**

Under the Florida Motor Vehicle No-Fault Law (No-Fault Law),<sup>1</sup> owners or registrants of motor vehicles are required to purchase personal injury protection (PIP) insurance which compensates persons injured in accidents regardless of fault.<sup>2</sup> Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.<sup>3</sup> This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.<sup>4</sup> In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

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<sup>1</sup> Sections 627.730-627.7405, F.S.

<sup>2</sup> Section 627.733, F.S.

<sup>3</sup> See s. 627.731, F.S.

<sup>4</sup> Section 627.737, F.S.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.<sup>5</sup> The personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.<sup>6</sup> PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,<sup>7</sup> 60 percent of loss of income,<sup>8</sup> and 100 percent of replacement services,<sup>9</sup> for bodily injury sustained in a motor vehicle accident, without regard to fault. The property damage liability coverage must provide a \$10,000 minimum benefit. A \$5,000 death benefit is also provided.<sup>10</sup>

### **PIP Medical Benefits**

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.<sup>11</sup> To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.<sup>12</sup> Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or must be rendered in a hospital, a facility that owns or is owned by a hospital, or a licensed emergency transportation and treatment provider.<sup>13</sup> Follow-up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.<sup>14</sup>

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician's assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.<sup>15</sup> An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.<sup>16</sup> If a provider who rendered treatment or services does not determine that the insured had an emergency medical condition, the PIP medical benefit limit is \$2,500.<sup>17</sup> Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.<sup>18</sup>

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<sup>5</sup> See ss. 324.022, F.S. and 627.733, F.S.

<sup>6</sup> Section 627.736(1), F.S.

<sup>7</sup> Section 627.736(1)(a), F.S.

<sup>8</sup> Section 627.736(1)(b), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 627.736(1)(c), F.S.

<sup>11</sup> Chapter 2012-197, L.O.F. (CS/CS/HB 119)

<sup>12</sup> Section 627.736(1)(a), F.S.

<sup>13</sup> Section 627.736(1)(a)1., F.S.

<sup>14</sup> Section 627.736(1)(a)2., F.S.

<sup>15</sup> Section 627.736(1)(a)3., F.S.

<sup>16</sup> Section 627.732(16), F.S.

<sup>17</sup> Section 627.736(1)(a)4., F.S.

<sup>18</sup> Section 627.736(1)(a)5., F.S.

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

### **Medical Fee Limits for PIP Reimbursement**

Section 627.736(5), F.S., authorizes insurers to limit reimbursement for benefits payable from PIP coverage to 80 percent of the following schedule of maximum charges:

- For emergency transport and treatment (ambulance and emergency medical technicians), 200 percent of Medicare;
- For emergency services and care provided by a hospital, 75 percent of the hospital's usual and customary charges;
- For emergency services and care and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;
- For hospital inpatient services, 200 percent of Medicare Part A;
- For hospital outpatient services, 200 percent of Medicare Part A;
- For services supplies and care provided by ambulatory surgical centers and clinical laboratories, 200 percent of Medicare Part B;
- For durable medical equipment, 200 percent of the Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B;
- For all other medical services, supplies, and care, 200 percent of the participating physicians fee schedule of Medicare Part B; and
- For medical care not reimbursable under Medicare, 80 percent of the workers' compensation fee schedule. If the medical care is not reimbursable under either Medicare or workers' compensation then the insurer is not required to provide reimbursement.

The insurer may not apply any utilization limits that apply under Medicare or workers' compensation.<sup>19</sup> In addition, the insurer must reimburse a health care provider rendering services under the scope of his or her license, regardless of any restriction under Medicare that restricts payments to certain types of health care providers for specified procedures. Medical providers are not allowed to bill the insured for any excess amount when an insurer limits payment as authorized in the fee schedule, except for amounts that are not covered due to the PIP coinsurance amount (the 20 percent copayment) or for amounts that exceed maximum policy limits.<sup>20</sup>

In 2012, the Legislature enacted chapter 2012-197, Laws of Florida, to revise the PIP medical fee schedule in an effort to resolve alleged ambiguities that led to conflicts and litigation between claimants and insurers. The law clarified the reimbursement levels for care provided by ambulatory surgical centers and clinical laboratories and for durable medical equipment. The law also provided that Medicare fee schedule in effect on March 1, is applicable for the remainder of that year.<sup>21</sup> Insurers were authorized to use Medicare coding policies and payment methodologies of the Centers for Medicare and Medicare Services, including applicable

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<sup>19</sup> Section 627.736(5)(a)3., F.S.

<sup>20</sup> Section 627.736(5)(a)4., F.S.

<sup>21</sup> Section 627.736(5)(a)2., F.S.

modifiers, when applying the fee schedule if they do not constitute a utilization limit.<sup>22</sup> The law also required insurers to include notice of the fee schedule in their policies.<sup>23</sup>

### **Attorney Fees**

Section 627.428, F.S., requires an insurer to pay the insured's or beneficiary's reasonable attorney fees upon a judgment against the insurer and in favor of the insured or named beneficiary under an insurance policy, and applies to disputes under the No-Fault Law.<sup>24</sup> Chapter 2012-197, L.O.F., amended provisions related to attorney fee awards in No-Fault disputes. The law prohibited the application of attorney fee multipliers.<sup>25</sup> The law also required that the attorney fees awarded must comply with prevailing professional standards, not overstate or inflate the number of hours reasonably necessary for a case of comparable skill or complexity, and represent legal services that are reasonable to achieve the result obtained.<sup>26</sup> The offer of judgment statute, s. 768.79, F.S., is applied to No-Fault cases, providing statutory authority for insurers to recover fees if the plaintiff's recovery does not exceed the insurer's settlement offer by a statutorily specified percentage.<sup>27</sup>

### **Mandatory Rate Filings and Data Call**

Chapter 2012-197, L.O.F., required the Office of Insurance Regulation to contract with a consulting firm to calculate the expected savings from the act.<sup>28</sup> The OIR retained Pinnacle Actuarial Resources, Inc., which released an August 20, 2012, report estimating an indicated statewide average savings in PIP premiums of 14 percent to 24.6 percent and an average overall motor vehicle insurance premium reduction ranging from 2.8 percent to 4.9 percent.<sup>29</sup> The report noted that if insurers' current PIP rates were inadequate they would likely offset the savings from Chapter 2012-197, L.O.F., against their indicated PIP rates. By October 1, 2012, each insurer writing private passenger automobile PIP insurance was required to submit a rate filing providing at least a 10 percent reduction of its PIP rate or explain in detail its reasons for failing to achieve those savings. The Legislature required a second mandatory rate filing due January 1, 2014, that provided at least a 25 percent reduction of the insurer's July 1, 2012, PIP rate or explained in detail its reasons for failing to achieve those savings.

The Office of Insurance Regulation performed a comprehensive PIP data call on January 1, 2015, that analyzed the impact of the 2012 act's reforms on the PIP insurance market. The top 25 personal lines automobile insurers<sup>30</sup> generally failed to achieve a 25 percent rate reduction

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<sup>22</sup> Section 627.736(5)(a)3., F.S.

<sup>23</sup> Section 627.736(5)(a)5., F.S.

<sup>24</sup> Section 627.736(8), F.S.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> Section 15, Ch. 2012-197, L.O.F.

<sup>29</sup> Pinnacle Actuarial Resources, Inc., *Impact Analysis of HB 119*, (Aug. 20, 2012) available at <https://www.floir.com/siteDocuments/HB119ImpactAnalystFINAL08202012.pdf> (last viewed March 7, 2019).

<sup>30</sup> On an earned premium basis.

and instead reduced PIP rates an average of 13.6 percent.<sup>31</sup> Rates were only reduced an average of 0.1 percent for a full auto insurance premium consisting of PIP, property damage, bodily injury, uninsured motorists, collision and comprehensive coverages.<sup>32</sup> The OIR noted that though the required rate filings were on the low end of 2012 Pinnacle report, prior to the 2012 act, the statewide average approved rate changes were a 46.3 percent increase in PIP rates, and a 12.9 percent rate increase for full auto insurance.<sup>33</sup>

Rate filings by top 25 auto insurers from January 1, 2015, to January 18, 2017, reversed the entirety of the rate reductions achieved post the 2012 act, resulting in average premiums higher than those charged before that act became law.<sup>34</sup> Generally, motor vehicle insurance rates increased nationally.<sup>35</sup> Recent data from the United States Department of Labor indicates that the consumer price index for motor vehicle insurance (U.S. city average for urban consumers) increased 3.4 percent from January of 2018 to January of 2019.<sup>36</sup> The number of crashes and crashes involving injuries reported to the Florida Department of Highway Safety and Motor Vehicles in the most recent 3 years is shown in the table below.<sup>37</sup>

Florida Motor Vehicle Crashes			
Calendar Year	Total Crashes	Injury Crashes	Fatalities
2016	395,972	166,002	3,175
2017	402,499	166,666	3,116
2018	400,619	166,172	3,070

### Motor Vehicle Insurance Fraud

Motor vehicle insurance fraud is a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled “Florida’s Motor Vehicle No-Fault Law”, which was a comprehensive review of Florida’s No-Fault system.<sup>38</sup> The report indicated that fraud was at an “all-time” high at the time, noting:

“Florida’s no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash

<sup>31</sup> Office of Insurance Regulation, *Report on Review of the Data Call Pursuant to HB 119 – Motor Vehicle Personal Injury Protection (PIP) Insurance*, Pg. 43 (January 1, 2015) available at

<https://www.floir.com/siteDocuments/HB119DataCallReport.pdf> (last viewed March 7, 2019).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at pg. 41.

<sup>34</sup> See Office of Insurance Regulation, *Florida Personal Auto Market Presented to The Florida Senate Committee on Banking and Insurance*, pg. 3 (January 24, 2017) available at

<https://www.floir.com/siteDocuments/SenateBIFLPersonalAutoMarketPresentation01242017.pdf> (last viewed March 7, 2019)

<sup>35</sup> See National Association of Insurance Commissioners, *Auto Insurance Database Report 2015/2016*, pg. 26 (2018) [https://naic.org/prod\\_serv/AUT-PB-15.pdf](https://naic.org/prod_serv/AUT-PB-15.pdf) (last viewed March 29, 2019).

<sup>36</sup> United States Department of Labor, *Economic News Release Consumer Price Index Summary* (January 2019) available at <https://www.bls.gov/news.release/cpi.t02.htm> (last viewed March 10, 2019).

<sup>37</sup> See Florida Department of Highway Safety and Motor Vehicles, Florida Integrated Report Exchange System Quick Statistics at <https://firesportal.com/Pages/Public/QuickStats.aspx> (last viewed March 10, 2019).

<sup>38</sup> See Florida’s Motor Vehicle No-Fault Law, *Report Number 2006-102*, available at [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-102bilong.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf) (last viewed March 10, 2019).

reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering...”

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders. The 2012 act contained numerous provisions designed to curtail PIP fraud. A health care practitioner found guilty of insurance fraud under s. 817.234, F.S., loses his or her license for 5 years and may not receive PIP reimbursement for 10 years. Insurers are provided an additional 60 days (90 total) to investigate suspected fraudulent claims, however, an insurer that ultimately pays the claim must also pay an interest penalty.<sup>39</sup> All entities seeking reimbursement under the No-Fault Law must obtain health care clinic licensure except for hospitals, ambulatory surgical centers, entities owned or wholly owned by a hospital, clinical facilities affiliated with an accredited medical school and practices wholly owned by a physician, dentist, or chiropractic physician or by such physicians and specified family members.<sup>40</sup> The act also defined failure to pay PIP claims within the time limits of s. 627.736(4)(b), F.S., as an unfair and deceptive practice.

### **Financial Responsibility Law**

Florida’s financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.<sup>41</sup> The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.<sup>42</sup> At that time, a driver’s financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.<sup>43</sup> The driver’s license and registration of the driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.<sup>44</sup> A driver’s license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.<sup>45</sup>

### **Review of Auto Insurance Systems**

Two auto insurance systems are utilized throughout the country: the tort system and the no-fault system, with certain variations. Thirty-eight states utilize the tort system in which the at-fault party is liable for damages (medical, economic, property damage and pain and suffering) to other parties in an accident.<sup>46</sup> Parties seeking redress for their injuries do so from the at-fault driver,

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<sup>39</sup> Section 627.736(4)(i), F.S.

<sup>40</sup> Section 627.736(5)(h), F.S.

<sup>41</sup> See ch. 324, F.S.

<sup>42</sup> Section 324.011, F.S.

<sup>43</sup> Section 324.022, F.S.

<sup>44</sup> Section 324.0221(2), F.S.

<sup>45</sup> Section 324.0221(3), F.S.

<sup>46</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North

and must prove negligence on the part of that individual. Nine of the 38 tort states, known as “add-on” states, require auto insurers to offer PIP coverage, but unlike no-fault states, do not restrict the right to pursue a liability claim or lawsuit.<sup>47</sup> Benefits are generally either offered in a PIP coverage form similar to that in no-fault states or as additional wage replacement benefits to medical payments coverage. Three tort add-on states require the purchase of PIP coverage; six do not, but require insurers to offer PIP coverage.

Twelve states (including Florida) have a no-fault system and mandate first-party PIP coverage for medical benefits, wage loss, and death benefits, with a limitation on pain and suffering lawsuits.<sup>48</sup> All 12 jurisdictions take different approaches to no-fault legislation in that coverage amounts, deductibles, mandated coverages, tort thresholds for pain and suffering claims, and the use of fee schedules or treatment protocols vary widely among these entities. Each state has either a “verbal” or “monetary” threshold regarding the seriousness of a person’s injuries that must be met prior to the filing of a tort suit for noneconomic damages against an at-fault driver. Florida and the four most populous no-fault states use a verbal threshold, which is a statutory description of the severity of an injury. The seven remaining no-fault states have monetary thresholds ranging from \$1,000 to \$5,000. Three of the 12 no-fault states (Kentucky, New Jersey and Pennsylvania) are known as “choice” states and offer consumers a choice between purchasing PIP coverage and traditional tort liability coverage, which does not include PIP benefits.

### **Tort-Based Motor Vehicle Insurance Jurisdictions**

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages from dollar one. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

If Florida repeals PIP and mandates BI coverage, it will be important for drivers to appreciate coverage applications under the tort system. For the most common type of accident (with one party at-fault), the at-fault party’s BI coverage would pay for injuries to the not at-fault driver, unless the at-fault party was uninsured. If the at-fault party is uninsured (or underinsured), the not at-fault party would utilize his/her Uninsured Motorist (UM) coverage, if purchased, to pay for injuries sustained in an accident. The at-fault party’s PD coverage would compensate for physical damages to the not at-fault driver’s vehicle. If the not-at-fault party has Med Pay coverage, it can be used to cover his or her own medical expenses, which could then be subrogated into the BI claim by the not at-fault driver’s insurer.

With respect to the at-fault party, that driver’s own health insurance, if available, would cover his or her own expenses. Med Pay coverage, if purchased, would pay for his/her medical expenses up to the Med Pay limits, at which point health insurance would apply. In the event the at-fault

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Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>47</sup> Arkansas, Delaware, Maryland, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin.

<sup>48</sup> Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah are the other No-Fault states.

party did not have health insurance, then the medical costs would not be reimbursed and the individual would be responsible for these costs or such costs would be assumed by the health care provider.

For single car accidents, the driver of the vehicle is presumed to be the at-fault party and therefore will be essentially in the same situation as the at-fault party described above. Occupants in the vehicle can sue the driver of the vehicle for their injuries and are in a similar circumstance to the not at-fault party's situation, previously described. Family members are precluded from suing the driver because of the intra-family exclusion resulting in the fact that only non-family occupants can pursue a tort claim. Pedestrians who are injured in an accident are in a similar situation as the not at-fault party.

### **III. Effect of Proposed Changes:**

#### **Repeal of the Florida Motor Vehicle No-Fault Law**

**Section 1** repeals ss. 627.730-627.7405, F.S., which constitute the Florida Motor Vehicle No-Fault Law.

Two of the most significant provisions repealed are the requirement to maintain PIP coverage under s. 627.736, F.S., and the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

**Section 2** repeals s. 627.7407, F.S., which explained how the Florida Motor Vehicle No-Fault Law was to be applied after being reinstated by ch. 2007-324, Laws of Florida.

#### **Mandatory Bodily Injury Liability Coverage Requirements**

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond to damages for liability because of crashes arising out of the use of a motor vehicle.<sup>49</sup> This requirement is usually met through the purchase of motor vehicle insurance.

**Sections 12 and 13** amend ss. 324.021 and 324.022, F.S., respectively, to require beginning January 1, 2020, every owner or operator of a motor vehicle registered in this state to maintain the ability to respond to damages for liability that results from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle as follows:

- For BI or death of one person in any one crash, \$25,000.
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

The bill retains current law that requires drivers to maintain the ability to respond to damages of \$10,000 for damage to, or the destruction of, other's property in a crash.

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<sup>49</sup> Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.



Financial responsibility may be met through motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. Beginning January 1, 2020, the minimum combined single limit will be \$60,000.

### ***Required Provisions in Motor Vehicle Liability Policies***

**Section 21** amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility to contain certain provisions. The bill requires policies issued to the owner of a motor vehicle registered in this state to insure all named insureds and any operator using the vehicle with the permission of the owner of the vehicle insured by the policy from liability resulting from the use of the motor vehicle referenced in the policy. The section of the bill also inserts a cross-reference to new provisions in the bill relating to excluding named drivers from certain coverage, discussed below.

**Section 42** amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include BI liability coverage and PD liability coverage as required by s. 324.022, F.S.

### ***Meeting Financial Responsibility through a Certificate of Self-Insurance***

**Section 16** amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy. Two alternatives are also available under the statute. A person may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth.

A person furnishing a certificate of self-insurance showing a deposit of cash must, beginning January 1, 2020, furnish a certificate of deposit equal to the number of vehicles owned times \$60,000, to a maximum of \$240,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. The bill retains current law that all persons using this method to maintain excess coverage of the amount deposited with limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit.

Under **Section 23** of the bill amending s. 324.161, F.S., the proof of a certificate of deposit must be provided annually, and must be from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The second alternative method is obtaining a certificate of self-insurance issued by the DHSMV. **Section 24** amends s. 324.171, F.S., effective January 1, 2020, to provide that a certificate of self-insurance from the DHSMV pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$100,000. Current law requires a net unencumbered worth of at least \$40,000. A person other than a natural person may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional vehicle. Current law requires a net unencumbered worth of \$40,000 for the first motor

vehicle and \$20,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons.

### ***Garage Liability Insurance Requirement***

**Section 7** amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill defines “garage liability insurance” to mean, beginning January 1, 2020, combined single-limit liability coverage, including property damage and BI liability coverage, of at least \$60,000.

Current law only requires at least \$25,000 in such coverage and requires \$10,000 of PIP coverage.

**Section 8** amends s. 320.771, F.S., and applies the same garage liability insurance requirement to recreational vehicle dealers.

### ***Financial Responsibility Requirement for For-Hire Vehicles***

**Section 17** amends s. 324.032, F.S., which provides the financial responsibility requirements for for-hire passenger vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and retains the minimum limits of coverage, which are \$125,000/\$250,000 of BI and \$50,000 of PD. The bill amends current law by specifying the coverage must be purchased by an insurer that is a member of the Florida Insurance Guaranty Association.

### **Optional Medical Payments Coverage**

#### ***Medical Payments Coverage Benefits***

**Section 40** creates s. 627.7265, F.S., which authorizes the inclusion of medical payments coverage of at least \$5,000 in each motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S. Medical payments coverage must provide coverage of at least \$5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage also includes a death benefit of at least \$5,000. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

Before issuing a motor vehicle liability policy furnished as proof of financial responsibility, an insurer must offer medical payments coverage at limits of \$5,000 and \$10,000, with an option for no deductible or a \$500 deductible. Insurers may also offer limits at greater than \$5,000, and deductibles less than \$500.

Each motor vehicle liability policy furnished as proof of financial responsibility is deemed to have:

- Medical payments coverage to a limit of \$10,000, unless the policyholder, in writing on an approved form, refuses the coverage or selects coverage at a limit other than \$10,000.
- No medical payments coverage deductible, unless the policyholder, in writing on an approved form, selects a deductible of up to \$500.<sup>50</sup>

The forms must be approved by the OIR and fully advise the applicant of the nature of the coverage being rejected or the policy limit or deductible being selected. The named insured's signature on such form constitutes a conclusive presumption of an informed, knowing rejection or selection. If the policyholder does not request in writing the specified coverage, the coverage need not be provided in any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if the policyholder has rejected the coverage or has selected an alternative coverage limit or deductible. An insurer must provide at least annually a notice of availability of coverage, which must be attached to the notice of premium and provide a means allowing the insured to request medical payments coverage at the limits and deductibles specified. Receipt of the notice does not constitute a waiver of an insured's right to medical payments coverage if the insured has not signed a selection or rejection form.

Upon receiving notice of an accident potentially covered by medical payments coverage benefits, the insurer must reserve \$5,000 for payment to licensed physicians and licensed dentists who provide emergency services and care or who provide hospital indigent care. The reserve amount may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice may be used by the insurer to pay other claims.

An insurer providing medical payments coverage benefits may not have a:

- Lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached;
- Cause of action against an alleged tortfeasor for benefits paid under medical payments coverage; or
- Cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when benefits are paid by reason of fraud by such person.

**Section 26** amends s. 400.9905, F.S., providing that an entity is deemed a "clinic" and must be licensed in order to receive medical payments coverage reimbursement under s. 627.7265, F.S., unless the entity is:

- Wholly owned by a licensed physician, a licensed dentist, or a licensed chiropractic physician, or by the physician, dentist, or chiropractic physician and the spouse, parent, child, or sibling of the physician, dentist, or chiropractic physician;
- A licensed hospital or ambulatory surgical center;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a licensed hospital or hospitals;

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<sup>50</sup> These provisions are similar to current law applicable to selection or rejection of uninsured motorist vehicle coverage in s. 627.727, F.S., which provisions are retained.

- A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic certified under federal law to provide outpatient physical therapy and speech pathology services; or
- Owned by a publicly traded corporation which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for operations of the entity are licensed health care practitioners in this state and are responsible for supervising the business and the entity's compliance with state law.

This section of the bill also revises the definition of a “clinic” contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to medical payments coverage.

### **Uninsured and Underinsured Motor Vehicle Insurance Coverage**

**Section 41** amends s. 627.727, F.S., which governs uninsured and underinsured motor vehicle insurance coverage. The bill deletes subsection (7), under which current law specifies that UM coverage does not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is of sufficient severity under “verbal threshold” s. 627.737(2), F.S. Under PIP, a person cannot recover “pain and suffering” damages from the at-fault driver’s bodily injury coverage unless the person’s injuries exceed a certain severity threshold<sup>51</sup>, commonly referred to as the “verbal threshold.” Personal injury protection is considered a no-fault coverage because the injured person trades a limitation on the ability to recover pain and suffering damages for the ability to get PIP benefits even if the injured person is at fault in the accident. Uninsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. The bill repeals the “verbal threshold” contained in the No-Fault Law, thus this corresponding provision is also repealed.

### **Named Driver Exclusion**

**Section 22** creates s. 627.747, F.S., authorizing a private passenger motor vehicle policy to exclude an identified individual from coverages. Currently, the OIR requires insurers to provide exceptions to named driver exclusions up to statutorily required minimum limits for PIP coverage, BI liability coverage if the policy is used to meet financial responsibility requirements, UM coverage, and property damage liability coverage.<sup>52</sup>

Under the bill, if an identified individual is specifically excluded by name on the policy declarations page or by endorsement, and a policyholder consents to such exclusion in writing, a private passenger motor vehicle policy may exclude an identified individual from the following coverages:

- Property damage liability coverage.

<sup>51</sup> The injury or disease must consist in whole or in part of significant and permanent loss of an important bodily function; permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; significant and permanent scarring or disfigurement; or death. See s. 627.737(2), F.S.

<sup>52</sup> See Office of Insurance Regulation, *2018 Agency Bill Analysis SB 518*, pg. 2 (Oct. 30, 2017). On file with the Senate Banking and Insurance Committee.

- Bodily injury liability coverage.
- Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.
- Any coverage the policyholder is not required by law to purchase.

However, a private passenger motor vehicle policy may not exclude coverage when:

- The identified excluded individual is injured while not operating a motor vehicle;
- The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the Office of Insurance Regulation; or
- The exclusion is inconsistent with the underwriting rules filed by the insurer.

An individual would not be covered for damages that occur while operating a motor vehicle that is insured under a policy that excludes the individual, under the conditions specified, from any or all of the specified coverages, unless the individual is injured while not operating a motor vehicle, the exclusion is unfair discrimination, or if the exclusion is inconsistent with the insurer's underwriting rules.

### **Commercial Motor Vehicle Coverage Requirements**

**Section 45** amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

Beginning January 1, 2020, a commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$60,000. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$120,000 per occurrence beginning January 1, 2020. Current law requires \$100,000 of coverage.

### **Technical and Conforming Changes**

**Section 3** amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill specifies that any person required by s. 324.022, F.S., to maintain liability security for operating a motor vehicle must have proof of security in his or her immediate possession and deletes references to PIP and amended or repealed sections of law.

**Section 4** amends s. 318.18(2), F.S., regarding nonmoving traffic violations, to remove a reference to PIP and conform cross references.

**Section 5** amends s. 320.02, F.S., which contains the requirements to register a motor vehicle. The bill amends the section to require proof of motor vehicle insurance that meets the minimum limits of bodily injury liability and property damage liability.

**Section 6** amends s. 320.0609, F.S., regarding transfer and exchange of registration license plates to eliminate a reference to PIP.

**Section 9** amends s. 322.251, F.S., regarding notice of cancellation, suspension, or revocation of a driver's license to repeal references to the No-Fault Law.

**Section 10** amends s. 322.34, F.S., regarding driving on a suspended, revoked, canceled, or disqualified driver's license, to delete a reference to the No-Fault Law.

**Section 11** amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that under the chapter all owners or operators of a motor vehicle required to be registered in this state must establish, maintain and show proof of financial responsibility. Currently, financial responsibility requirements only apply after an operator is involved in a crash or convicted of certain traffic offenses.

**Section 14** amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and property damage coverage, insert references to BI liability coverage, and conform cross references.

**Section 15** corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

**Section 18** amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

**Section 19** amends s. 324.071, F.S., to provide stylistic changes to provisions governing the reinstatement of a suspended license.

**Section 20** amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to automobile liability policy while retaining references to a motor vehicle liability policy.

**Section 25** amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the "Financial Responsibility Law of 2019" and state it will be effective at 12:01 a.m., on January 1, 2020. Currently the chapter is the "Financial Responsibility Law of 1955."

**Sections 27 and 28** amend s. 400.991, F.S., and s. 400.9935, F.S., respectively, of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to medical payments coverage.

**Section 29** revises the definition of a "third party benefit" in s. 409.901, F.S., for purposes of Medicaid to refer to medical payments coverage rather than PIP coverage.

**Section 30** amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

**Section 31** amends s. 456.057, F.S., regarding patient records, to correct a cross-reference.

**Section 32** amends s. 456.072, F.S., which allows the Department of Health to discipline licensees for submitting claims for PIP reimbursement when treatment was not rendered or that are intentionally upcoded, to relocate from the repealed s. 627.732, F.S., the existing definition of “upcoded” and refer instead to medical payments coverage.

**Section 33** amends s. 626.9541(1)(i) and (o), F.S., regarding unfair insurance trade practices related to motor vehicle insurance. The bill deletes the unfair trade practice in paragraph (i) for failing to pay claims within statutory time periods required under the No-Fault Law to conform to the repeal of those time frames by the bill. The section makes a technical amendment to paragraph (o) to reference BI liability coverage, property damage liability coverage, and medical payments coverage, rather than PIP, in the prohibitions against the unfair insurance trade practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

**Section 34** amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to medical payments coverage, rather than the No-Fault Law.

**Section 35** amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to medical payments.

**Sections 36 and 37** amend s. 627.0652, F.S., and s. 627.0653, F.S., respectively, relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to medical payments coverage.

**Section 38** amends s. 627.4132, F.S., regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

**Section 39** amends s. 627.7263, F.S., which generally makes the rental and leasing driver’s insurance primary, to delete references to PIP and insert references to medical payments coverage.

**Section 43** amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of “policy.”

**Section 44** amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and inserting references to BI liability coverage.

**Section 46** amends s. 627.748, F.S., relating to insurance requirements for transportation network companies, to remove references to PIP required under the repealed No-Fault law and insert a cross-reference to the revised financial responsibility requirements for for-hire passenger transportation vehicles in section 17 of the bill.

**Section 47** amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies, to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD.

**Section 48** amends s. 627.915, F.S., which requires private passenger automobile insurers to report annually information to the office, to remove references to PIP.

**Section 49** amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

**Section 50** amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

**Section 51** amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

**Section 52** amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to medical payments coverage.

### **Application of Bill and Effective Date**

**Section 53** creates s. 627.7278, F.S., applying financial responsibility requirements and optional medical payments coverage created by the bill as follows:

- Effective January 1, 2020:
  - All motor vehicle insurance policies issued or renewed may not include PIP.
  - All persons must maintain at least minimum security requirements, which is the ability to respond to damages for liability because of motor vehicle crashes in the amounts required in s. 324.021(7), F.S., for private use motor vehicles, for-hire passenger transportation vehicles, commercial motor vehicles, and nonpublic sector buses.
  - Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements.
  - An existing motor vehicle insurance policy that provides PIP and property damage liability coverage but does not meet the new bodily injury liability requirements is deemed to meet the bodily injury requirements until the policy is renewed, non-renewed or cancelled on or after January 1, 2020, and the provisions of the No-Fault law and other related statutes remain in full force and effect for motor vehicle accidents covered under a policy issued under the No-Fault law before that date, until the policy is renewed, nonrenewed, or canceled.
- Insurers must allow each insured who has a policy providing PIP which is effective before January 1, 2020, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements effective on or after January 1, 2020. The insurer is also required to offer each insured the optional medical payments coverage required by the bill. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated.
- By September 1, 2019, each motor vehicle insurer shall provide notice that:
  - The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2020, and that PIP coverage is no longer required or available for purchase.



- Effective January 1, 2020, a person subject to the financial security requirements of s. 324.022, F.S., must maintain minimum security requirements for bodily injury liability and property damage liability in the following amounts:
  - \$25,000 for BI or death of one person in any one crash and, subject to such limits, \$50,000 for BI or death of two or more persons in any one crash, and
  - \$10,000 for PD in any one crash.
- BI liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.
- Effective January 1, 2020, each holder of a motor vehicle liability insurance policy purchased as proof of financial responsibility must be offered the optional medical payments coverage benefits at limits of \$5,000 and \$10,000 without a deductible, may be offered such coverage at limits greater than \$5,000, and may be offered coverage with a deductible of up to \$500. Medical payments coverage pays covered medical expenses, up to the limits, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle. Medical payments coverage also provides a death benefit of at least \$5,000.
- A policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
- A policy effective before January 1, 2020, is deemed to meet minimum security requirements until it is renewed, non-renewed, or canceled.
- A policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements.
- If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective upon the act becoming a law.

**Section 54** creates s. 324.0222, F.S., requiring all driver license and motor vehicle registration suspensions for failure to maintain required security as required by law in effect before January 1, 2020, to remain in full force and effect after the effective date of this act. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

**Section 55** appropriates \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing the act.

**Section 56** provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective January 1, 2020.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15. The bill retains this reinstatement fee for a license suspension based upon a crash report under s. 324.051(2), F.S.; a registration suspension under s. 324.072, F.S., based on a license suspension pursuant to s. 322.26, F.S., or s. 322.27, F.S.; suspension of the operating privileges of a nonresident driver under s. 324.081, F.S.; or suspension of license and registration under s. 324.121, F.S., for failure to satisfy a judgment.

The bill retains the current reinstatement fees under s. 324.0221, F.S., for a suspended license or registration for failure to maintain required insurance based on a report by an insurer. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

## B. Private Sector Impact:

The fiscal impact to policyholders, health insurers, health care providers, and injured claimants is indeterminate. However, in a 2016 report, *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, provided, among other information, actuarial estimates of the savings expected from repealing the No-Fault

Law.<sup>53</sup> The report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of \$25,000/\$50,000, that a 5.6 percent savings would be realized in the statewide average premium charge.<sup>54</sup> The 2016 PIP Study estimated that health insurers would cover approximately \$469.7 million of current PIP loss if No-Fault were repealed.<sup>55</sup> Health care providers would cover approximately \$32.8 million of current PIP losses.<sup>56</sup> Injured claimants would cover approximately \$82.9 million of current PIP losses.<sup>57</sup>

The actuarial consulting firm Milliman, Inc., estimated the impact of similar, but not identical, legislation in 2018, on behalf of the Property and Casualty Insurers Association of America. The Milliman report, dated January 25, 2018, estimated that repealing PIP and mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$67 (5.3 percent), increase premiums on average for drivers that currently purchase full coverage by \$105 (7.2 percent), and increase premiums on average \$230 (50.1 percent) for drivers who currently purchase only PIP and PD at the minimum mandatory limits.<sup>58</sup> The report estimates that *mandating* \$5,000 of MedPay in addition to mandating BI coverage of at least \$25,000/\$50,000 would increase premiums on average by \$115.85 (9.2 percent).<sup>59</sup> The report identifies as cost-drivers increasing premium the elimination of the No-Fault verbal threshold for noneconomic damages and the elimination of the PIP co-insurance provisions (20 percent for medical expenses and 40 percent for loss of income expenses).<sup>60</sup>

Policyholders who reside in the same household as a high-risk individual who is of driving age could see a decrease in their rates if they exclude such drivers from one or more of the specified coverages.

### C. Government Sector Impact:

The bill appropriates \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulations to implement the act. The fiscal impact to state and local governments is otherwise indeterminate.

## VI. Technical Deficiencies:

None.

<sup>53</sup> Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016), Appendix 3, p. 1. Available at <http://www.flair.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last viewed March 6, 2019).

<sup>54</sup> That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.

<sup>55</sup> See Office of Insurance Regulation fn. 52 at pg. 68.

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> Milliman, Inc., *Florida Personal Auto Insurance Impact of Repealing No-Fault Coverage – Prepared for Property Casualty Insurers Association of America*, pg. 4 (Jan. 25, 2018). Available at [http://floridapolitics.com/wp-content/uploads/2018/02/Impact-of-Repealing-No-Fault\\_Final.pdf](http://floridapolitics.com/wp-content/uploads/2018/02/Impact-of-Repealing-No-Fault_Final.pdf) (last viewed March 7, 2019).

<sup>59</sup> See Milliman at pg. 6.

<sup>60</sup> See Milliman at pgs. 9-10.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.011, 324.021, 324.022, 324.0221, 324.023, 324.031, 324.032, 324.051, 324.071, 324.091, 324.151, 324.161, 324.171, 324.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 626.9541, 626.989, 627.06501, 627.0652, 627.0653, 627.4132, 627.7263, 627.727, 627.7275, 627.728, 627.7295, 627.7415, 627.8405, 627.915, 628.909, 705.184, 713.78, and 817.234.

This bill creates the following sections of the Florida Statutes: 324.0222, 627.7265, and 627.7278.

This bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, 627.7405, and 627.7407.

**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 Infrastructure and Security on March 13, 2019:**

The CS incorporates technical revisions to correct grammar, statutory cross-references, and references to “paragraph” that should read “subparagraph.” In addition, the CS incorporates authorization for the exclusion of a specifically named individual from specified insurance coverages under a private passenger motor vehicle policy, under certain conditions.

- B. **Amendments:**

None.

By the Committee on Infrastructure and Security; and Senators  
Lee and Rouson

596-02960-19

20191052c1

1 A bill to be entitled  
2 An act relating to motor vehicle insurance; repealing  
3 ss. 627.730, 627.731, 627.7311, 627.732, 627.733,  
4 627.734, 627.736, 627.737, 627.739, 627.7401,  
5 627.7403, and 627.7405, F.S., which comprise the  
6 Florida Motor Vehicle No-Fault Law; repealing s.  
7 627.7407, F.S., relating to application of the Florida  
8 Motor Vehicle No-Fault Law; amending s. 316.646, F.S.;  
9 revising a requirement for proof of security on a  
10 motor vehicle and the applicability of the  
11 requirement; amending s. 318.18, F.S.; conforming a  
12 provision to changes made by the act; amending s.  
13 320.02, F.S.; revising the motor vehicle insurance  
14 coverages that an applicant must show to register  
15 certain vehicles with the Department of Highway Safety  
16 and Motor Vehicles; conforming a provision to changes  
17 made by the act; revising construction; amending s.  
18 320.0609, F.S.; conforming a provision to changes made  
19 by the act; amending s. 320.27, F.S.; defining the  
20 term "garage liability insurance"; revising garage  
21 liability insurance requirements for motor vehicle  
22 dealer applicants; conforming a provision to changes  
23 made by the act; amending s. 320.771, F.S.; revising  
24 garage liability insurance requirements for  
25 recreational vehicle dealer license applicants;  
26 amending ss. 322.251 and 322.34, F.S.; conforming  
27 provisions to changes made by the act; amending s.  
28 324.011, F.S.; revising legislative intent; amending  
29 s. 324.021, F.S.; revising definitions of the terms

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30 "motor vehicle" and "proof of financial  
31 responsibility"; revising minimum coverage  
32 requirements for proof of financial responsibility for  
33 specified motor vehicles; defining the term "for-hire  
34 passenger transportation vehicle"; conforming  
35 provisions to changes made by the act; amending s.  
36 324.022, F.S.; revising minimum liability coverage  
37 requirements for motor vehicle owners or operators;  
38 revising authorized methods for meeting such  
39 requirements; deleting a provision relating to an  
40 insurer's duty to defend certain claims; revising the  
41 vehicles that are excluded from the definition of the  
42 term "motor vehicle"; providing security requirements  
43 for certain excluded vehicles; conforming provisions  
44 to changes made by the act; conforming cross-  
45 references; amending s. 324.0221, F.S.; revising  
46 coverages that subject a policy to certain insurer  
47 reporting and notice requirements; conforming  
48 provisions to changes made by the act; amending s.  
49 324.023, F.S.; conforming cross-references; amending  
50 s. 324.031, F.S.; revising the amount of a certificate  
51 of deposit required to elect a certain method of proof  
52 of financial responsibility; revising excess liability  
53 coverage requirements for a person electing to use  
54 such method; amending s. 324.032, F.S.; revising  
55 financial responsibility requirements for owners or  
56 lessees of for-hire passenger transportation vehicles;  
57 amending ss. 324.051, 324.071, and 324.091, F.S.;  
58 making technical changes; amending s. 324.151, F.S.;

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59 conforming provisions to changes made by the act;  
 60 making technical changes; creating s. 627.747, F.S.;  
 61 providing that private passenger motor vehicle  
 62 policies may exclude certain identified individuals  
 63 from specified coverages under certain circumstances;  
 64 providing that such policies may not exclude coverage  
 65 under certain circumstances; amending s. 324.161,  
 66 F.S.; revising requirements for a certificate of  
 67 deposit that is required if a person elects a certain  
 68 method of proving financial responsibility; amending  
 69 s. 324.171, F.S.; revising the minimum net worth  
 70 requirements to qualify certain persons as self-  
 71 insurers; conforming provisions to changes made by the  
 72 act; amending s. 324.251, F.S.; revising the short  
 73 title and an effective date; amending s. 400.9905,  
 74 F.S.; revising the definition of the term "clinic";  
 75 amending ss. 400.991 and 400.9935, F.S.; conforming  
 76 provisions to changes made by the act; amending s.  
 77 409.901, F.S.; revising the definition of the term  
 78 "third-party benefit"; amending s. 409.910, F.S.;  
 79 revising the definition of the term "medical  
 80 coverage"; amending s. 456.057, F.S.; conforming a  
 81 cross-reference; amending s. 456.072, F.S.; revising  
 82 specified grounds for discipline for certain health  
 83 professions; amending s. 626.9541, F.S.; conforming a  
 84 provision to changes made by the act; revising the  
 85 type of insurance coverage applicable to a certain  
 86 prohibited act; amending s. 626.989, F.S.; revising  
 87 the definition of the term "fraudulent insurance act";

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88 amending s. 627.06501, F.S.; revising coverages that  
 89 may provide for a reduction in motor vehicle insurance  
 90 policy premium charges under certain circumstances;  
 91 amending s. 627.0652, F.S.; revising coverages that  
 92 must provide a premium charge reduction under certain  
 93 circumstances; amending s. 627.0653, F.S.; revising  
 94 coverages subject to premium discounts for specified  
 95 motor vehicle equipment; amending s. 627.4132, F.S.;  
 96 revising the coverages of a motor vehicle policy which  
 97 are subject to a stacking prohibition; amending s.  
 98 627.7263, F.S.; revising coverages that are deemed  
 99 primary, except under certain circumstances, for the  
 100 lessor of a motor vehicle for lease or rent; revising  
 101 a notice that is required if the lessee's coverage is  
 102 to be primary; creating s. 627.7265, F.S.; specifying  
 103 persons whom medical payments coverage must protect;  
 104 requiring medical payments coverage to provide  
 105 specified medical expense coverage and a specified  
 106 death benefit; specifying coverage options an insurer  
 107 must and may offer; providing that motor vehicle  
 108 liability insurance policies are deemed to have  
 109 medical payments coverage at a certain limit and with  
 110 no deductible, unless rejected or modified by the  
 111 policyholder by certain means; specifying requirements  
 112 for certain forms approved by the Office of Insurance  
 113 Regulation; requiring insurers to provide  
 114 policyholders with a certain annual notice; providing  
 115 construction relating to limits on certain other  
 116 coverages; requiring insurers, upon receiving a

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117 certain notice of an accident, to hold a specified  
 118 reserve for certain purposes for a specified time;  
 119 providing that the reserve requirement does not  
 120 require insurers to establish a claim reserve for  
 121 accounting purposes; providing that an insurer  
 122 providing medical payments coverage benefits may not  
 123 have a lien on a certain recovery and may not have  
 124 certain causes of action; amending s. 627.727, F.S.;  
 125 conforming provisions to changes made by the act;  
 126 amending s. 627.7275, F.S.; revising required  
 127 coverages for a motor vehicle insurance policy;  
 128 conforming provisions to changes made by the act;  
 129 amending s. 627.728, F.S.; conforming a provision to  
 130 changes made by the act; amending s. 627.7295, F.S.;  
 131 revising the definitions of the terms "policy" and  
 132 "binder"; revising the coverages of a motor vehicle  
 133 insurance policy for which a licensed general lines  
 134 agent may charge a specified fee; conforming a  
 135 provision to changes made by the act; amending s.  
 136 627.7415, F.S.; revising additional liability  
 137 insurance requirements for commercial motor vehicles;  
 138 amending s. 627.748, F.S.; revising insurance  
 139 requirements for transportation network company  
 140 drivers; conforming provisions to changes made by the  
 141 act; amending s. 627.8405, F.S.; revising coverages in  
 142 a policy sold in combination with an accidental death  
 143 and dismemberment policy which a premium finance  
 144 company may not finance; revising rulemaking authority  
 145 of the Financial Services Commission; amending ss.

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146 627.915, 628.909, 705.184, and 713.78, F.S.;  
 147 conforming provisions to changes made by the act;  
 148 amending s. 817.234, F.S.; revising coverages that are  
 149 the basis of specified prohibited false and fraudulent  
 150 insurance claims; conforming provisions to changes  
 151 made by the act; creating s. 627.7278, F.S.; defining  
 152 the term "minimum security requirements"; providing  
 153 requirements, applicability, and construction relating  
 154 to motor vehicle insurance policies as of a certain  
 155 date; requiring insurers to allow certain insureds to  
 156 make certain coverage changes, subject to certain  
 157 conditions; requiring an insurer to provide, by a  
 158 specified date, a specified notice to policyholders  
 159 relating to requirements under the act; creating s.  
 160 324.0222, F.S.; providing that driver license or  
 161 registration suspensions for failure to maintain  
 162 required security which were in effect before a  
 163 specified date remain in full force and effect;  
 164 providing that such suspended licenses or  
 165 registrations may be reinstated as provided in a  
 166 specified section; providing an appropriation;  
 167 providing effective dates.

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

170  
 171 Section 1. Sections 627.730, 627.731, 627.7311, 627.732,  
 172 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403,  
 173 and 627.7405, Florida Statutes, which comprise the Florida Motor  
 174 Vehicle No-Fault Law, are repealed.

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175 Section 2. Section 627.7407, Florida Statutes, is repealed.

176 Section 3. Subsection (1) of section 316.646, Florida  
177 Statutes, is amended to read:

178 316.646 Security required; proof of security and display  
179 thereof.-

180 (1) Any person required by s. 324.022 to maintain liability  
181 security for property damage, ~~liability security, required by s.~~  
182 ~~324.023 to maintain liability security for~~ bodily injury, or  
183 ~~death, or required by s. 627.733 to maintain personal injury~~  
184 ~~protection security on a motor vehicle~~ shall have in his or her  
185 immediate possession at all times while operating such motor  
186 vehicle proper proof of maintenance of the ~~required~~ security  
187 required under s. 324.021(7).

188 (a) Such proof must ~~shall~~ be in a uniform paper or  
189 electronic format, as prescribed by the department, a valid  
190 insurance policy, an insurance policy binder, a certificate of  
191 insurance, or such other proof as may be prescribed by the  
192 department.

193 (b)1. The act of presenting to a law enforcement officer an  
194 electronic device displaying proof of insurance in an electronic  
195 format does not constitute consent for the officer to access any  
196 information on the device other than the displayed proof of  
197 insurance.

198 2. The person who presents the device to the officer  
199 assumes the liability for any resulting damage to the device.

200 Section 4. Paragraph (b) of subsection (2) of section  
201 318.18, Florida Statutes, is amended to read:

202 318.18 Amount of penalties.-The penalties required for a  
203 noncriminal disposition pursuant to s. 318.14 or a criminal

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204 offense listed in s. 318.17 are as follows:

205 (2) Thirty dollars for all nonmoving traffic violations  
206 and:

207 (b) For all violations of ss. 320.0605, 320.07(1), 322.065,  
208 and 322.15(1). ~~A~~ Any person who is cited for a violation of s.  
209 320.07(1) shall be charged a delinquent fee pursuant to s.  
210 320.07(4).

211 1. If a person who is cited for a violation of s. 320.0605  
212 or s. 320.07 can show proof of having a valid registration at  
213 the time of arrest, the clerk of the court may dismiss the case  
214 and may assess a dismissal fee of up to \$10. A person who finds  
215 it impossible or impractical to obtain a valid registration  
216 certificate must submit an affidavit detailing the reasons for  
217 the impossibility or impracticality. The reasons may include,  
218 but are not limited to, the fact that the vehicle was sold,  
219 stolen, or destroyed; that the state in which the vehicle is  
220 registered does not issue a certificate of registration; or that  
221 the vehicle is owned by another person.

222 2. If a person who is cited for a violation of s. 322.03,  
223 s. 322.065, or s. 322.15 can show a driver license issued to him  
224 or her and valid at the time of arrest, the clerk of the court  
225 may dismiss the case and may assess a dismissal fee of up to  
226 \$10.

227 3. If a person who is cited for a violation of s. 316.646  
228 can show proof of security as required by s. 324.021(7) ~~or~~  
229 ~~627.733~~, issued to the person and valid at the time of arrest,  
230 the clerk of the court may dismiss the case and may assess a  
231 dismissal fee of up to \$10. A person who finds it impossible or  
232 impractical to obtain proof of security must submit an affidavit



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233 detailing the reasons for the impracticality. The reasons may  
 234 include, but are not limited to, the fact that the vehicle has  
 235 since been sold, stolen, or destroyed; ~~that the owner or~~  
 236 ~~registrant of the vehicle is not required by s. 627.733 to~~  
 237 ~~maintain personal injury protection insurance;~~ or that the  
 238 vehicle is owned by another person.

239 Section 5. Paragraphs (a) and (d) of subsection (5) of  
 240 section 320.02, Florida Statutes, are amended to read:

241 320.02 Registration required; application for registration;  
 242 forms.—

243 (5) (a) Proof that bodily injury liability coverage and  
 244 property damage liability coverage ~~personal injury protection~~  
 245 ~~benefits~~ have been purchased if required under s. 324.022, s.  
 246 324.032, or s. 627.742 ~~s. 627.733, that property damage~~  
 247 ~~liability coverage has been purchased as required under s.~~  
 248 ~~324.022, that bodily injury liability or death~~ coverage has been  
 249 purchased if required under s. 324.023, and that combined bodily  
 250 liability insurance and property damage liability insurance have  
 251 been purchased if required under s. 627.7415 must ~~shall~~ be  
 252 provided in the manner prescribed by law by the applicant at the  
 253 time of application for registration of any motor vehicle that  
 254 is subject to such requirements. The issuing agent may not ~~shall~~  
 255 ~~refuse to~~ issue registration if such proof of purchase is not  
 256 provided. Insurers shall furnish uniform proof-of-purchase cards  
 257 in a paper or electronic format in a form prescribed by the  
 258 department and include the name of the insured's insurance  
 259 company, the coverage identification number, and the make, year,  
 260 and vehicle identification number of the vehicle insured. The  
 261 card must contain a statement notifying the applicant of the

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262 penalty specified under s. 316.646(4). The card or insurance  
 263 policy, insurance policy binder, or certificate of insurance or  
 264 a photocopy of any of these; an affidavit containing the name of  
 265 the insured's insurance company, the insured's policy number,  
 266 and the make and year of the vehicle insured; or such other  
 267 proof as may be prescribed by the department ~~constitutes~~ shall  
 268 ~~constitute~~ sufficient proof of purchase. If an affidavit is  
 269 provided as proof, it must be in substantially the following  
 270 form:

271  
 272 Under penalty of perjury, I ...(Name of insured)... do hereby  
 273 certify that I have ...(bodily injury liability and Personal  
 274 Injury Protection, property damage liability, ~~and, if required,~~  
 275 Bodily Injury Liability)... insurance currently in effect with  
 276 ...(Name of insurance company)... under ...(policy number)...  
 277 covering ...(make, year, and vehicle identification number of  
 278 vehicle).... ...(Signature of Insured)...

279  
 280 Such affidavit must include the following warning:

281  
 282 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE  
 283 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA  
 284 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS  
 285 SUBJECT TO PROSECUTION.

286  
 287 If an application is made through a licensed motor vehicle  
 288 dealer as required under s. 319.23, the original or a photocopy  
 289 ~~photostatic copy~~ of such card, insurance policy, insurance  
 290 policy binder, or certificate of insurance or the original

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291 affidavit from the insured ~~must shall~~ be forwarded by the dealer  
 292 to the tax collector of the county or the Department of Highway  
 293 Safety and Motor Vehicles for processing. By executing the  
 294 ~~aforsaid~~ affidavit, a ne licensed motor vehicle dealer is not  
 295 ~~will be~~ liable in damages for any inadequacy, insufficiency, or  
 296 falsification of any statement contained therein. ~~A card must~~  
 297 ~~also indicate the existence of any bodily injury liability~~  
 298 ~~insurance voluntarily purchased.~~

299 (d) The verifying of ~~proof of personal injury protection~~  
 300 ~~insurance, proof of property damage liability insurance, proof~~  
 301 ~~of combined bodily liability insurance and property damage~~  
 302 ~~liability insurance, or proof of financial responsibility~~  
 303 ~~insurance and the issuance or failure to issue the motor vehicle~~  
 304 registration under ~~the provisions of~~ this chapter may not be  
 305 construed in any court as a warranty of the reliability or  
 306 accuracy of the evidence of such proof, or as meaning that the  
 307 provisions of any insurance policy furnished as proof of  
 308 financial responsibility comply with state law. Neither the  
 309 department nor any tax collector is liable in damages for any  
 310 inadequacy, insufficiency, falsification, or unauthorized  
 311 modification of any item of ~~the proof of personal injury~~  
 312 ~~protection insurance, proof of property damage liability~~  
 313 ~~insurance, proof of combined bodily liability insurance and~~  
 314 ~~property damage liability insurance, or proof of financial~~  
 315 responsibility before insurance prior to, during, or subsequent  
 316 to the verification of the proof. The issuance of a motor  
 317 vehicle registration does not constitute prima facie evidence or  
 318 a presumption of insurance coverage.

319 Section 6. Paragraph (b) of subsection (1) of section

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320 320.0609, Florida Statutes, is amended to read:

321 320.0609 Transfer and exchange of registration license  
 322 plates; transfer fee.—

323 (1)

324 (b) The transfer of a license plate from a vehicle disposed  
 325 of to a newly acquired vehicle does not constitute a new  
 326 registration. The application for transfer shall be accepted  
 327 without requiring proof of ~~personal injury protection or~~  
 328 liability insurance.

329 Section 7. Paragraph (g) is added to subsection (1) of  
 330 section 320.27, Florida Statutes, and subsection (3) of that  
 331 section is amended, to read:

332 320.27 Motor vehicle dealers.—

333 (1) DEFINITIONS.—The following words, terms, and phrases  
 334 when used in this section have the meanings respectively  
 335 ascribed to them in this subsection, except where the context  
 336 clearly indicates a different meaning:

337 (g) "Garage liability insurance" means, beginning January  
 338 1, 2020, combined single-limit liability coverage, including  
 339 property damage and bodily injury liability coverage, in the  
 340 amount of at least \$60,000.

341 (3) APPLICATION AND FEE.—~~The application for the license~~  
 342 application must shall be in such form as may be prescribed by  
 343 the department and ~~is shall be~~ subject to such rules with  
 344 ~~respect thereto~~ as may be so prescribed by the department it.  
 345 Such application ~~must shall~~ be verified by oath or affirmation  
 346 and ~~must shall~~ contain a full statement of the name and birth  
 347 date of the person or persons applying for the license therefor;  
 348 the name of the firm or copartnership, with the names and places

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349 of residence of all members ~~thereof~~, if such applicant is a firm  
 350 or copartnership; the names and places of residence of the  
 351 principal officers, if the applicant is a body corporate or  
 352 other artificial body; the name of the state under whose laws  
 353 the corporation is organized; the present and former place or  
 354 places of residence of the applicant; and the prior business in  
 355 which the applicant has been engaged and ~~its the~~ location  
 356 ~~thereof~~. ~~The Such~~ application ~~must shall~~ describe the exact  
 357 location of the place of business and ~~must shall~~ state whether  
 358 the place of business is owned by the applicant and when  
 359 acquired, or, if leased, a true copy of the lease ~~must shall~~ be  
 360 attached to the application. The applicant shall certify that  
 361 the location provides an adequately equipped office and is not a  
 362 residence; that the location affords sufficient unoccupied space  
 363 upon and within which adequately to store all motor vehicles  
 364 offered and displayed for sale; and that the location is a  
 365 suitable place where the applicant can in good faith carry on  
 366 such business and keep and maintain books, records, and files  
 367 necessary to conduct such business, which ~~must shall~~ be  
 368 available at all reasonable hours to inspection by the  
 369 department or any of its inspectors or other employees. The  
 370 applicant shall certify that the business of a motor vehicle  
 371 dealer is the principal business ~~that will which shall~~ be  
 372 conducted at that location. The application ~~must shall~~ contain a  
 373 statement that the applicant is either franchised by a  
 374 manufacturer of motor vehicles, in which case the name of each  
 375 motor vehicle that the applicant is franchised to sell ~~must~~  
 376 ~~shall~~ be included, or an independent (nonfranchised) motor  
 377 vehicle dealer. The application ~~must shall~~ contain other

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378 relevant information as may be required by the department. The  
 379 applicant shall furnish, including evidence, in a form approved  
 380 by the department, that the applicant is insured under a garage  
 381 liability insurance policy or a general liability insurance  
 382 policy coupled with a business automobile policy having the  
 383 coverages and limits of the garage liability insurance coverage  
 384 in accordance with paragraph (1) (g), which shall include, at a  
 385 minimum, \$25,000 combined single-limit liability coverage  
 386 including bodily injury and property damage protection and  
 387 \$10,000 personal injury protection. However, a salvage motor  
 388 vehicle dealer as defined in subparagraph (1) (c)5. is exempt  
 389 from the requirements for garage liability insurance ~~and~~  
 390 ~~personal injury protection insurance~~ on those vehicles that  
 391 cannot be legally operated on roads, highways, or streets in  
 392 this state. Franchise dealers must submit a garage liability  
 393 insurance policy, and all other dealers must submit a garage  
 394 liability insurance policy or a general liability insurance  
 395 policy coupled with a business automobile policy. Such policy  
 396 ~~must shall~~ be for the license period, and evidence of a new or  
 397 continued policy ~~must shall~~ be delivered to the department at  
 398 the beginning of each license period. Upon making an initial  
 399 application, the applicant shall pay to the department a fee of  
 400 \$300 in addition to any other fees required by law. Applicants  
 401 may choose to extend the licensure period for 1 additional year  
 402 for a total of 2 years. An initial applicant shall pay to the  
 403 department a fee of \$300 for the first year and \$75 for the  
 404 second year, in addition to any other fees required by law. An  
 405 applicant for renewal shall pay to the department \$75 for a 1-  
 406 year renewal or \$150 for a 2-year renewal, in addition to any

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407 other fees required by law. Upon making an application for a  
 408 change of location, the applicant ~~person~~ shall pay a fee of \$50  
 409 in addition to any other fees now required by law. The  
 410 department shall, in the case of every application for initial  
 411 licensure, verify whether certain facts set forth in the  
 412 application are true. Each applicant, general partner in the  
 413 case of a partnership, or corporate officer and director in the  
 414 case of a corporate applicant ~~shall, must~~ file a set of  
 415 fingerprints with the department for the purpose of determining  
 416 any prior criminal record or any outstanding warrants. The  
 417 department shall submit the fingerprints to the Department of  
 418 Law Enforcement for state processing and forwarding to the  
 419 Federal Bureau of Investigation for federal processing. The  
 420 actual cost of state and federal processing must ~~shall~~ be borne  
 421 by the applicant and is in addition to the fee for licensure.  
 422 The department may issue a license to an applicant pending the  
 423 results of the fingerprint investigation, which license is fully  
 424 revocable if the department subsequently determines that any  
 425 facts set forth in the application are not true or correctly  
 426 represented.

427 Section 8. Paragraph (j) of subsection (3) of section  
 428 320.771, Florida Statutes, is amended to read:

429 320.771 License required of recreational vehicle dealers.—

430 (3) APPLICATION.—The application for such license shall be  
 431 in the form prescribed by the department and subject to such  
 432 rules as may be prescribed by it. The application shall be  
 433 verified by oath or affirmation and shall contain:

434 (j) A statement that the applicant is insured under a  
 435 garage liability insurance policy in accordance with s.

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436 ~~320.27(1)(g), which shall include, at a minimum, \$25,000~~  
 437 ~~combined single-limit liability coverage, including bodily~~  
 438 ~~injury and property damage protection, and \$10,000 personal~~  
 439 ~~injury protection, if the applicant is to be licensed as a~~  
 440 ~~dealer in, or intends to sell, recreational vehicles.~~

441  
 442 The department shall, if it deems necessary, cause an  
 443 investigation to be made to ascertain if the facts set forth in  
 444 the application are true and shall not issue a license to the  
 445 applicant until it is satisfied that the facts set forth in the  
 446 application are true.

447 Section 9. Subsections (1) and (2) of section 322.251,  
 448 Florida Statutes, are amended to read:

449 322.251 Notice of cancellation, suspension, revocation, or  
 450 disqualification of license.—

451 (1) All orders of cancellation, suspension, revocation, or  
 452 disqualification issued under ~~the provisions of~~ this chapter,  
 453 chapter 318, or chapter 324 must, or ss. 627.732-627.734 shall  
 454 be given either by personal delivery thereof to the licensee  
 455 whose license is being canceled, suspended, revoked, or  
 456 disqualified or by deposit in the United States mail in an  
 457 envelope, first class, postage prepaid, addressed to the  
 458 licensee at his or her last known mailing address furnished to  
 459 the department. Such mailing by the department constitutes  
 460 notification, and any failure by the person to receive the  
 461 mailed order will not affect or stay the effective date or term  
 462 of the cancellation, suspension, revocation, or disqualification  
 463 of the licensee's driving privilege.

464 (2) The giving of notice and an order of cancellation,

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465 suspension, revocation, or disqualification by mail is complete  
 466 upon expiration of 20 days after deposit in the United States  
 467 mail for all notices except those issued under chapter 324 ~~ex~~  
 468 ~~ss. 627.732-627.734~~, which are complete 15 days after deposit in  
 469 the United States mail. Proof of the giving of notice and an  
 470 order of cancellation, suspension, revocation, or  
 471 disqualification in either manner must ~~shall~~ be made by entry in  
 472 the records of the department that such notice was given. The  
 473 entry is admissible in the courts of this state and constitutes  
 474 sufficient proof that such notice was given.

475 Section 10. Paragraph (a) of subsection (8) of section  
 476 322.34, Florida Statutes, is amended to read:

477 322.34 Driving while license suspended, revoked, canceled,  
 478 or disqualified.—

479 (8) (a) Upon the arrest of a person for the offense of  
 480 driving while the person's driver license or driving privilege  
 481 is suspended or revoked, the arresting officer shall determine:

482 1. Whether the person's driver license is suspended or  
 483 revoked.

484 2. Whether the person's driver license has remained  
 485 suspended or revoked since a conviction for the offense of  
 486 driving with a suspended or revoked license.

487 3. Whether the suspension or revocation was made under s.  
 488 316.646 ~~or s. 627.733~~, relating to failure to maintain required  
 489 security, or under s. 322.264, relating to habitual traffic  
 490 offenders.

491 4. Whether the driver is the registered owner or coowner of  
 492 the vehicle.

493 Section 11. Section 324.011, Florida Statutes, is amended

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494 to read:

495 324.011 Legislative intent and purpose of chapter.—It is  
 496 the Legislature's intent of this chapter to ensure that the  
 497 privilege of owning or operating a motor vehicle in this state  
 498 is exercised ~~recognize the existing privilege to own or operate~~  
 499 ~~a motor vehicle on the public streets and highways of this state~~  
 500 ~~when such vehicles are used~~ with due consideration for others'  
 501 safety ~~others~~ and their property, ~~and~~ to promote safety, and to  
 502 provide financial security requirements for such owners and ~~or~~  
 503 operators whose responsibility it is to recompense others for  
 504 injury to person or property caused by the operation of a motor  
 505 vehicle. Therefore, this chapter requires that every owner or  
 506 operator of a motor vehicle required to be registered in this  
 507 state establish, maintain, and it is required herein that the  
 508 operator of a motor vehicle involved in a crash or convicted of  
 509 certain traffic offenses meeting the operative provisions of s.  
 510 324.051(2) shall respond for such damages and show proof of  
 511 financial ability to respond for damages arising out of the  
 512 ownership, maintenance, or use of a motor vehicle in future  
 513 accidents as a requisite to owning or operating a motor vehicle  
 514 in this state his or her future exercise of such privileges.

515 Section 12. Subsections (1) and (7) and paragraph (c) of  
 516 subsection (9) of section 324.021, Florida Statutes, are  
 517 amended, and subsection (12) is added to that section, to read:

518 324.021 Definitions; minimum insurance required.—The  
 519 following words and phrases when used in this chapter shall, for  
 520 the purpose of this chapter, have the meanings respectively  
 521 ascribed to them in this section, except in those instances  
 522 where the context clearly indicates a different meaning:

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523 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is  
 524 designed and required to be licensed for use upon a highway,  
 525 including trailers and semitrailers designed for use with such  
 526 vehicles, except traction engines, road rollers, farm tractors,  
 527 power shovels, and well drillers, and every vehicle that is  
 528 propelled by electric power obtained from overhead wires but not  
 529 operated upon rails, but not including any personal delivery  
 530 device or mobile carrier as defined in s. 316.003, bicycle, or  
 531 moped. ~~However, the term "motor vehicle" does not include a~~  
 532 ~~motor vehicle as defined in s. 627.732(3) when the owner of such~~  
 533 ~~vehicle has complied with the requirements of ss. 627.730-~~  
 534 ~~627.7405, inclusive, unless the provisions of s. 324.051 apply,~~  
 535 ~~and, in such case, the applicable proof of insurance provisions~~  
 536 ~~of s. 320.02 apply.~~

537 (7) PROOF OF FINANCIAL RESPONSIBILITY.—~~That~~ Proof of  
 538 ability to respond in damages for liability on account of  
 539 crashes arising out of the ownership, maintenance, or use of a  
 540 motor vehicle:

541 (a) Beginning January 1, 2020, with respect to a motor  
 542 vehicle that is not a commercial motor vehicle, nonpublic sector  
 543 bus, or for-hire passenger transportation vehicle, in the amount  
 544 of:

545 1. Twenty-five thousand dollars for \$10,000 because of  
 546 bodily injury to, or the death of, one person in any one crash  
 547 and,

548 ~~(b)~~ subject to such limits for one person, in the amount of  
 549 \$50,000 for \$20,000 because of bodily injury to, or the death  
 550 of, two or more persons in any one crash; and

551 2. ~~(e)~~ Ten thousand dollars for damage in the amount of

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552 ~~\$10,000 because of injury~~ to, or destruction of, property of  
 553 others in any one crash, ~~and~~

554 (b) ~~(d)~~ With respect to commercial motor vehicles ~~and~~  
 555 nonpublic sector buses, in the amounts specified in s. 627.7415  
 556 ~~ss. 627.7415 and 627.742, respectively.~~

557 (c) With respect to nonpublic sector buses, in the amounts  
 558 specified in s. 627.742.

559 (d) With respect to for-hire passenger transportation  
 560 vehicles, in the amounts specified in s. 324.032.

561 (9) OWNER; OWNER/LESSOR.—

562 (c) Application.—

563 1. The limits on liability in subparagraphs (b)2. and 3. do  
 564 not apply to an owner of motor vehicles that are used for  
 565 commercial activity in the owner's ordinary course of business,  
 566 other than a rental company that rents or leases motor vehicles.  
 567 For purposes of this paragraph, the term "rental company"  
 568 includes only an entity that is engaged in the business of  
 569 renting or leasing motor vehicles to the general public and that  
 570 rents or leases a majority of its motor vehicles to persons with  
 571 no direct or indirect affiliation with the rental company. The  
 572 term also includes a motor vehicle dealer that provides  
 573 temporary replacement vehicles to its customers for up to 10  
 574 days. The term "rental company" also includes:

575 a. A related rental or leasing company that is a subsidiary  
 576 of the same parent company as that of the renting or leasing  
 577 company that rented or leased the vehicle.

578 b. The holder of a motor vehicle title or an equity  
 579 interest in a motor vehicle title if the title or equity  
 580 interest is held pursuant to or to facilitate an asset-backed

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581 securitization of a fleet of motor vehicles used solely in the  
582 business of renting or leasing motor vehicles to the general  
583 public and under the dominion and control of a rental company,  
584 as described in this subparagraph, in the operation of such  
585 rental company's business.

586 2. Furthermore, with respect to commercial motor vehicles  
587 as defined in s. 207.002 or s. 320.01 ~~s. 627.732~~, the limits on  
588 liability in subparagraphs (b)2. and 3. do not apply if, at the  
589 time of the incident, the commercial motor vehicle is being used  
590 in the transportation of materials found to be hazardous for the  
591 purposes of the Hazardous Materials Transportation Authorization  
592 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is  
593 required pursuant to such act to carry placards warning others  
594 of the hazardous cargo, unless at the time of lease or rental  
595 either:

596 a. The lessee indicates in writing that the vehicle will  
597 not be used to transport materials found to be hazardous for the  
598 purposes of the Hazardous Materials Transportation Authorization  
599 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

600 b. The lessee or other operator of the commercial motor  
601 vehicle has in effect insurance with limits of at least \$5  
602 million ~~\$5,000,000~~ combined property damage and bodily injury  
603 liability.

604 (12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every "for-  
605 hire vehicle" as defined in s. 320.01(15) which is offered or  
606 used to provide transportation for persons, including taxicabs,  
607 limousines, and jitneys.

608 Section 13. Section 324.022, Florida Statutes, is amended  
609 to read:

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610 324.022 Financial responsibility requirements ~~for property~~  
611 ~~damage.—~~

612 (1) (a) Beginning January 1, 2020, every owner or operator  
613 of a motor vehicle required to be registered in this state shall  
614 establish and continuously maintain the ability to respond in  
615 damages for liability on account of accidents arising out of the  
616 use of the motor vehicle in the amount of:

617 1. Twenty-five thousand dollars for bodily injury to, or  
618 the death of, one person in any one crash and, subject to such  
619 limits for one person, in the amount of \$50,000 for bodily  
620 injury to, or the death of, two or more persons in any one  
621 crash; and

622 2. Ten thousand dollars for ~~\$10,000 because of~~ damage to,  
623 or destruction of, property of others in any one crash.

624 (b) The requirements of paragraph (a) ~~this section~~ may be  
625 met by one of the methods established in s. 324.031; by self-  
626 insuring as authorized by s. 768.28(16); or by maintaining a  
627 motor vehicle liability insurance policy that an insurancee  
628 policy providing coverage for property damage liability in the  
629 amount of at least \$10,000 because of damage to, or destruction  
630 of, property of others in any one accident arising out of the  
631 use of the motor vehicle. The requirements of this section may  
632 also be met by having a policy which provides combined property  
633 damage liability and bodily injury liability coverage for any  
634 one crash arising out of the ownership, maintenance, or use of a  
635 motor vehicle which conforms to the requirements of s. 324.151  
636 in the amount of at least \$60,000 for every owner or operator  
637 subject to the financial responsibility required in paragraph  
638 (a) \$30,000 for combined property damage liability and bodily

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639 ~~injury liability for any one crash arising out of the use of the~~  
 640 ~~motor vehicle. The policy, with respect to coverage for property~~  
 641 ~~damage liability, must meet the applicable requirements of s.~~  
 642 ~~324.151, subject to the usual policy exclusions that have been~~  
 643 ~~approved in policy forms by the Office of Insurance Regulation.~~  
 644 ~~No insurer shall have any duty to defend uncovered claims~~  
 645 ~~irrespective of their joinder with covered claims.~~

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

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

652 1. A mobile home as defined in s. 320.01.

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

658 3. A school bus as defined in s. 1006.25, which must  
 659 maintain security as required under s. 316.615.

660 4. A commercial motor vehicle as defined in s. 207.002 or  
 661 s. 320.01, which must maintain security as required under ss.  
 662 324.031 and 627.7415.

663 5. A nonpublic sector bus, which must maintain security as  
 664 required under ss. 324.031 and 627.742.

665 6.4- ~~A vehicle providing for-hire passenger transportation~~  
 666 ~~vehicle, which must that is subject to the provisions of s.~~  
 667 ~~324.031. A taxicab shall maintain security as required under s.~~

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668 ~~324.032 s. 324.032(1).~~

669 ~~7.5-~~ A personal delivery device as defined in s. 316.003.

670 (b) "Owner" means the person who holds legal title to a  
 671 motor vehicle or the debtor or lessee who has the right to  
 672 possession of a motor vehicle that is the subject of a security  
 673 agreement or lease with an option to purchase.

674 (3) Each nonresident owner or registrant of a motor vehicle  
 675 that, whether operated or not, has been physically present  
 676 within this state for more than 90 days during the preceding 365  
 677 days shall maintain security as required by subsection (1). The  
 678 security must be that is in effect continuously throughout the  
 679 period the motor vehicle remains within this state.

680 (4) An ~~The~~ owner or registrant of a motor vehicle who is  
 681 ~~exempt from the requirements of this section if she or he is a~~  
 682 member of the United States Armed Forces and is called to or on  
 683 active duty outside the United States in an emergency situation  
 684 is exempt from this section while he or she. ~~The exemption~~  
 685 ~~provided by this subsection applies only as long as the member~~  
 686 ~~of the Armed Forces is on such active duty. This exemption~~  
 687 ~~outside the United States and applies only while the vehicle~~  
 688 covered by the security is not operated by any person. Upon  
 689 receipt of a written request by the insured to whom the  
 690 exemption provided in this subsection applies, the insurer shall  
 691 cancel the coverages and return any unearned premium or suspend  
 692 the security required by this section. Notwithstanding s.  
 693 324.0221(2) ~~s. 324.0221(3)~~, the department may not suspend the  
 694 registration or operator's license of an any owner or registrant  
 695 of a motor vehicle during the time she or he qualifies for the  
 696 an exemption under this subsection. An Any owner or registrant



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697 of a motor vehicle who qualifies for the an exemption under this  
698 subsection shall immediately notify the department before ~~prior~~  
699 ~~to~~ and at the end of the expiration of the exemption.

700 Section 14. Subsections (1) and (2) of section 324.0221,  
701 Florida Statutes, are amended to read:

702 324.0221 Reports by insurers to the department; suspension  
703 of driver license and vehicle registrations; reinstatement.—

704 (1) (a) Each insurer that has issued a policy providing  
705 ~~personal injury protection coverage or property damage~~ liability  
706 coverage shall report the cancellation or nonrenewal thereof to  
707 the department within 10 days after the processing date or  
708 effective date of each cancellation or nonrenewal. Upon the  
709 issuance of a policy providing ~~personal injury protection~~  
710 ~~coverage or property damage~~ liability coverage to a named  
711 insured not previously insured by the insurer during that  
712 calendar year, the insurer shall report the issuance of the new  
713 policy to the department within 10 days. The report must ~~shall~~  
714 be in the form ~~and format~~ and contain any information required  
715 by the department and must be provided in a format that is  
716 compatible with the data processing capabilities of the  
717 department. Failure by an insurer to file proper reports with  
718 the department as required by this subsection constitutes a  
719 violation of the Florida Insurance Code. These records may ~~shall~~  
720 be used by the department only for enforcement and regulatory  
721 purposes, including the generation by the department of data  
722 regarding compliance by owners of motor vehicles with the  
723 requirements for financial responsibility coverage.

724 (b) With respect to an insurance policy providing ~~personal~~  
725 ~~injury protection coverage or property damage~~ liability

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726 coverage, each insurer shall notify the named insured, or the  
727 first-named insured in the case of a commercial fleet policy, in  
728 writing that any cancellation or nonrenewal of the policy will  
729 be reported by the insurer to the department. The notice must  
730 also inform the named insured that failure to maintain bodily  
731 injury liability ~~personal injury protection~~ coverage and  
732 property damage liability coverage on a motor vehicle when  
733 required by law may result in the loss of registration and  
734 driving privileges in this state and inform the named insured of  
735 the amount of the reinstatement fees required by this section.  
736 This notice is for informational purposes only, and an insurer  
737 is not civilly liable for failing to provide this notice.

738 (2) The department shall suspend, after due notice and an  
739 opportunity to be heard, the registration and driver license of  
740 any owner or registrant of a motor vehicle for with respect to  
741 which security is required under s. 324.022, s. 324.032, s.  
742 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

743 (a) The department's records showing that the owner or  
744 registrant of such motor vehicle did not have the in full force  
745 and effect when required security in full force and effect ~~that~~  
746 ~~complies with the requirements of ss. 324.022 and 627.733~~; or

747 (b) Notification by the insurer to the department, in a  
748 form approved by the department, of cancellation or termination  
749 of the required security.

750 Section 15. Section 324.023, Florida Statutes, is amended  
751 to read:

752 324.023 Financial responsibility for bodily injury or  
753 death.—In addition to any other financial responsibility  
754 required by law, every owner or operator of a motor vehicle that

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755 is required to be registered in this state, or that is located  
 756 within this state, and who, regardless of adjudication of guilt,  
 757 has been found guilty of or entered a plea of guilty or nolo  
 758 contendere to a charge of driving under the influence under s.  
 759 316.193 after October 1, 2007, shall, by one of the methods  
 760 established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2)~~,  
 761 establish and maintain the ability to respond in damages for  
 762 liability on account of accidents arising out of the use of a  
 763 motor vehicle in the amount of \$100,000 because of bodily injury  
 764 to, or death of, one person in any one crash and, subject to  
 765 such limits for one person, in the amount of \$300,000 because of  
 766 bodily injury to, or death of, two or more persons in any one  
 767 crash and in the amount of \$50,000 because of property damage in  
 768 any one crash. If the owner or operator chooses to establish and  
 769 maintain such ability by furnishing a certificate of deposit  
 770 pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of  
 771 deposit must be at least \$350,000. Such higher limits must be  
 772 carried for a minimum period of 3 years. If the owner or  
 773 operator has not been convicted of driving under the influence  
 774 or a felony traffic offense for a period of 3 years from the  
 775 date of reinstatement of driving privileges for a violation of  
 776 s. 316.193, the owner or operator shall be exempt from this  
 777 section.

778 Section 16. Section 324.031, Florida Statutes, is amended  
 779 to read:

780 324.031 Manner of proving financial responsibility.-

781 (1) The owner or operator of a taxicab, limousine, jitney,  
 782 or any other for-hire passenger transportation vehicle may prove  
 783 financial responsibility by providing satisfactory evidence of

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784 ~~holding a motor vehicle liability policy as defined in s.~~  
 785 ~~324.021(8) or s. 324.151, which policy is issued by an insurance~~  
 786 ~~carrier which is a member of the Florida Insurance Guaranty~~  
 787 ~~Association. The operator or owner of a motor vehicle other than~~  
 788 ~~a for-hire passenger transportation vehicle any other vehicle~~  
 789 may prove his or her financial responsibility by:

790 (a)(1) ~~Furnishing satisfactory evidence of holding a motor~~  
 791 ~~vehicle liability policy as defined in ss. 324.021(8) and~~  
 792 ~~324.151;~~

793 (b)(2) ~~Furnishing a certificate of self-insurance showing a~~  
 794 ~~deposit of cash in accordance with s. 324.161; or~~

795 (c)(3) ~~Furnishing a certificate of self-insurance issued by~~  
 796 ~~the department in accordance with s. 324.171.~~

797 (2) (a) Beginning January 1, 2020, any person, including any  
 798 firm, partnership, association, corporation, or other person,  
 799 other than a natural person, electing to use the method of proof  
 800 specified in paragraph (1)(b) subsection (2) shall furnish a  
 801 certificate of deposit equal to the number of vehicles owned  
 802 times \$60,000 ~~\$30,000~~, to a maximum of \$240,000. ~~\$120,000~~.

803 (b) In addition, any such person, other than a natural  
 804 person, shall maintain insurance providing coverage conforming  
 805 to the requirements of s. 324.151 in excess of the amount of the  
 806 certificate of deposit, with limits of at least:

807 1. One hundred twenty-five thousand dollars for bodily  
 808 injury to, or the death of, one person in any one crash and,  
 809 subject to such limits for one person, in the amount of \$250,000  
 810 for bodily injury to, or the death of, two or more persons in  
 811 any one crash, and \$50,000 for damage to, or destruction of,  
 812 property of others in any one crash; or

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813 2. Three hundred thousand dollars for combined bodily  
 814 injury liability and property damage liability for any one crash  
 815 \$10,000/20,000/10,000 or \$30,000 combined single limits, and  
 816 such excess insurance shall provide minimum limits of  
 817 \$125,000/250,000/50,000 or \$300,000 combined single limits.  
 818 These increased limits shall not affect the requirements for  
 819 proving financial responsibility under s. 324.032(1).

820 Section 17. Section 324.032, Florida Statutes, is amended  
 821 to read:

822 324.032 Manner of proving Financial responsibility for  
 823 for-hire passenger transportation vehicles. Notwithstanding the  
 824 provisions of s. 324.031:

825 (1) An owner or lessee of a for-hire passenger  
 826 transportation vehicle that is required to be registered in this  
 827 state shall establish and continuously maintain the ability to  
 828 respond in damages for liability on account of accidents arising  
 829 out of the ownership, maintenance, or use of the for-hire  
 830 passenger transportation vehicle, in the amount of:

831 (a) One hundred twenty-five thousand dollars for bodily  
 832 injury to, or the death of, one person in any one crash and,  
 833 subject to such limits for one person, in the amount of \$250,000  
 834 for bodily injury to, or the death of, two or more persons in  
 835 any one crash; and A person who is either the owner or a lessee  
 836 required to maintain insurance under s. 627.733(1)(b) and who  
 837 operates one or more taxicabs, limousines, jitneys, or any other  
 838 for-hire passenger transportation vehicles may prove financial  
 839 responsibility by furnishing satisfactory evidence of holding a  
 840 motor vehicle liability policy, but with minimum limits of  
 841 \$125,000/250,000/50,000.

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842 (b) Fifty thousand dollars for damage to, or destruction  
 843 of, property of others in any one crash A person who is either  
 844 the owner or a lessee required to maintain insurance under s.  
 845 324.021(9)(b) and who operates limousines, jitneys, or any other  
 846 for hire passenger vehicles, other than taxicabs, may prove  
 847 financial responsibility by furnishing satisfactory evidence of  
 848 holding a motor vehicle liability policy as defined in s.  
 849 324.031.

850 (2) Except as provided in subsection (3), the requirements  
 851 of this section must be met by the owner or lessee providing  
 852 satisfactory evidence of holding a motor vehicle liability  
 853 policy conforming to the requirements of s. 324.151 which is  
 854 issued by an insurance carrier that is a member of the Florida  
 855 Insurance Guaranty Association.

856 (3)(2) An owner or a lessee who is required to maintain  
 857 insurance under s. 324.021(9)(b) and who operates at least 300  
 858 taxicabs, limousines, jitneys, or any other for-hire passenger  
 859 transportation vehicles may provide financial responsibility by  
 860 complying with the provisions of s. 324.171, which must such  
 861 compliance to be demonstrated by maintaining at its principal  
 862 place of business an audited financial statement, prepared in  
 863 accordance with generally accepted accounting principles, and  
 864 providing to the department a certification issued by a  
 865 certified public accountant that the applicant's net worth is at  
 866 least equal to the requirements of s. 324.171 as determined by  
 867 the Office of Insurance Regulation of the Financial Services  
 868 Commission, including claims liabilities in an amount certified  
 869 as adequate by a Fellow of the Casualty Actuarial Society.

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871 Upon request by the department, the applicant ~~shall~~ must provide  
 872 the department at the applicant's principal place of business in  
 873 this state access to the applicant's underlying financial  
 874 information and financial statements that provide the basis of  
 875 the certified public accountant's certification. The applicant  
 876 shall reimburse the requesting department for all reasonable  
 877 costs incurred by it in reviewing the supporting information.  
 878 The maximum amount of self-insurance permissible under this  
 879 subsection is \$300,000 and must be stated on a per-occurrence  
 880 basis, and the applicant shall maintain adequate excess  
 881 insurance issued by an authorized or eligible insurer licensed  
 882 or approved by the Office of Insurance Regulation. All risks  
 883 self-insured shall remain with the owner or lessee providing it,  
 884 and the risks are not transferable to any other person, unless a  
 885 policy complying with subsections (1) and (2) ~~subsection (1)~~ is  
 886 obtained.

887 Section 18. Paragraph (b) of subsection (2) of section  
 888 324.051, Florida Statutes, is amended to read:

889 324.051 Reports of crashes; suspensions of licenses and  
 890 registrations.-

891 (2)

892 (b) This subsection ~~does shall~~ not apply:

893 1. To such operator or owner if such operator or owner had  
 894 in effect at the time of such crash or traffic conviction a  
 895 motor vehicle an automobile liability policy with respect to all  
 896 of the registered motor vehicles owned by such operator or  
 897 owner.

898 2. To such operator, if not the owner of such motor  
 899 vehicle, if there was in effect at the time of such crash or

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900 traffic conviction a motor vehicle an automobile liability  
 901 policy or bond with respect to his or her operation of motor  
 902 vehicles not owned by him or her.

903 3. To such operator or owner if the liability of such  
 904 operator or owner for damages resulting from such crash is, in  
 905 the judgment of the department, covered by any other form of  
 906 liability insurance or bond.

907 4. To any person who has obtained from the department a  
 908 certificate of self-insurance, in accordance with s. 324.171, or  
 909 to any person operating a motor vehicle for such self-insurer.

910

911 No such policy or bond shall be effective under this subsection  
 912 unless it contains limits of not less than those specified in s.  
 913 324.021(7).

914 Section 19. Section 324.071, Florida Statutes, is amended  
 915 to read:

916 324.071 Reinstatement; renewal of license; reinstatement  
 917 fee.-An Any operator or owner whose license or registration has  
 918 been suspended pursuant to s. 324.051(2), s. 324.072, s.  
 919 324.081, or s. 324.121 may effect its reinstatement upon  
 920 compliance with ~~the provisions of~~ s. 324.051(2) (a)3. or 4., or  
 921 s. 324.081(2) and (3), as the case may be, and with one of the  
 922 provisions of s. 324.031 and upon payment to the department of a  
 923 nonrefundable reinstatement fee of \$15. Only one such fee may  
 924 ~~shall~~ be paid by any one person regardless irrespective of the  
 925 number of licenses and registrations to be then reinstated or  
 926 issued to such person. ~~All~~ Such fees must shall be deposited to  
 927 a department trust fund. ~~If When~~ the reinstatement of any  
 928 license or registration is effected by compliance with s.

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929 324.051(2)(a)3. or 4., the department ~~may shall~~ not renew the  
 930 license or registration within a period of 3 years after from  
 931 such reinstatement, nor ~~may shall~~ any other license or  
 932 registration be issued in the name of such person, unless the  
 933 operator continues is continuing to comply with ~~one of the~~  
 934 ~~provisions of s. 324.031.~~

935 Section 20. Subsection (1) of section 324.091, Florida  
 936 Statutes, is amended to read:

937 324.091 Notice to department; notice to insurer.-

938 (1) Each owner and operator involved in a crash or  
 939 conviction case within the purview of this chapter shall furnish  
 940 evidence of ~~automobile liability insurance or~~ motor vehicle  
 941 liability insurance within 14 days after the date of the mailing  
 942 of notice of crash by the department in the form and manner as  
 943 it may designate. Upon receipt of evidence that a an automobile  
 944 ~~liability policy or~~ motor vehicle liability policy was in effect  
 945 at the time of the crash or conviction case, the department  
 946 shall forward to the insurer such information for verification  
 947 in a method as determined by the department. The insurer shall  
 948 respond to the department within 20 days after the notice as to  
 949 whether ~~or not~~ such information is valid. If the department  
 950 determines that a an automobile liability policy or motor  
 951 vehicle liability policy was not in effect and did not provide  
 952 coverage for both the owner and the operator, it ~~must shall~~ take  
 953 action as it is authorized to do under this chapter.

954 Section 21. Section 324.151, Florida Statutes, is amended  
 955 to read:

956 324.151 Motor vehicle liability policies; required  
 957 provisions.-

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958 (1) A motor vehicle liability policy that serves as to be  
 959 proof of financial responsibility under s. 324.031(1)(a) must s-  
 960 ~~324.031(1), shall~~ be issued to owners or operators of motor  
 961 vehicles under the following provisions:

962 (a) A motor vehicle An owner's liability insurance policy  
 963 issued to an owner of a motor vehicle registered in this state  
 964 ~~must shall~~ designate by explicit description or by appropriate  
 965 reference all motor vehicles for with respect to which coverage  
 966 is thereby granted. The policy must and shall insure the person  
 967 or persons owner named therein, and, except for a named driver  
 968 excluded under s. 627.747, must insure any other person as  
 969 operator using such motor vehicle or motor vehicles with the  
 970 express or implied permission of such owner against loss from  
 971 the liability imposed by law for damage arising out of the  
 972 ownership, maintenance, or use of any such motor vehicle or  
 973 motor vehicles within the United States or ~~the Dominion of~~  
 974 Canada, subject to limits, exclusive of interest and costs with  
 975 respect to each such motor vehicle, as is provided for under s.  
 976 324.021(7). Insurers may make available, with respect to  
 977 property damage liability coverage, a deductible amount not to  
 978 exceed \$500. In the event of a property damage loss covered by a  
 979 policy containing a property damage deductible provision, the  
 980 insurer shall pay to the third-party claimant the amount of any  
 981 property damage liability settlement or judgment, subject to  
 982 policy limits, as if no deductible existed.

983 (b) An operator's motor vehicle liability policy of  
 984 insurance ~~must shall~~ insure the person or persons named therein  
 985 against loss from the liability imposed ~~upon him or her~~ by law  
 986 for damages arising out of the use by the person of any motor

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987 vehicle not owned by him or her, with the same territorial  
988 limits and subject to the same limits of liability as referred  
989 to above with respect to an owner's policy of liability  
990 insurance.

991 (c) All such motor vehicle liability policies ~~must shall~~  
992 state the name and address of the named insured, the coverage  
993 afforded by the policy, the premium charged therefor, the policy  
994 period, and the limits of liability, and ~~must shall~~ contain an  
995 agreement or be endorsed that insurance is provided in  
996 accordance with the coverage defined in this chapter ~~as respects~~  
997 ~~bodily injury and death or property damage or both~~ and is  
998 subject to ~~all provisions of~~ this chapter. The said policies  
999 ~~must shall~~ also contain a provision that the satisfaction by an  
1000 insured of a judgment for such injury or damage ~~may shall~~ not be  
1001 a condition precedent to the right or duty of the insurance  
1002 carrier to make payment on account of such injury or damage, and  
1003 ~~must shall~~ also contain a provision that bankruptcy or  
1004 insolvency of the insured or of the insured's estate ~~may shall~~  
1005 not relieve the insurance carrier of any of its obligations  
1006 under the said policy.

1007 (2) ~~The provisions of~~ This section ~~is shall~~ not be  
1008 applicable to any motor vehicle ~~automobile~~ liability policy  
1009 unless and until it is furnished as proof of financial  
1010 responsibility for the future pursuant to s. 324.031, and then  
1011 applies only from ~~and after~~ the date the said policy is ~~so~~  
1012 furnished.

1013 Section 22. Section 627.747, Florida Statutes, is created  
1014 to read:

1015 627.747 Named driver exclusion.-

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1016 (1) A private passenger motor vehicle policy may exclude an  
1017 identified individual from the following coverages while the  
1018 identified individual is operating a motor vehicle, provided  
1019 that the identified individual is specifically excluded by name  
1020 on the declarations page or by endorsement, and a policyholder  
1021 consents in writing to such exclusion:

1022 (a) Property damage liability coverage.

1023 (b) Bodily injury liability coverage.

1024 (c) Uninsured motorist coverage for any damages sustained  
1025 by the identified excluded individual, if the policyholder has  
1026 purchased such coverage.

1027 (d) Any coverage the policyholder is not required by law to  
1028 purchase.

1029 (2) A private passenger motor vehicle policy may not  
1030 exclude coverage when:

1031 (a) The identified excluded individual is injured while not  
1032 operating a motor vehicle;

1033 (b) The exclusion is unfairly discriminatory under the  
1034 Florida Insurance Code, as determined by the office; or

1035 (c) The exclusion is inconsistent with the underwriting  
1036 rules filed by the insurer pursuant to s. 627.0651(13)(a).

1037 Section 23. Section 324.161, Florida Statutes, is amended  
1038 to read:

1039 324.161 Proof of financial responsibility; deposit.—If a  
1040 person elects to prove his or her financial responsibility under  
1041 the method of proof specified in s. 324.031(1)(b), he or she  
1042 annually must obtain and submit to the department proof of a  
1043 certificate of deposit in the amount required under s.  
1044 324.031(2) from a financial institution insured by the Federal

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1045 ~~Deposit Insurance Corporation or the National Credit Union~~  
 1046 ~~Administration~~ Annually, before any certificate of insurance may  
 1047 be issued to a person, including any firm, partnership,  
 1048 association, corporation, or other person, other than a natural  
 1049 person, proof of a certificate of deposit of \$30,000 issued and  
 1050 held by a financial institution must be submitted to the  
 1051 department. A power of attorney will be issued to and held by  
 1052 the department and may be executed upon a judgment issued  
 1053 against such person making the deposit, for damages for because  
 1054 of bodily injury to or death of any person or for damages for  
 1055 because of injury to or destruction of property resulting from  
 1056 the use or operation of any motor vehicle occurring after such  
 1057 deposit was made. Money so deposited is shall not be subject to  
 1058 attachment or execution unless such attachment or execution  
 1059 arises shall arise out of a lawsuit suit for such damages as  
 1060 aforesaid.

1061 Section 24. Subsections (1) and (2) of section 324.171,  
 1062 Florida Statutes, are amended to read:

1063 324.171 Self-insurer.—

1064 (1) A Any person may qualify as a self-insurer by obtaining  
 1065 a certificate of self-insurance from the department, ~~which may,~~  
 1066 ~~in its discretion and~~ Upon application of such a person, the  
 1067 department may issue a said certificate of self-insurance to an  
 1068 applicant who satisfies when such person has satisfied the  
 1069 requirements of this section. Effective January 1, 2020 ~~to~~  
 1070 ~~qualify as a self-insurer under this section:~~

1071 (a) A private individual with private passenger vehicles  
 1072 shall possess a net unencumbered worth of at least \$100,000  
 1073 ~~\$40,000~~.

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1074 (b) A person, including any firm, partnership, association,  
 1075 corporation, or other person, other than a natural person,  
 1076 shall:

1077 1. Possess a net unencumbered worth of at least \$100,000  
 1078 ~~\$40,000~~ for the first motor vehicle and \$50,000 ~~\$20,000~~ for each  
 1079 additional motor vehicle; or

1080 2. Maintain sufficient net worth, in an amount determined  
 1081 by the department, to be financially responsible for potential  
 1082 losses. The department annually shall determine the minimum net  
 1083 worth sufficient to satisfy this subparagraph as determined  
 1084 ~~annually by the department,~~ pursuant to rules adopted  
 1085 ~~promulgated~~ by the department, with the assistance of the Office  
 1086 of Insurance Regulation of the Financial Services Commission, ~~to~~  
 1087 ~~be financially responsible for potential losses. The rules must~~  
 1088 consider any shall take into consideration excess insurance  
 1089 carried by the applicant. The department's determination must  
 1090 ~~shall~~ be based upon reasonable actuarial principles considering  
 1091 the frequency, severity, and loss development of claims incurred  
 1092 by casualty insurers writing coverage on the type of motor  
 1093 vehicles for which a certificate of self-insurance is desired.

1094 (c) The owner of a commercial motor vehicle, as defined in  
 1095 s. 207.002 or s. 320.01, may qualify as a self-insurer subject  
 1096 to the standards provided ~~for~~ in subparagraph (b)2.

1097 (2) The self-insurance certificate must ~~shall~~ provide  
 1098 limits of liability insurance in the amounts specified under s.  
 1099 324.021(7) ~~or s. 627.7415 and shall provide personal injury~~  
 1100 ~~protection coverage under s. 627.733(3)(b).~~

1101 Section 25. Section 324.251, Florida Statutes, is amended  
 1102 to read:

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1103 324.251 Short title.—This chapter may be cited as the  
 1104 “Financial Responsibility Law of 2019 ~~1955~~” and is shall become  
 1105 effective at 12:01 a.m., January 1, 2020 ~~October 1, 1955~~.  
 1106 Section 26. Subsection (4) of section 400.9905, Florida  
 1107 Statutes, is amended to read:  
 1108 400.9905 Definitions.—  
 1109 (4) (a) “Clinic” means an entity where health care services  
 1110 are provided to individuals and which tenders charges for  
 1111 reimbursement for such services, including a mobile clinic and a  
 1112 portable equipment provider. As used in this part, the term does  
 1113 not include and the licensure requirements of this part do not  
 1114 apply to:  
 1115 1. (a) Entities licensed or registered by the state under  
 1116 chapter 395; entities licensed or registered by the state and  
 1117 providing only health care services within the scope of services  
 1118 authorized under their respective licenses under ss. 383.30-  
 1119 383.332, chapter 390, chapter 394, chapter 397, this chapter  
 1120 except part X, chapter 429, chapter 463, chapter 465, chapter  
 1121 466, chapter 478, chapter 484, or chapter 651; end-stage renal  
 1122 disease providers authorized under 42 C.F.R. part 405, subpart  
 1123 U; providers certified under 42 C.F.R. part 485, subpart B or  
 1124 subpart H; or any entity that provides neonatal or pediatric  
 1125 hospital-based health care services or other health care  
 1126 services by licensed practitioners solely within a hospital  
 1127 licensed under chapter 395.  
 1128 2. (b) Entities that own, directly or indirectly, entities  
 1129 licensed or registered by the state pursuant to chapter 395;  
 1130 entities that own, directly or indirectly, entities licensed or  
 1131 registered by the state and providing only health care services

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1132 within the scope of services authorized pursuant to their  
 1133 respective licenses under ss. 383.30-383.332, chapter 390,  
 1134 chapter 394, chapter 397, this chapter except part X, chapter  
 1135 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter  
 1136 484, or chapter 651; end-stage renal disease providers  
 1137 authorized under 42 C.F.R. part 405, subpart U; providers  
 1138 certified under 42 C.F.R. part 485, subpart B or subpart H; or  
 1139 any entity that provides neonatal or pediatric hospital-based  
 1140 health care services by licensed practitioners solely within a  
 1141 hospital licensed under chapter 395.  
 1142 3. (e) Entities that are owned, directly or indirectly, by  
 1143 an entity licensed or registered by the state pursuant to  
 1144 chapter 395; entities that are owned, directly or indirectly, by  
 1145 an entity licensed or registered by the state and providing only  
 1146 health care services within the scope of services authorized  
 1147 pursuant to their respective licenses under ss. 383.30-383.332,  
 1148 chapter 390, chapter 394, chapter 397, this chapter except part  
 1149 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter  
 1150 478, chapter 484, or chapter 651; end-stage renal disease  
 1151 providers authorized under 42 C.F.R. part 405, subpart U;  
 1152 providers certified under 42 C.F.R. part 485, subpart B or  
 1153 subpart H; or any entity that provides neonatal or pediatric  
 1154 hospital-based health care services by licensed practitioners  
 1155 solely within a hospital under chapter 395.  
 1156 4. (d) Entities that are under common ownership, directly or  
 1157 indirectly, with an entity licensed or registered by the state  
 1158 pursuant to chapter 395; entities that are under common  
 1159 ownership, directly or indirectly, with an entity licensed or  
 1160 registered by the state and providing only health care services

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1161 within the scope of services authorized pursuant to their  
 1162 respective licenses under ss. 383.30-383.332, chapter 390,  
 1163 chapter 394, chapter 397, this chapter except part X, chapter  
 1164 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter  
 1165 484, or chapter 651; end-stage renal disease providers  
 1166 authorized under 42 C.F.R. part 405, subpart U; providers  
 1167 certified under 42 C.F.R. part 485, subpart B or subpart H; or  
 1168 any entity that provides neonatal or pediatric hospital-based  
 1169 health care services by licensed practitioners solely within a  
 1170 hospital licensed under chapter 395.

1171 5.(e) An entity that is exempt from federal taxation under  
 1172 26 U.S.C. s. 501(c) (3) or (4), an employee stock ownership plan  
 1173 under 26 U.S.C. s. 409 that has a board of trustees at least  
 1174 two-thirds of which are Florida-licensed health care  
 1175 practitioners and provides only physical therapy services under  
 1176 physician orders, any community college or university clinic,  
 1177 and any entity owned or operated by the federal or state  
 1178 government, including agencies, subdivisions, or municipalities  
 1179 thereof.

1180 6.(f) A sole proprietorship, group practice, partnership,  
 1181 or corporation that provides health care services by physicians  
 1182 covered by s. 627.419, that is directly supervised by one or  
 1183 more of such physicians, and that is wholly owned by one or more  
 1184 of those physicians or by a physician and the spouse, parent,  
 1185 child, or sibling of that physician.

1186 7.(g) A sole proprietorship, group practice, partnership,  
 1187 or corporation that provides health care services by licensed  
 1188 health care practitioners under chapter 457, chapter 458,  
 1189 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,

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1190 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,  
 1191 chapter 490, chapter 491, or part I, part III, part X, part  
 1192 XIII, or part XIV of chapter 468, or s. 464.012, and that is  
 1193 wholly owned by one or more licensed health care practitioners,  
 1194 or the licensed health care practitioners set forth in this  
 1195 ~~subparagraph~~ paragraph and the spouse, parent, child, or sibling  
 1196 of a licensed health care practitioner if one of the owners who  
 1197 is a licensed health care practitioner is supervising the  
 1198 business activities and is legally responsible for the entity's  
 1199 compliance with all federal and state laws. However, a health  
 1200 care practitioner may not supervise services beyond the scope of  
 1201 the practitioner's license, except that, for the purposes of  
 1202 this part, a clinic owned by a licensee in s. 456.053(3) (b)  
 1203 which provides only services authorized pursuant to s.  
 1204 456.053(3) (b) may be supervised by a licensee specified in s.  
 1205 456.053(3) (b) .

1206 8.(h) Clinical facilities affiliated with an accredited  
 1207 medical school at which training is provided for medical  
 1208 students, residents, or fellows.

1209 9.(i) Entities that provide only oncology or radiation  
 1210 therapy services by physicians licensed under chapter 458 or  
 1211 chapter 459 or entities that provide oncology or radiation  
 1212 therapy services by physicians licensed under chapter 458 or  
 1213 chapter 459 which are owned by a corporation whose shares are  
 1214 publicly traded on a recognized stock exchange.

1215 10.(j) Clinical facilities affiliated with a college of  
 1216 chiropractic accredited by the Council on Chiropractic Education  
 1217 at which training is provided for chiropractic students.

1218 11.(k) Entities that provide licensed practitioners to

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1219 staff emergency departments or to deliver anesthesia services in  
 1220 facilities licensed under chapter 395 and that derive at least  
 1221 90 percent of their gross annual revenues from the provision of  
 1222 such services. Entities claiming an exemption from licensure  
 1223 under this ~~subparagraph~~ ~~paragraph~~ must provide documentation  
 1224 demonstrating compliance.

1225 ~~12.(1)~~ Orthotic, prosthetic, pediatric cardiology, or  
 1226 perinatology clinical facilities or anesthesia clinical  
 1227 facilities that are not otherwise exempt under subparagraph 1.  
 1228 or subparagraph 11. ~~paragraph (a) or paragraph (k)~~ and that are  
 1229 a publicly traded corporation or are wholly owned, directly or  
 1230 indirectly, by a publicly traded corporation. As used in this  
 1231 subparagraph ~~paragraph~~, a publicly traded corporation is a  
 1232 corporation that issues securities traded on an exchange  
 1233 registered with the United States Securities and Exchange  
 1234 Commission as a national securities exchange.

1235 ~~13.(m)~~ Entities that are owned by a corporation that has  
 1236 \$250 million or more in total annual sales of health care  
 1237 services provided by licensed health care practitioners where  
 1238 one or more of the persons responsible for the operations of the  
 1239 entity is a health care practitioner who is licensed in this  
 1240 state and who is responsible for supervising the business  
 1241 activities of the entity and is responsible for the entity's  
 1242 compliance with state law for purposes of this part.

1243 ~~14.(n)~~ Entities that employ 50 or more licensed health care  
 1244 practitioners licensed under chapter 458 or chapter 459 where  
 1245 the billing for medical services is under a single tax  
 1246 identification number. The application for exemption under this  
 1247 subsection must include ~~shall contain information that includes:~~

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1248 the name, residence, and business address and telephone ~~phone~~  
 1249 number of the entity that owns the practice; a complete list of  
 1250 the names and contact information of all the officers and  
 1251 directors of the corporation; the name, residence address,  
 1252 business address, and medical license number of each licensed  
 1253 Florida health care practitioner employed by the entity; the  
 1254 corporate tax identification number of the entity seeking an  
 1255 exemption; a listing of health care services to be provided by  
 1256 the entity at the health care clinics owned or operated by the  
 1257 entity; and a certified statement prepared by an independent  
 1258 certified public accountant which states that the entity and the  
 1259 health care clinics owned or operated by the entity have not  
 1260 received payment for health care services under medical payments  
 1261 ~~personal injury protection~~ insurance coverage for the preceding  
 1262 year. If the agency determines that an entity that ~~which~~ is  
 1263 exempt under this subsection has received payments for medical  
 1264 services under medical payments ~~personal injury protection~~  
 1265 insurance coverage, the agency may deny or revoke the exemption  
 1266 from licensure under this subsection.

1267 ~~(b)~~ Notwithstanding paragraph (a) ~~this subsection~~, an  
 1268 entity is ~~shall be~~ deemed a clinic and must be licensed under  
 1269 this part in order to receive medical payments coverage  
 1270 reimbursement under s. 627.7265 ~~unless the entity is: the~~  
 1271 ~~Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless~~  
 1272 ~~exempted under s. 627.736(5)(h).~~

1273 1. Wholly owned by a physician licensed under chapter 458  
 1274 or chapter 459, or by the physician and the spouse, parent,  
 1275 child, or sibling of the physician;

1276 2. Wholly owned by a dentist licensed under chapter 466, or

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1277 by the dentist and the spouse, parent, child, or sibling of the  
 1278 dentist;  
 1279 3. Wholly owned by a chiropractic physician licensed under  
 1280 chapter 460, or by the chiropractic physician and the spouse,  
 1281 parent, child, or sibling of the chiropractic physician;  
 1282 4. A hospital or ambulatory surgical center licensed under  
 1283 chapter 395;  
 1284 5. An entity that wholly owns or is wholly owned, directly  
 1285 or indirectly, by a hospital or hospitals licensed under chapter  
 1286 395;  
 1287 6. A clinical facility affiliated with an accredited  
 1288 medical school at which training is provided for medical  
 1289 students, residents, or fellows;  
 1290 7. Certified under 42 C.F.R. part 485, subpart H; or  
 1291 8. Owned by a publicly traded corporation, either directly  
 1292 or indirectly through its subsidiaries, which has \$250 million  
 1293 or more in total annual sales of health care services provided  
 1294 by licensed health care practitioners, if one or more of the  
 1295 persons responsible for the operations of the entity are health  
 1296 care practitioners who are licensed in this state and are  
 1297 responsible for supervising the business activities of the  
 1298 entity and the entity's compliance with state law for purposes  
 1299 of this section.  
 1300 Section 27. Subsection (6) of section 400.991, Florida  
 1301 Statutes, is amended to read:  
 1302 400.991 License requirements; background screenings;  
 1303 prohibitions.—  
 1304 (6) All agency forms for licensure application or exemption  
 1305 from licensure under this part must contain the following

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1306 statement:  
 1307  
 1308 INSURANCE FRAUD NOTICE.—A person commits a fraudulent  
 1309 insurance act, as defined in s. 626.989, Florida  
 1310 Statutes, if the person ~~who~~ knowingly submits a false,  
 1311 misleading, or fraudulent application or other  
 1312 document when applying for licensure as a health care  
 1313 clinic, seeking an exemption from licensure as a  
 1314 health care clinic, or demonstrating compliance with  
 1315 part X of chapter 400, Florida Statutes, with the  
 1316 intent to use the license, exemption from licensure,  
 1317 or demonstration of compliance to provide services or  
 1318 seek reimbursement under a motor vehicle liability  
 1319 insurance policy's medical payments coverage ~~the~~  
 1320 Florida Motor Vehicle No-Fault Law, commits a  
 1321 fraudulent insurance act, as defined in s. 626.989,  
 1322 Florida Statutes. A person who presents a claim for  
 1323 benefits under medical payments coverage, ~~personal~~  
 1324 injury protection benefits knowing that the payee  
 1325 knowingly submitted such health care clinic  
 1326 application or document, commits insurance fraud, as  
 1327 defined in s. 817.234, Florida Statutes.  
 1328 Section 28. Paragraph (g) of subsection (1) of section  
 1329 400.9935, Florida Statutes, is amended to read:  
 1330 400.9935 Clinic responsibilities.—  
 1331 (1) Each clinic shall appoint a medical director or clinic  
 1332 director who shall agree in writing to accept legal  
 1333 responsibility for the following activities on behalf of the  
 1334 clinic. The medical director or the clinic director shall:

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1335 (g) Conduct systematic reviews of clinic billings to ensure  
 1336 that the billings are not fraudulent or unlawful. Upon discovery  
 1337 of an unlawful charge, the medical director or clinic director  
 1338 shall take immediate corrective action. If the clinic performs  
 1339 only the technical component of magnetic resonance imaging,  
 1340 static radiographs, computed tomography, or positron emission  
 1341 tomography, and provides the professional interpretation of such  
 1342 services, in a fixed facility that is accredited by a national  
 1343 accrediting organization that is approved by the Centers for  
 1344 Medicare and Medicaid Services for magnetic resonance imaging  
 1345 and advanced diagnostic imaging services and if, in the  
 1346 preceding quarter, the percentage of scans performed by that  
 1347 clinic which was billed to motor vehicle all personal injury  
 1348 protection insurance carriers under medical payments coverage  
 1349 was less than 15 percent, the chief financial officer of the  
 1350 clinic may, in a written acknowledgment provided to the agency,  
 1351 assume the responsibility for the conduct of the systematic  
 1352 reviews of clinic billings to ensure that the billings are not  
 1353 fraudulent or unlawful.

1354 Section 29. Subsection (28) of section 409.901, Florida  
 1355 Statutes, is amended to read:

1356 409.901 Definitions; ss. 409.901-409.920.—As used in ss.  
 1357 409.901-409.920, except as otherwise specifically provided, the  
 1358 term:

1359 (28) "Third-party benefit" means any benefit that is or may  
 1360 be available at any time through contract, court award,  
 1361 judgment, settlement, agreement, or any arrangement between a  
 1362 third party and any person or entity, including, without  
 1363 limitation, a Medicaid recipient, a provider, another third

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1364 party, an insurer, or the agency, for any Medicaid-covered  
 1365 injury, illness, goods, or services, including costs of medical  
 1366 services related thereto, for ~~bodily personal injury~~ or for  
 1367 death of the recipient, but specifically excluding ~~policies of~~  
 1368 life insurance policies on the recipient, unless available under  
 1369 terms of the policy to pay medical expenses ~~before~~ prior to  
 1370 death. The term includes, without limitation, collateral, as  
 1371 defined in this section; ~~health insurance;~~ any benefit under a  
 1372 health maintenance organization, a preferred provider  
 1373 arrangement, a prepaid health clinic, liability insurance,  
 1374 uninsured motorist insurance, or medical payments coverage; or  
 1375 ~~personal injury protection coverage;~~ medical benefits under  
 1376 workers' compensation, and any obligation under law or equity to  
 1377 provide medical support.

1378 Section 30. Paragraph (f) of subsection (11) of section  
 1379 409.910, Florida Statutes, is amended to read:

1380 409.910 Responsibility for payments on behalf of Medicaid-  
 1381 eligible persons when other parties are liable.—

1382 (11) The agency may, as a matter of right, in order to  
 1383 enforce its rights under this section, institute, intervene in,  
 1384 or join any legal or administrative proceeding in its own name  
 1385 in one or more of the following capacities: individually, as  
 1386 subrogee of the recipient, as assignee of the recipient, or as  
 1387 lienholder of the collateral.

1388 (f) Notwithstanding any provision in this section to the  
 1389 contrary, in the event of an action in tort against a third  
 1390 party in which the recipient or his or her legal representative  
 1391 is a party which results in a judgment, award, or settlement  
 1392 from a third party, the amount recovered shall be distributed as

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1393 follows:

1394 1. After ~~attorney~~ ~~attorney's~~ fees and taxable costs as  
1395 defined by the Florida Rules of Civil Procedure, one-half of the  
1396 remaining recovery shall be paid to the agency up to the total  
1397 amount of medical assistance provided by Medicaid.

1398 2. The remaining amount of the recovery shall be paid to  
1399 the recipient.

1400 3. For purposes of calculating the agency's recovery of  
1401 medical assistance benefits paid, the fee for services of an  
1402 attorney retained by the recipient or his or her legal  
1403 representative shall be calculated at 25 percent of the  
1404 judgment, award, or settlement.

1405 4. Notwithstanding any other provision of this section to  
1406 the contrary, the agency shall be entitled to all medical  
1407 coverage benefits up to the total amount of medical assistance  
1408 provided by Medicaid. For purposes of this paragraph, the term  
1409 "medical coverage" means any benefits under health insurance, a  
1410 health maintenance organization, a preferred provider  
1411 arrangement, or a prepaid health clinic, and the portion of  
1412 benefits designated for medical payments under ~~coverage for~~  
1413 workers' compensation coverage, motor vehicle insurance  
1414 coverage, personal injury protection, and casualty coverage.

1415 Section 31. Paragraph (k) of subsection (2) of section  
1416 456.057, Florida Statutes, is amended to read:

1417 456.057 Ownership and control of patient records; report or  
1418 copies of records to be furnished; disclosure of information.—

1419 (2) As used in this section, the terms "records owner,"  
1420 "health care practitioner," and "health care practitioner's  
1421 employer" do not include any of the following persons or

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1422 entities; furthermore, the following persons or entities are not  
1423 authorized to acquire or own medical records, but are authorized  
1424 under the confidentiality and disclosure requirements of this  
1425 section to maintain those documents required by the part or  
1426 chapter under which they are licensed or regulated:

1427 (k) Persons or entities practicing under s. 627.7265 ~~s.-~~  
1428 ~~627.736(7).~~

1429 Section 32. Paragraphs (ee) and (ff) of subsection (1) of  
1430 section 456.072, Florida Statutes, are amended to read:

1431 456.072 Grounds for discipline; penalties; enforcement.—

1432 (1) The following acts shall constitute grounds for which  
1433 the disciplinary actions specified in subsection (2) may be  
1434 taken:

1435 (ee) With respect to making a medical payments coverage  
1436 ~~personal injury protection~~ claim under s. 627.7265 ~~as required~~  
1437 ~~by s. 627.736~~, intentionally submitting a claim, statement, or  
1438 bill that has been upcoded. As used in this paragraph, the term  
1439 "upcoded" means an action that submits a billing code that would  
1440 result in payment greater in amount than would be paid using a  
1441 billing code that accurately describes the services performed.

1442 The term does not include an otherwise lawful bill by a magnetic  
1443 resonance imaging facility, which globally combines both  
1444 technical and professional components, if the amount of the  
1445 global bill is not more than the components if billed  
1446 separately; however, payment of such a bill constitutes payment  
1447 in full for all components of such service ~~"upcoded" as defined~~  
1448 ~~in s. 627.732.~~

1449 (ff) With respect to making a medical payments coverage  
1450 ~~personal injury protection~~ claim as required under s. 627.7265

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1451 ~~by s. 627.736~~, intentionally submitting a claim, statement, or  
 1452 bill for payment of services that were not rendered.

1453 Section 33. Paragraphs (i) and (o) of subsection (1) of  
 1454 section 626.9541, Florida Statutes, are amended to read:

1455 626.9541 Unfair methods of competition and unfair or  
 1456 deceptive acts or practices defined.—

1457 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 1458 ACTS.—The following are defined as unfair methods of competition  
 1459 and unfair or deceptive acts or practices:

1460 (i) *Unfair claim settlement practices*.—

1461 1. Attempting to settle claims on the basis of an  
 1462 application, when serving as a binder or intended to become a  
 1463 part of the policy, or any other material document which was  
 1464 altered without notice to, or knowledge or consent of, the  
 1465 insured;

1466 2. A material misrepresentation made to an insured or any  
 1467 other person having an interest in the proceeds payable under  
 1468 such contract or policy, for the purpose and with the intent of  
 1469 effecting settlement of such claims, loss, or damage under such  
 1470 contract or policy on less favorable terms than those provided  
 1471 in, and contemplated by, such contract or policy; ~~or~~

1472 3. Committing or performing with such frequency as to  
 1473 indicate a general business practice any of the following:

1474 a. Failing to adopt and implement standards for the proper  
 1475 investigation of claims;

1476 b. Misrepresenting pertinent facts or insurance policy  
 1477 provisions relating to coverages at issue;

1478 c. Failing to acknowledge and act promptly upon  
 1479 communications with respect to claims;

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1480 d. Denying claims without conducting reasonable  
 1481 investigations based upon available information;

1482 e. Failing to affirm or deny full or partial coverage of  
 1483 claims, and, as to partial coverage, the dollar amount or extent  
 1484 of coverage, or failing to provide a written statement that the  
 1485 claim is being investigated, upon the written request of the  
 1486 insured within 30 days after proof-of-loss statements have been  
 1487 completed;

1488 f. Failing to promptly provide a reasonable explanation in  
 1489 writing to the insured of the basis in the insurance policy, in  
 1490 relation to the facts or applicable law, for denial of a claim  
 1491 or for the offer of a compromise settlement;

1492 g. Failing to promptly notify the insured of any additional  
 1493 information necessary for the processing of a claim; or

1494 h. Failing to clearly explain the nature of the requested  
 1495 information and the reasons why such information is necessary.

1496 ~~i. Failing to pay personal injury protection insurance~~  
 1497 ~~claims within the time periods required by s. 627.736(4)(b). The~~  
 1498 ~~office may order the insurer to pay restitution to a~~  
 1499 ~~policyholder, medical provider, or other claimant, including~~  
 1500 ~~interest at a rate consistent with the amount set forth in s.~~  
 1501 ~~55.03(1), for the time period within which an insurer fails to~~  
 1502 ~~pay claims as required by law. Restitution is in addition to any~~  
 1503 ~~other penalties allowed by law, including, but not limited to,~~  
 1504 ~~the suspension of the insurer's certificate of authority.~~

1505 4. Failing to pay undisputed amounts of partial or full  
 1506 benefits owed under first-party property insurance policies  
 1507 within 90 days after an insurer receives notice of a residential  
 1508 property insurance claim, determines the amounts of partial or

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1509 full benefits, and agrees to coverage, unless payment of the  
 1510 undisputed benefits is prevented by an act of God, prevented by  
 1511 the impossibility of performance, or due to actions by the  
 1512 insured or claimant that constitute fraud, lack of cooperation,  
 1513 or intentional misrepresentation regarding the claim for which  
 1514 benefits are owed.

1515 (o) *Illegal dealings in premiums; excess or reduced charges*  
 1516 *for insurance.*-

1517 1. Knowingly collecting any sum as a premium or charge for  
 1518 insurance, which is not then provided, or is not in due course  
 1519 to be provided, subject to acceptance of the risk by the  
 1520 insurer, by an insurance policy issued by an insurer as  
 1521 permitted by this code.

1522 2. Knowingly collecting as a premium or charge for  
 1523 insurance any sum in excess of or less than the premium or  
 1524 charge applicable to such insurance, in accordance with the  
 1525 applicable classifications and rates as filed with and approved  
 1526 by the office, and as specified in the policy; or, in cases when  
 1527 classifications, premiums, or rates are not required by this  
 1528 code to be so filed and approved, premiums and charges collected  
 1529 from a Florida resident in excess of or less than those  
 1530 specified in the policy and as fixed by the insurer.  
 1531 Notwithstanding any other provision of law, this provision shall  
 1532 not be deemed to prohibit the charging and collection, by  
 1533 surplus lines agents licensed under part VIII of this chapter,  
 1534 of the amount of applicable state and federal taxes, or fees as  
 1535 authorized by s. 626.916(4), in addition to the premium required  
 1536 by the insurer or the charging and collection, by licensed  
 1537 agents, of the exact amount of any discount or other such fee

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1538 charged by a credit card facility in connection with the use of  
 1539 a credit card, as authorized by subparagraph (q)3., in addition  
 1540 to the premium required by the insurer. This subparagraph shall  
 1541 not be construed to prohibit collection of a premium for a  
 1542 universal life or a variable or indeterminate value insurance  
 1543 policy made in accordance with the terms of the contract.

1544 3.a. Imposing or requesting an additional premium for  
 1545 bodily injury liability coverage, property damage liability  
 1546 coverage ~~a policy of motor vehicle liability, personal injury~~  
 1547 ~~protection, medical payments coverage payment, or collision~~  
 1548 coverage in a motor vehicle liability insurance policy ~~insurance~~  
 1549 ~~or any combination thereof~~ or refusing to renew the policy  
 1550 solely because the insured was involved in a motor vehicle  
 1551 accident unless the insurer's file contains information from  
 1552 which the insurer in good faith determines that the insured was  
 1553 substantially at fault in the accident.

1554 b. An insurer which imposes and collects such a surcharge  
 1555 or which refuses to renew such policy shall, in conjunction with  
 1556 the notice of premium due or notice of nonrenewal, notify the  
 1557 named insured that he or she is entitled to reimbursement of  
 1558 such amount or renewal of the policy under the conditions listed  
 1559 below and will subsequently reimburse him or her or renew the  
 1560 policy, if the named insured demonstrates that the operator  
 1561 involved in the accident was:

1562 (I) Lawfully parked;

1563 (II) Reimbursed by, or on behalf of, a person responsible  
 1564 for the accident or has a judgment against such person;

1565 (III) Struck in the rear by another vehicle headed in the  
 1566 same direction and was not convicted of a moving traffic

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1567 violation in connection with the accident;

1568 (IV) Hit by a "hit-and-run" driver, if the accident was

1569 reported to the proper authorities within 24 hours after

1570 discovering the accident;

1571 (V) Not convicted of a moving traffic violation in

1572 connection with the accident, but the operator of the other

1573 automobile involved in such accident was convicted of a moving

1574 traffic violation;

1575 (VI) Finally adjudicated not to be liable by a court of

1576 competent jurisdiction;

1577 (VII) In receipt of a traffic citation which was dismissed

1578 or nolle prossed; or

1579 (VIII) Not at fault as evidenced by a written statement

1580 from the insured establishing facts demonstrating lack of fault

1581 which are not rebutted by information in the insurer's file from

1582 which the insurer in good faith determines that the insured was

1583 substantially at fault.

1584 c. In addition to the other provisions of this

1585 subparagraph, an insurer may not fail to renew a policy if the

1586 insured has had only one accident in which he or she was at

1587 fault within the current 3-year period. However, an insurer may

1588 nonrenew a policy for reasons other than accidents in accordance

1589 with s. 627.728. This subparagraph does not prohibit nonrenewal

1590 of a policy under which the insured has had three or more

1591 accidents, regardless of fault, during the most recent 3-year

1592 period.

1593 4. Imposing or requesting an additional premium for, or

1594 refusing to renew, a policy for motor vehicle insurance solely

1595 because the insured committed a noncriminal traffic infraction

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1596 as described in s. 318.14 unless the infraction is:

1597 a. A second infraction committed within an 18-month period,

1598 or a third or subsequent infraction committed within a 36-month

1599 period.

1600 b. A violation of s. 316.183, when such violation is a

1601 result of exceeding the lawful speed limit by more than 15 miles

1602 per hour.

1603 5. Upon the request of the insured, the insurer and

1604 licensed agent shall supply to the insured the complete proof of

1605 fault or other criteria which justifies the additional charge or

1606 cancellation.

1607 6. No insurer shall impose or request an additional premium

1608 for motor vehicle insurance, cancel or refuse to issue a policy,

1609 or refuse to renew a policy because the insured or the applicant

1610 is a handicapped or physically disabled person, so long as such

1611 handicap or physical disability does not substantially impair

1612 such person's mechanically assisted driving ability.

1613 7. No insurer may cancel or otherwise terminate any

1614 insurance contract or coverage, or require execution of a

1615 consent to rate endorsement, during the stated policy term for

1616 the purpose of offering to issue, or issuing, a similar or

1617 identical contract or coverage to the same insured with the same

1618 exposure at a higher premium rate or continuing an existing

1619 contract or coverage with the same exposure at an increased

1620 premium.

1621 8. No insurer may issue a nonrenewal notice on any

1622 insurance contract or coverage, or require execution of a

1623 consent to rate endorsement, for the purpose of offering to

1624 issue, or issuing, a similar or identical contract or coverage

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1625 to the same insured at a higher premium rate or continuing an  
 1626 existing contract or coverage at an increased premium without  
 1627 meeting any applicable notice requirements.

1628 9. No insurer shall, with respect to premiums charged for  
 1629 motor vehicle insurance, unfairly discriminate solely on the  
 1630 basis of age, sex, marital status, or scholastic achievement.

1631 10. Imposing or requesting an additional premium for motor  
 1632 vehicle comprehensive or uninsured motorist coverage solely  
 1633 because the insured was involved in a motor vehicle accident or  
 1634 was convicted of a moving traffic violation.

1635 11. No insurer shall cancel or issue a nonrenewal notice on  
 1636 any insurance policy or contract without complying with any  
 1637 applicable cancellation or nonrenewal provision required under  
 1638 the Florida Insurance Code.

1639 12. No insurer shall impose or request an additional  
 1640 premium, cancel a policy, or issue a nonrenewal notice on any  
 1641 insurance policy or contract because of any traffic infraction  
 1642 when adjudication has been withheld and no points have been  
 1643 assessed pursuant to s. 318.14(9) and (10). However, this  
 1644 subparagraph does not apply to traffic infractions involving  
 1645 accidents in which the insurer has incurred a loss due to the  
 1646 fault of the insured.

1647 Section 34. Paragraph (a) of subsection (1) of section  
 1648 626.989, Florida Statutes, is amended to read:

1649 626.989 Investigation by department or Division of  
 1650 Investigative and Forensic Services; compliance; immunity;  
 1651 confidential information; reports to division; division  
 1652 investigator's power of arrest.-

1653 (1) For the purposes of this section:

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1654 (a) A person commits a "fraudulent insurance act" if the  
 1655 person:

1656 1. Knowingly and with intent to defraud presents, causes to  
 1657 be presented, or prepares with knowledge or belief that it will  
 1658 be presented, to or by an insurer, self-insurer, self-insurance  
 1659 fund, servicing corporation, purported insurer, broker, or any  
 1660 agent thereof, any written statement as part of, or in support  
 1661 of, an application for the issuance of, or the rating of, any  
 1662 insurance policy, or a claim for payment or other benefit  
 1663 pursuant to any insurance policy, which the person knows to  
 1664 contain materially false information concerning any fact  
 1665 material thereto or if the person conceals, for the purpose of  
 1666 misleading another, information concerning any fact material  
 1667 thereto.

1668 2. Knowingly submits:

1669 a. A false, misleading, or fraudulent application or other  
 1670 document when applying for licensure as a health care clinic,  
 1671 seeking an exemption from licensure as a health care clinic, or  
 1672 demonstrating compliance with part X of chapter 400 with an  
 1673 intent to use the license, exemption from licensure, or  
 1674 demonstration of compliance to provide services or seek  
 1675 reimbursement under a motor vehicle liability insurance policy's  
 1676 medical payments coverage ~~the Florida Motor Vehicle No-Fault~~  
 1677 ~~Law.~~

1678 b. A claim for payment or other benefit under medical  
 1679 payments coverage ~~pursuant to a personal injury protection~~  
 1680 ~~insurance policy under the Florida Motor Vehicle No-Fault Law~~ if  
 1681 the person knows that the payee knowingly submitted a false,  
 1682 misleading, or fraudulent application or other document when

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1683 applying for licensure as a health care clinic, seeking an  
1684 exemption from licensure as a health care clinic, or  
1685 demonstrating compliance with part X of chapter 400.

1686 Section 35. Subsection (1) of section 627.06501, Florida  
1687 Statutes, is amended to read:

1688 627.06501 Insurance discounts for certain persons  
1689 completing driver improvement course.-

1690 (1) Any rate, rating schedule, or rating manual for the  
1691 liability, medical payments ~~personal injury protection~~, and  
1692 collision coverages of a motor vehicle insurance policy filed  
1693 with the office may provide for an appropriate reduction in  
1694 premium charges as to such coverages if ~~when~~ the principal  
1695 operator on the covered vehicle has successfully completed a  
1696 driver improvement course approved and certified by the  
1697 Department of Highway Safety and Motor Vehicles which is  
1698 effective in reducing crash or violation rates, or both, as  
1699 determined pursuant to s. 318.1451(5). Any discount, not to  
1700 exceed 10 percent, used by an insurer is presumed to be  
1701 appropriate unless credible data demonstrates otherwise.

1702 Section 36. Subsection (1) of section 627.0652, Florida  
1703 Statutes, is amended to read:

1704 627.0652 Insurance discounts for certain persons completing  
1705 safety course.-

1706 (1) Any rates, rating schedules, or rating manuals for the  
1707 liability, medical payments ~~personal injury protection~~, and  
1708 collision coverages of a motor vehicle insurance policy filed  
1709 with the office must ~~shall~~ provide for an appropriate reduction  
1710 in premium charges as to such coverages if ~~when~~ the principal  
1711 operator on the covered vehicle is an insured 55 years of age or

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1712 older who has successfully completed a motor vehicle accident  
1713 prevention course approved by the Department of Highway Safety  
1714 and Motor Vehicles. Any discount used by an insurer is presumed  
1715 to be appropriate unless credible data demonstrates otherwise.

1716 Section 37. Subsections (1), (3), and (6) of section  
1717 627.0653, Florida Statutes, are amended to read:

1718 627.0653 Insurance discounts for specified motor vehicle  
1719 equipment.-

1720 (1) Any rates, rating schedules, or rating manuals for the  
1721 liability, medical payments ~~personal injury protection~~, and  
1722 collision coverages of a motor vehicle insurance policy filed  
1723 with the office must ~~shall~~ provide a premium discount if the  
1724 insured vehicle is equipped with factory-installed, four-wheel  
1725 antilock brakes.

1726 (3) Any rates, rating schedules, or rating manuals for  
1727 ~~personal injury protection coverage and~~ medical payments  
1728 coverage, ~~if offered,~~ of a motor vehicle insurance policy filed  
1729 with the office must ~~shall~~ provide a premium discount if the  
1730 insured vehicle is equipped with one or more air bags that ~~which~~  
1731 are factory installed.

1732 (6) The Office of Insurance Regulation may approve a  
1733 premium discount to any rates, rating schedules, or rating  
1734 manuals for the liability, medical payments ~~personal injury~~  
1735 ~~protection~~, and collision coverages of a motor vehicle insurance  
1736 policy filed with the office if the insured vehicle is equipped  
1737 with autonomous driving technology or electronic vehicle  
1738 collision avoidance technology that is factory installed or a  
1739 retrofitted system and that complies with National Highway  
1740 Traffic Safety Administration standards.

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1741 Section 38. Section 627.4132, Florida Statutes, is amended  
1742 to read:

1743 627.4132 Stacking of coverages prohibited.—If an insured or  
1744 named insured is protected by any type of motor vehicle  
1745 insurance policy for bodily injury and property damage  
1746 ~~liability, personal injury protection, or other coverage~~, the  
1747 policy ~~must shall~~ provide that the insured or named insured is  
1748 protected only to the extent of the coverage she or he has on  
1749 the vehicle involved in the accident. However, if none of the  
1750 insured's or named insured's vehicles are ~~is~~ involved in the  
1751 accident, coverage is available only to the extent of coverage  
1752 on any one of the vehicles with applicable coverage. Coverage on  
1753 any other vehicles may shall not be added to or stacked upon  
1754 that coverage. This section does not apply:

1755 (1) To uninsured motorist coverage that which is separately  
1756 governed by s. 627.727.

1757 (2) To reduce the coverage available by reason of insurance  
1758 policies insuring different named insureds.

1759 Section 39. Section 627.7263, Florida Statutes, is amended  
1760 to read:

1761 627.7263 Rental and leasing driver's insurance to be  
1762 primary; exception.—

1763 (1) The valid and collectible liability insurance and  
1764 medical payments coverage ~~or personal injury protection~~  
1765 ~~insurance providing coverage~~ for the lessor of a motor vehicle  
1766 for rent or lease is primary unless otherwise stated in at least  
1767 10-point type on the face of the rental or lease agreement. Such  
1768 insurance is primary for the limits of liability ~~and personal~~  
1769 ~~injury protection~~ coverage as required by s. 324.021(7) and the

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1770 medical payments coverage limit specified under s. 627.7265 ~~ss-~~  
1771 324.021(7) and 627.736.

1772 (2) If the lessee's coverage is to be primary, the rental  
1773 or lease agreement must contain the following language, in at  
1774 least 10-point type:

1775  
1776 "The valid and collectible liability insurance and  
1777 medical payments coverage ~~personal injury protection~~  
1778 ~~insurance of an any~~ authorized rental or leasing  
1779 driver is primary for the limits of liability ~~and~~  
1780 ~~personal injury protection~~ coverage required under  
1781 section 324.021(7), Florida Statutes, and the medical  
1782 payments coverage limit specified under section  
1783 627.7265 by ss. 324.021(7) and 627.736, Florida  
1784 Statutes."

1785 Section 40. Section 627.7265, Florida Statutes, is created  
1786 to read:

1787 627.7265 Motor vehicle insurance; medical payments  
1788 coverage.—

1789 (1) Medical payments coverage must protect the named  
1790 insured, resident relatives, persons operating the insured motor  
1791 vehicle, passengers in the insured motor vehicle, and persons  
1792 who are struck by the insured motor vehicle and suffer bodily  
1793 injury while not an occupant of a self-propelled motor vehicle  
1794 at a limit of at least \$5,000 for medical expense incurred due  
1795 to bodily injury, sickness, or disease arising out of the  
1796 ownership, maintenance, or use of a motor vehicle. The coverage  
1797 must provide an additional death benefit of at least \$5,000.

1798 (a) Before issuing a motor vehicle liability insurance

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1799 policy that is furnished as proof of financial responsibility  
 1800 under s. 324.031, the insurer must offer medical payments  
 1801 coverage at limits of \$5,000 and \$10,000. The insurer may also  
 1802 offer medical payments coverage at limits greater than \$5,000.

1803 (b) The medical payments coverage must be offered with an  
 1804 option with no deductible. The insurer may also offer medical  
 1805 payments coverage with a deductible not to exceed \$500.

1806 (c) Each motor vehicle liability insurance policy that is  
 1807 furnished as proof of financial responsibility under s. 324.031  
 1808 is deemed to have:

1809 1. Medical payments coverage to a limit of \$10,000, unless  
 1810 the insurer obtains the policyholder's written refusal of  
 1811 medical payments coverage or written selection of medical  
 1812 payments coverage at a limit other than \$10,000. The rejection  
 1813 or selection of coverage at a limit other than \$10,000 must be  
 1814 made on a form approved by the office.

1815 2. No medical payments coverage deductible, unless the  
 1816 insurer obtains the policyholder's written selection of a  
 1817 deductible of up to \$500. The selection of a deductible must be  
 1818 made on a form approved by the office.

1819 (d)1. The forms in subparagraphs (c)1. and 2. must fully  
 1820 advise the applicant of the nature of the coverage being  
 1821 rejected or the policy limit or deductible being selected. If  
 1822 such form is signed by a named insured, it is conclusively  
 1823 presumed that there was an informed, knowing rejection of the  
 1824 coverage or election of the policy limit or deductible selected.

1825 2. Unless the policyholder requests in writing the coverage  
 1826 specified in this section, it need not be provided in or  
 1827 supplemental to any other policy that renews, insures, extends,

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1828 changes, supersedes, or replaces an existing policy if the  
 1829 policyholder has rejected the coverage specified in this section  
 1830 or has selected an alternative coverage limit or deductible. At  
 1831 least annually, the insurer shall provide the policyholder with  
 1832 a notice of the availability of such coverage in a form approved  
 1833 by the office. Such notice must be part of, and attached to, the  
 1834 notice of premium and must provide for a means to allow the  
 1835 insured to request medical payments coverage at the limits and  
 1836 deductibles required to be offered under this section. The  
 1837 notice must be given in a manner approved by the office. Receipt  
 1838 of this notice does not constitute an affirmative waiver of the  
 1839 insured's right to medical payments coverage if the insured has  
 1840 not signed a selection or rejection form.

1841 (e) This section may not be construed to limit any other  
 1842 coverage made available by an insurer.

1843 (2) Upon receiving notice of an accident that is  
 1844 potentially covered by medical payments coverage benefits, the  
 1845 insurer must reserve \$5,000 of medical payments coverage  
 1846 benefits for payment to physicians licensed under chapter 458 or  
 1847 chapter 459 or dentists licensed under chapter 466 who provide  
 1848 emergency services and care, as defined in s. 395.002, or who  
 1849 provide hospital inpatient care. The amount required to be held  
 1850 in reserve may be used only to pay claims from such physicians  
 1851 or dentists until 30 days after the date the insurer receives  
 1852 notice of the accident. After the 30-day period, any amount of  
 1853 the reserve for which the insurer has not received notice of  
 1854 such claims may be used by the insurer to pay other claims. This  
 1855 subsection does not require an insurer to establish a claim  
 1856 reserve for insurance accounting purposes.

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1857 (3) An insurer providing medical payments coverage benefits  
 1858 may not have a:

1859 (a) Lien on any recovery in tort by judgment, settlement,  
 1860 or otherwise for medical payments coverage benefits, whether  
 1861 suit has been filed or settlement has been reached without suit;

1862 (b) Cause of action against an alleged tortfeasor for  
 1863 benefits paid under medical payments coverage; or

1864 (c) Cause of action against a person to whom or for whom  
 1865 medical payments coverage benefits were paid, except when  
 1866 medical payments coverage benefits are paid by reason of fraud  
 1867 by such person.

1868 Section 41. Subsections (1) and (7) of section 627.727,  
 1869 Florida Statutes, are amended, and present subsections (8), (9),  
 1870 and (10) of that section are redesignated as subsections (7),  
 1871 (8), and (9), respectively, to read:

1872 627.727 Motor vehicle insurance; uninsured and underinsured  
 1873 vehicle coverage; insolvent insurer protection.—

1874 (1) A ~~No~~ motor vehicle liability insurance policy that  
 1875 ~~which~~ provides bodily injury liability coverage may not shall be  
 1876 delivered or issued for delivery in this state with respect to  
 1877 any specifically insured or identified motor vehicle registered  
 1878 or principally garaged in this state, unless uninsured motor  
 1879 vehicle coverage is provided therein or supplemental thereto for  
 1880 the protection of persons insured thereunder who are legally  
 1881 entitled to recover damages from owners or operators of  
 1882 uninsured motor vehicles because of bodily injury, sickness, or  
 1883 disease, including death, resulting therefrom. However, the  
 1884 coverage required under this section is not applicable if when,  
 1885 or to the extent that, an insured named in the policy makes a

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1886 written rejection of the coverage on behalf of all insureds  
 1887 under the policy. If ~~When~~ a motor vehicle is leased for a ~~period~~  
 1888 ~~of~~ 1 year or longer and the lessor of such vehicle, by the terms  
 1889 of the lease contract, provides liability coverage on the leased  
 1890 vehicle, the lessee of such vehicle ~~has shall have~~ the sole  
 1891 privilege to reject uninsured motorist coverage or to select  
 1892 lower limits than the bodily injury liability limits, regardless  
 1893 of whether the lessor is qualified as a self-insurer pursuant to  
 1894 s. 324.171. Unless an insured, or a lessee having the privilege  
 1895 of rejecting uninsured motorist coverage, requests such coverage  
 1896 or requests higher uninsured motorist limits in writing, the  
 1897 coverage or such higher uninsured motorist limits need not be  
 1898 provided in or supplemental to any other policy that which  
 1899 renews, extends, changes, supersedes, or replaces an existing  
 1900 policy with the same bodily injury liability limits when an  
 1901 insured or lessee had rejected the coverage. When an insured or  
 1902 lessee has initially selected limits of uninsured motorist  
 1903 coverage lower than her or his bodily injury liability limits,  
 1904 higher limits of uninsured motorist coverage need not be  
 1905 provided in or supplemental to any other policy that which  
 1906 renews, extends, changes, supersedes, or replaces an existing  
 1907 policy with the same bodily injury liability limits unless an  
 1908 insured requests higher uninsured motorist coverage in writing.  
 1909 The rejection or selection of lower limits must shall be made on  
 1910 a form approved by the office. The form must shall fully advise  
 1911 the applicant of the nature of the coverage and must shall state  
 1912 that the coverage is equal to bodily injury liability limits  
 1913 unless lower limits are requested or the coverage is rejected.  
 1914 The heading of the form must shall be in 12-point bold type and

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1915 ~~must shall~~ state: "You are electing not to purchase certain  
 1916 valuable coverage ~~that which~~ protects you and your family or you  
 1917 are purchasing uninsured motorist limits less than your bodily  
 1918 injury liability limits when you sign this form. Please read  
 1919 carefully." If this form is signed by a named insured, it will  
 1920 be conclusively presumed that there was an informed, knowing  
 1921 rejection of coverage or election of lower limits on behalf of  
 1922 all insureds. The insurer shall notify the named insured at  
 1923 least annually of her or his options as to the coverage required  
 1924 by this section. Such notice must shall be part of, and attached  
 1925 to, the notice of premium, must shall provide for a means to  
 1926 allow the insured to request such coverage, and must shall be  
 1927 given in a manner approved by the office. Receipt of this notice  
 1928 does not constitute an affirmative waiver of the insured's right  
 1929 to uninsured motorist coverage ~~if where~~ the insured has not  
 1930 signed a selection or rejection form. The coverage described  
 1931 under this section must shall be over and above, but may shall  
 1932 not duplicate, the benefits available to an insured under any  
 1933 workers' compensation law, ~~personal injury protection benefits,~~  
 1934 disability benefits law, or similar law; under any automobile  
 1935 medical payments expense coverage; under any motor vehicle  
 1936 liability insurance coverage; or from the owner or operator of  
 1937 the uninsured motor vehicle or any other person or organization  
 1938 jointly or severally liable together with such owner or operator  
 1939 for the accident,~~r~~ and such coverage must shall cover the  
 1940 difference, if any, between the sum of such benefits and the  
 1941 damages sustained, up to the maximum amount of such coverage  
 1942 provided under this section. The amount of coverage available  
 1943 under this section may shall not be reduced by a setoff against

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1944 any coverage, including liability insurance. Such coverage does  
 1945 ~~shall~~ not inure directly or indirectly to the benefit of any  
 1946 workers' compensation or disability benefits carrier or any  
 1947 person or organization qualifying as a self-insurer under any  
 1948 workers' compensation or disability benefits law or similar law.

1949 ~~(7) The legal liability of an uninsured motorist coverage~~  
 1950 ~~insurer does not include damages in tort for pain, suffering,~~  
 1951 ~~mental anguish, and inconvenience unless the injury or disease~~  
 1952 ~~is described in one or more of paragraphs (a) - (d) of s.~~  
 1953 ~~627.737(2).~~

1954 Section 42. Subsection (1) and paragraphs (a) and (b) of  
 1955 subsection (2) of section 627.7275, Florida Statutes, are  
 1956 amended to read:

1957 627.7275 Motor vehicle liability.—

1958 (1) A motor vehicle insurance policy ~~providing personal~~  
 1959 ~~injury protection as set forth in s. 627.736~~ may not be  
 1960 delivered or issued for delivery in this state for a with  
 1961 ~~respect to any~~ specifically insured or identified motor vehicle  
 1962 registered or principally garaged in this state must provide  
 1963 bodily injury liability coverage and ~~unless the policy also~~  
 1964 ~~provides coverage for~~ property damage liability coverage as  
 1965 required under by s. 324.022.

1966 (2) (a) Insurers writing motor vehicle insurance in this  
 1967 state shall make available, subject to the insurers' usual  
 1968 underwriting restrictions:

1969 1. Coverage under policies as described in subsection (1)  
 1970 to an applicant for private passenger motor vehicle insurance  
 1971 coverage who is seeking the coverage in order to reinstate the  
 1972 applicant's driving privileges in this state if the driving

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1973 privileges were revoked or suspended pursuant to s. 316.646 or  
 1974 s. 324.0221 due to the failure of the applicant to maintain  
 1975 required security.

1976 2. Coverage under policies as described in subsection (1),  
 1977 which includes bodily injury ~~also provides~~ liability coverage  
 1978 and property damage liability coverage, for bodily injury,  
 1979 ~~death, and property damage arising out of the ownership,~~  
 1980 ~~maintenance, or use of the motor vehicle~~ in an amount not less  
 1981 than the minimum limits required under ~~described in~~ s.  
 1982 324.021(7) or s. 324.023 and which conforms to the requirements  
 1983 of s. 324.151, to an applicant for private passenger motor  
 1984 vehicle insurance coverage who is seeking the coverage in order  
 1985 to reinstate the applicant's driving privileges in this state  
 1986 after such privileges were revoked or suspended under s. 316.193  
 1987 or s. 322.26(2) for driving under the influence.

1988 (b) The policies described in paragraph (a) must ~~shall~~ be  
 1989 issued for at least 6 months and, as to the minimum coverages  
 1990 required under this section, may not be canceled by the insured  
 1991 for any reason or by the insurer after 60 days, during which  
 1992 period the insurer is completing the underwriting of the policy.  
 1993 After the insurer has completed underwriting the policy, the  
 1994 insurer shall notify the Department of Highway Safety and Motor  
 1995 Vehicles that the policy is in full force and effect and is not  
 1996 cancelable for the remainder of the policy period. A premium  
 1997 must ~~shall~~ be collected and the coverage is in effect for the  
 1998 60-day period during which the insurer is completing the  
 1999 underwriting of the policy, whether or not the person's driver  
 2000 license, motor vehicle tag, and motor vehicle registration are  
 2001 in effect. Once the noncancelable provisions of the policy

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2002 become effective, the bodily injury liability and property  
 2003 damage liability coverages ~~for bodily injury, property damage,~~  
 2004 ~~and personal injury protection~~ may not be reduced below the  
 2005 minimum limits required under s. 324.021 or s. 324.023 during  
 2006 the policy period.

2007 Section 43. Paragraph (a) of subsection (1) of section  
 2008 627.728, Florida Statutes, is amended to read:

2009 627.728 Cancellations; nonrenewals.—

2010 (1) As used in this section, the term:

2011 (a) "Policy" means the bodily injury and property damage  
 2012 liability, ~~personal injury protection,~~ medical payments,  
 2013 comprehensive, collision, and uninsured motorist coverage  
 2014 portions of a policy of motor vehicle insurance delivered or  
 2015 issued for delivery in this state:

2016 1. Insuring a natural person as named insured or one or  
 2017 more related individuals who are residents ~~resident~~ of the same  
 2018 household; and

2019 2. Insuring only a motor vehicle of the private passenger  
 2020 type or station wagon type which is not used as a public or  
 2021 livery conveyance for passengers or rented to others; or  
 2022 insuring any other four-wheel motor vehicle having a load  
 2023 capacity of 1,500 pounds or less which is not used in the  
 2024 occupation, profession, or business of the insured other than  
 2025 farming; other than any policy issued under an automobile  
 2026 insurance assigned risk plan or covering garage, automobile  
 2027 sales agency, repair shop, service station, or public parking  
 2028 place operation hazards.

2029  
 2030 The term "policy" does not include a binder as defined in s.

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2031 627.420 unless the duration of the binder period exceeds 60  
 2032 days.

2033 Section 44. Subsection (1), paragraph (a) of subsection  
 2034 (5), and subsections (6) and (7) of section 627.7295, Florida  
 2035 Statutes, are amended to read:

2036 627.7295 Motor vehicle insurance contracts.—

2037 (1) As used in this section, the term:

2038 (a) "Policy" means a motor vehicle insurance policy that  
 2039 provides bodily injury liability ~~personal injury protection~~  
 2040 coverage and, ~~property damage liability coverage,~~ ~~or both~~.

2041 (b) "Binder" means a binder that provides motor vehicle  
 2042 bodily injury liability coverage ~~personal injury protection~~ and  
 2043 property damage liability coverage.

2044 (5) (a) A licensed general lines agent may charge a per-  
 2045 policy fee up to not to exceed \$10 to cover the administrative  
 2046 costs of the agent associated with selling the motor vehicle  
 2047 insurance policy if the policy covers only bodily injury  
 2048 liability coverage ~~personal injury protection coverage as~~  
 2049 ~~provided by s. 627.736~~ and property damage liability coverage as  
 2050 provided by s. 627.7275 and if no other insurance is sold or  
 2051 issued in conjunction with or collateral to the policy. The fee  
 2052 is not ~~considered~~ part of the premium.

2053 (6) If a motor vehicle owner's driver license, license  
 2054 plate, and registration have previously been suspended pursuant  
 2055 to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy  
 2056 only as provided in s. 627.7275.

2057 (7) A policy of private passenger motor vehicle insurance  
 2058 or a binder for such a policy may be initially issued in this  
 2059 state only if, before the effective date of such binder or

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2060 policy, the insurer or agent has collected ~~from the insured an~~  
 2061 ~~amount equal to~~ 2 months' premium from the insured. An insurer,  
 2062 agent, or premium finance company may not, directly or  
 2063 indirectly, take any action that results ~~resulting~~ in the  
 2064 insured paying ~~having paid~~ from the insured's own funds an  
 2065 amount less than the 2 months' premium required by this  
 2066 subsection. This subsection applies without regard to whether  
 2067 the premium is financed by a premium finance company or is paid  
 2068 pursuant to a periodic payment plan of an insurer or an  
 2069 insurance agent.

2070 (a) This subsection does not apply:

2071 1. If an insured or member of the insured's family is  
 2072 renewing or replacing a policy or a binder for such policy  
 2073 written by the same insurer or a member of the same insurer  
 2074 group. ~~This subsection does not apply~~

2075 2. To an insurer that issues private passenger motor  
 2076 vehicle coverage primarily to active duty or former military  
 2077 personnel or their dependents. ~~This subsection does not apply~~

2078 3. If all policy payments are paid pursuant to a payroll  
 2079 deduction plan, an automatic electronic funds transfer payment  
 2080 plan from the policyholder, or a recurring credit card or debit  
 2081 card agreement with the insurer.

2082 (b) This subsection and subsection (4) do not apply if:

2083 1. All policy payments to an insurer are paid pursuant to  
 2084 an automatic electronic funds transfer payment plan from an  
 2085 agent, a managing general agent, or a premium finance company  
 2086 and if the policy includes, at a minimum, bodily injury  
 2087 liability coverage and ~~personal injury protection pursuant to~~  
 2088 ~~ss. 627.730-627.7405~~; ~~motor vehicle property damage liability~~



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2089 ~~coverage pursuant to s. 627.7275; or and bodily injury liability~~  
 2090 ~~in at least the amount of \$10,000 because of bodily injury to,~~  
 2091 ~~or death of, one person in any one accident and in the amount of~~  
 2092 ~~\$20,000 because of bodily injury to, or death of, two or more~~  
 2093 ~~persons in any one accident. This subsection and subsection (4)~~  
 2094 ~~do not apply if~~

2095 2. An insured has had a policy in effect for at least 6  
 2096 months, the insured's agent is terminated by the insurer that  
 2097 issued the policy, and the insured obtains coverage on the  
 2098 policy's renewal date with a new company through the terminated  
 2099 agent.

2100 Section 45. Section 627.7415, Florida Statutes, is amended  
 2101 to read:

2102 627.7415 Commercial motor vehicles; additional liability  
 2103 insurance coverage.—Beginning January 1, 2020, commercial motor  
 2104 vehicles, as defined in s. 207.002 or s. 320.01, operated upon  
 2105 the roads and highways of this state must ~~shall~~ be insured with  
 2106 the following minimum levels of combined bodily liability  
 2107 insurance and property damage liability insurance in addition to  
 2108 any other insurance requirements:

2109 (1) ~~Sixty Fifty~~ sixty thousand dollars per occurrence for a  
 2110 commercial motor vehicle with a gross vehicle weight of 26,000  
 2111 pounds or more, but less than 35,000 pounds.

2112 (2) One hundred twenty thousand dollars per occurrence for  
 2113 a commercial motor vehicle with a gross vehicle weight of 35,000  
 2114 pounds or more, but less than 44,000 pounds.

2115 (3) Three hundred thousand dollars per occurrence for a  
 2116 commercial motor vehicle with a gross vehicle weight of 44,000  
 2117 pounds or more.

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2118 (4) All commercial motor vehicles subject to regulations of  
 2119 the United States Department of Transportation, 49 C.F.R. part  
 2120 387, subpart A, and as may be hereinafter amended, shall be  
 2121 insured in an amount equivalent to the minimum levels of  
 2122 financial responsibility as set forth in such regulations.  
 2123

2124 A violation of this section is a noncriminal traffic infraction,  
 2125 punishable as a nonmoving violation as provided in chapter 318.

2126 Section 46. Paragraphs (b), (c), and (g) of subsection (7)  
 2127 and paragraphs (a) and (b) of subsection (8) of section 627.748,  
 2128 Florida Statutes, are amended to read:

2129 627.748 Transportation network companies.—

2130 (7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE  
 2131 REQUIREMENTS.—

2132 (b) The following automobile insurance requirements apply  
 2133 while a participating TNC driver is logged on to the digital  
 2134 network but is not engaged in a prearranged ride:

2135 1. Automobile insurance that provides:

2136 a. A primary automobile liability coverage of at least  
 2137 \$50,000 for death and bodily injury per person, \$100,000 for  
 2138 death and bodily injury per incident, and \$25,000 for property  
 2139 damage; and

2140 b. ~~Personal injury protection benefits that meet the~~  
 2141 ~~minimum coverage amounts required under ss. 627.730-627.7405;~~  
 2142 ~~and~~

2143 ~~e-~~ Uninsured and underinsured vehicle coverage as required  
 2144 by s. 627.727.

2145 2. The coverage requirements of this paragraph may be  
 2146 satisfied by any of the following:

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2147 a. Automobile insurance maintained by the TNC driver;  
 2148 b. Automobile insurance maintained by the TNC; or  
 2149 c. A combination of sub-subparagraphs a. and b.  
 2150 (c) The following automobile insurance requirements apply  
 2151 while a TNC driver is engaged in a prearranged ride:  
 2152 1. Automobile insurance that provides:  
 2153 a. A primary automobile liability coverage of at least \$1  
 2154 million for death, bodily injury, and property damage; and  
 2155 b. ~~Personal injury protection benefits that meet the~~  
 2156 ~~minimum coverage amounts required of a limousine under ss.~~  
 2157 ~~627.730-627.7405; and~~  
 2158 ~~e.~~ Uninsured and underinsured vehicle coverage as required  
 2159 by s. 627.727.  
 2160 2. The coverage requirements of this paragraph may be  
 2161 satisfied by any of the following:  
 2162 a. Automobile insurance maintained by the TNC driver;  
 2163 b. Automobile insurance maintained by the TNC; or  
 2164 c. A combination of sub-subparagraphs a. and b.  
 2165 (g) Insurance satisfying the requirements under this  
 2166 subsection is deemed to satisfy the financial responsibility  
 2167 requirement for a motor vehicle under chapter 324 ~~and the~~  
 2168 ~~security required under s. 627.733~~ for any period when the TNC  
 2169 driver is logged onto the digital network or engaged in a  
 2170 prearranged ride.  
 2171 (8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE;  
 2172 EXCLUSIONS.—  
 2173 (a) Before a TNC driver is allowed to accept a request for  
 2174 a prearranged ride on the digital network, the TNC must disclose  
 2175 in writing to the TNC driver:

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2176 1. The insurance coverage, including the types of coverage  
 2177 and the limits for each coverage, which the TNC provides while  
 2178 the TNC driver uses a TNC vehicle in connection with the TNC's  
 2179 digital network.  
 2180 2. That the TNC driver's own automobile insurance policy  
 2181 might not provide any coverage while the TNC driver is logged on  
 2182 to the digital network or is engaged in a prearranged ride,  
 2183 depending on the terms of the TNC driver's own automobile  
 2184 insurance policy.  
 2185 3. That the provision of rides for compensation which are  
 2186 not prearranged rides subjects the driver to the coverage  
 2187 requirements imposed under s. 324.032(1) and (2) and that  
 2188 failure to meet such coverage requirements subjects the TNC  
 2189 driver to penalties provided in s. 324.221, up to and including  
 2190 a misdemeanor of the second degree.  
 2191 (b)1. An insurer that provides an automobile liability  
 2192 insurance policy under this part may exclude any and all  
 2193 coverage afforded under the policy issued to an owner or  
 2194 operator of a TNC vehicle while driving that vehicle for any  
 2195 loss or injury that occurs while a TNC driver is logged on to a  
 2196 digital network or while a TNC driver provides a prearranged  
 2197 ride. Exclusions imposed under this subsection are limited to  
 2198 coverage while a TNC driver is logged on to a digital network or  
 2199 while a TNC driver provides a prearranged ride. This right to  
 2200 exclude all coverage may apply to any coverage included in an  
 2201 automobile insurance policy, including, but not limited to:  
 2202 a. Liability coverage for bodily injury and property  
 2203 damage;  
 2204 b. Uninsured and underinsured motorist coverage;

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2205 c. Medical payments coverage;

2206 d. Comprehensive physical damage coverage; and

2207 e. Collision physical damage coverage; ~~and~~

2208 ~~f. Personal injury protection.~~

2209 2. The exclusions described in subparagraph 1. apply

2210 notwithstanding any requirement under chapter 324. These

2211 exclusions do not affect or diminish coverage otherwise

2212 available for permissive drivers or resident relatives under the

2213 personal automobile insurance policy of the TNC driver or owner

2214 of the TNC vehicle who are not occupying the TNC vehicle at the

2215 time of loss. This section does not require that a personal

2216 automobile insurance policy provide coverage while the TNC

2217 driver is logged on to a digital network, while the TNC driver

2218 is engaged in a prearranged ride, or while the TNC driver

2219 otherwise uses a vehicle to transport riders for compensation.

2220 3. This section must not be construed to require an insurer

2221 to use any particular policy language or reference to this

2222 section in order to exclude any and all coverage for any loss or

2223 injury that occurs while a TNC driver is logged on to a digital

2224 network or while a TNC driver provides a prearranged ride.

2225 4. This section does not preclude an insurer from providing

2226 primary or excess coverage for the TNC driver's vehicle by

2227 contract or endorsement.

2228 Section 47. Section 627.8405, Florida Statutes, is amended

2229 to read:

2230 627.8405 Prohibited acts; financing companies.—~~A~~ ~~No~~ premium

2231 finance company ~~shall~~, in a premium finance agreement or other

2232 agreement, may not finance the cost of or otherwise provide for

2233 the collection or remittance of dues, assessments, fees, or

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2234 other periodic payments of money for the cost of:

2235 (1) A membership in an automobile club. The term

2236 "automobile club" means a legal entity that ~~which~~, in

2237 consideration of dues, assessments, or periodic payments of

2238 money, promises its members or subscribers to assist them in

2239 matters relating to the ownership, operation, use, or

2240 maintenance of a motor vehicle; however, the term ~~this~~

2241 ~~definition of "automobile club"~~ does not include persons,

2242 associations, or corporations ~~which are~~ organized and operated

2243 solely for the purpose of conducting, sponsoring, or sanctioning

2244 motor vehicle races, exhibitions, or contests upon racetracks,

2245 or upon racecourses established and marked as such for the

2246 duration of such particular events. The term ~~words~~ "motor

2247 vehicle" used herein has ~~have~~ the same meaning as defined in

2248 chapter 320.

2249 (2) An accidental death and dismemberment policy sold in

2250 combination with a policy providing only bodily injury liability

2251 coverage ~~personal injury protection~~ and property damage

2252 liability coverage ~~only policy~~.

2253 (3) Any product not regulated under ~~the provisions of~~ this

2254 insurance code.

2255

2256 This section also applies to premium financing by any insurance

2257 agent or insurance company under part XVI. The commission shall

2258 adopt rules to assure disclosure, at the time of sale, of

2259 coverages financed ~~with personal injury protection~~ and shall

2260 prescribe the form of such disclosure.

2261 Section 48. Subsection (1) of section 627.915, Florida

2262 Statutes, is amended to read:

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2263 627.915 Insurer experience reporting.-  
 2264 (1) Each insurer transacting private passenger automobile  
 2265 insurance in this state shall report certain information  
 2266 annually to the office. The information will be due on or before  
 2267 July 1 of each year. The information must ~~shall~~ be divided into  
 2268 the following categories: bodily injury liability; property  
 2269 damage liability; uninsured motorist; ~~personal injury protection~~  
 2270 ~~benefits~~; medical payments; and comprehensive and collision. The  
 2271 information given must ~~shall~~ be on direct insurance writings in  
 2272 the state alone and ~~shall~~ represent total limits data. The  
 2273 information set forth in paragraphs (a)-(f) is applicable to  
 2274 voluntary private passenger and Joint Underwriting Association  
 2275 private passenger writings and must ~~shall~~ be reported for each  
 2276 of the latest 3 calendar-accident years, with an evaluation date  
 2277 of March 31 of the current year. The information set forth in  
 2278 paragraphs (g)-(j) is applicable to voluntary private passenger  
 2279 writings and must ~~shall~~ be reported on a calendar-accident year  
 2280 basis ultimately seven times at seven different stages of  
 2281 development.  
 2282 (a) Premiums earned for the latest 3 calendar-accident  
 2283 years.  
 2284 (b) Loss development factors and the historic development  
 2285 of those factors.  
 2286 (c) Policyholder dividends incurred.  
 2287 (d) Expenses for other acquisition and general expense.  
 2288 (e) Expenses for agents' commissions and taxes, licenses,  
 2289 and fees.  
 2290 (f) Profit and contingency factors as utilized in the  
 2291 insurer's automobile rate filings for the applicable years.

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2292 (g) Losses paid.  
 2293 (h) Losses unpaid.  
 2294 (i) Loss adjustment expenses paid.  
 2295 (j) Loss adjustment expenses unpaid.  
 2296 Section 49. Subsections (2) and (3) of section 628.909,  
 2297 Florida Statutes, are amended to read:  
 2298 628.909 Applicability of other laws.-  
 2299 (2) The following provisions of the Florida Insurance Code  
 2300 apply to captive insurance companies that ~~who~~ are not industrial  
 2301 insured captive insurance companies to the extent that such  
 2302 provisions are not inconsistent with this part:  
 2303 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
 2304 624.40851, 624.4095, 624.411, 624.425, and 624.426.  
 2305 (b) Chapter 625, part II.  
 2306 (c) Chapter 626, part IX.  
 2307 (d) ~~Sections 627.730-627.7405, when no-fault coverage is~~  
 2308 ~~provided.~~  
 2309 ~~(e)~~ Chapter 628.  
 2310 (3) The following provisions of the Florida Insurance Code  
 2311 ~~shall~~ apply to industrial insured captive insurance companies to  
 2312 the extent that such provisions are not inconsistent with this  
 2313 part:  
 2314 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
 2315 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).  
 2316 (b) Chapter 625, part II, if the industrial insured captive  
 2317 insurance company is incorporated in this state.  
 2318 (c) Chapter 626, part IX.  
 2319 (d) ~~Sections 627.730-627.7405 when no-fault coverage is~~  
 2320 ~~provided.~~

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2321 ~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and  
 2322 628.6018.

2323 Section 50. Subsections (2), (6), and (7) of section  
 2324 705.184, Florida Statutes, are amended to read:

2325 705.184 Derelict or abandoned motor vehicles on the  
 2326 premises of public-use airports.—

2327 (2) The airport director or the director's designee shall  
 2328 contact the Department of Highway Safety and Motor Vehicles to  
 2329 notify that department that the airport has possession of the  
 2330 abandoned or derelict motor vehicle and to determine the name  
 2331 and address of the owner of the motor vehicle, the insurance  
 2332 company insuring the motor vehicle, ~~notwithstanding the~~  
 2333 ~~provisions of s. 627.736,~~ and any person who has filed a lien on  
 2334 the motor vehicle. Within 7 business days after receipt of the  
 2335 information, the director or the director's designee shall send  
 2336 notice by certified mail, return receipt requested, to the owner  
 2337 of the motor vehicle, the insurance company insuring the motor  
 2338 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all  
 2339 persons of record claiming a lien against the motor vehicle. The  
 2340 notice must ~~shall~~ state the fact of possession of the motor  
 2341 vehicle, that charges for reasonable towing, storage, and  
 2342 parking fees, if any, have accrued and the amount thereof, that  
 2343 a lien as provided in subsection (6) will be claimed, that the  
 2344 lien is subject to enforcement pursuant to law, that the owner  
 2345 or lienholder, if any, has the right to a hearing as set forth  
 2346 in subsection (4), and that any motor vehicle which, at the end  
 2347 of 30 calendar days after receipt of the notice, has not been  
 2348 removed from the airport upon payment in full of all accrued  
 2349 charges for reasonable towing, storage, and parking fees, if

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2350 any, may be disposed of as provided in s. 705.182(2) (a), (b),  
 2351 (d), or (e), including, but not limited to, the motor vehicle  
 2352 being sold free of all prior liens after 35 calendar days after  
 2353 the time the motor vehicle is stored if any prior liens on the  
 2354 motor vehicle are more than 5 years of age or after 50 calendar  
 2355 days after the time the motor vehicle is stored if any prior  
 2356 liens on the motor vehicle are 5 years of age or less.

2357 (6) The airport pursuant to this section or, if used, a  
 2358 licensed independent wrecker company pursuant to s. 713.78 shall  
 2359 have a lien on an abandoned or derelict motor vehicle for all  
 2360 reasonable towing, storage, and accrued parking fees, if any,  
 2361 except that no storage fee may ~~shall~~ be charged if the motor  
 2362 vehicle is stored less than 6 hours. As a prerequisite to  
 2363 perfecting a lien under this section, the airport director or  
 2364 the director's designee must serve a notice in accordance with  
 2365 subsection (2) on the owner of the motor vehicle, the insurance  
 2366 company insuring the motor vehicle, ~~notwithstanding the~~  
 2367 ~~provisions of s. 627.736,~~ and all persons of record claiming a  
 2368 lien against the motor vehicle. If attempts to notify the owner,  
 2369 the insurance company insuring the motor vehicle,  
 2370 ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are  
 2371 not successful, the requirement of notice by mail shall be  
 2372 considered met. Serving of the notice does not dispense with  
 2373 recording the claim of lien.

2374 (7) (a) For the purpose of perfecting its lien under this  
 2375 section, the airport shall record a claim of lien which states  
 2376 ~~shall state~~:

- 2377 1. The name and address of the airport.
- 2378 2. The name of the owner of the motor vehicle, the

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2379 insurance company insuring the motor vehicle, ~~notwithstanding~~  
 2380 ~~the provisions of s. 627.736~~, and all persons of record claiming  
 2381 a lien against the motor vehicle.

2382 3. The costs incurred from reasonable towing, storage, and  
 2383 parking fees, if any.

2384 4. A description of the motor vehicle sufficient for  
 2385 identification.

2386 (b) The claim of lien ~~must shall~~ be signed and sworn to or  
 2387 affirmed by the airport director or the director's designee.

2388 (c) The claim of lien is ~~shall be~~ sufficient if it is in  
 2389 substantially the following form:

2390

2391 CLAIM OF LIEN

2392 State of .....

2393 County of .....

2394 Before me, the undersigned notary public, personally appeared  
 2395 ....., who was duly sworn and says that he/she is the  
 2396 ..... of ....., whose address is.....; and that the  
 2397 following described motor vehicle:  
 2398 ...(Description of motor vehicle)...  
 2399 owned by ....., whose address is ....., has accrued  
 2400 \$..... in fees for a reasonable tow, for storage, and for  
 2401 parking, if applicable; that the lienor served its notice to the  
 2402 owner, the insurance company insuring the motor vehicle  
 2403 ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~  
 2404 and all persons of record claiming a lien against the motor  
 2405 vehicle on ....., ...(year)..., by.....  
 2406 ...(Signature)...  
 2407 Sworn to (or affirmed) and subscribed before me this .... day of

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2408 ....., ...(year)..., by ...(name of person making statement)...  
 2409 ...(Signature of Notary Public).....(Print, Type, or Stamp  
 2410 Commissioned name of Notary Public)...  
 2411 Personally Known...OR Produced...as identification.  
 2412

2413 However, the negligent inclusion or omission of any information  
 2414 in this claim of lien which does not prejudice the owner does  
 2415 not constitute a default that operates to defeat an otherwise  
 2416 valid lien.

2417 (d) The claim of lien ~~must shall~~ be served on the owner of  
 2418 the motor vehicle, the insurance company insuring the motor  
 2419 vehicle, ~~notwithstanding the provisions of s. 627.736~~, and all  
 2420 persons of record claiming a lien against the motor vehicle. If  
 2421 attempts to notify the owner, the insurance company insuring the  
 2422 motor vehicle ~~notwithstanding the provisions of s. 627.736~~, or  
 2423 lienholders are not successful, the requirement of notice by  
 2424 mail shall be considered met. The claim of lien ~~must shall~~ be so  
 2425 served before recordation.

2426 (e) The claim of lien ~~must shall~~ be recorded with the clerk  
 2427 of court in the county where the airport is located. The  
 2428 recording of the claim of lien shall be constructive notice to  
 2429 all persons of the contents and effect of such claim. The lien  
 2430 ~~attaches shall attach~~ at the time of recordation and ~~takes shall~~  
 2431 ~~take~~ priority as of that time.

2432 Section 51. Subsection (4) of section 713.78, Florida  
 2433 Statutes, is amended to read:  
 2434 713.78 Liens for recovering, towing, or storing vehicles  
 2435 and vessels.-  
 2436 (4) (a) Any person regularly engaged in the business of

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2437 recovering, towing, or storing vehicles or vessels who comes  
 2438 into possession of a vehicle or vessel pursuant to subsection  
 2439 (2), and who claims a lien for recovery, towing, or storage  
 2440 services, shall give notice to the registered owner, the  
 2441 insurance company insuring the vehicle ~~notwithstanding the~~  
 2442 ~~provisions of s. 627.736~~, and to all persons claiming a lien  
 2443 thereon, as disclosed by the records in the Department of  
 2444 Highway Safety and Motor Vehicles or as disclosed by the records  
 2445 of any corresponding agency in any other state in which the  
 2446 vehicle is identified through a records check of the National  
 2447 Motor Vehicle Title Information System or an equivalent  
 2448 commercially available system as being titled or registered.

2449 (b) If a ~~Whenever any~~ law enforcement agency authorizes the  
 2450 removal of a vehicle or vessel or if a ~~whenever any~~ towing  
 2451 service, garage, repair shop, or automotive service, storage, or  
 2452 parking place notifies the law enforcement agency of possession  
 2453 of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
 2454 enforcement agency of the jurisdiction where the vehicle or  
 2455 vessel is stored shall contact the Department of Highway Safety  
 2456 and Motor Vehicles, or the appropriate agency of the state of  
 2457 registration, if known, within 24 hours through the medium of  
 2458 electronic communications, giving the full description of the  
 2459 vehicle or vessel. Upon receipt of the full description of the  
 2460 vehicle or vessel, the department shall search its files to  
 2461 determine the owner's name, the insurance company insuring the  
 2462 vehicle or vessel, and whether any person has filed a lien upon  
 2463 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
 2464 notify the applicable law enforcement agency within 72 hours.  
 2465 The person in charge of the towing service, garage, repair shop,

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2466 or automotive service, storage, or parking place shall obtain  
 2467 such information from the applicable law enforcement agency  
 2468 within 5 days after the date of storage and shall give notice  
 2469 pursuant to paragraph (a). The department may release the  
 2470 insurance company information to the requestor ~~notwithstanding~~  
 2471 ~~the provisions of s. 627.736~~.

2472 (c) Notice by certified mail ~~must shall~~ be sent within 7  
 2473 business days after the date of storage of the vehicle or vessel  
 2474 to the registered owner, the insurance company insuring the  
 2475 vehicle ~~notwithstanding the provisions of s. 627.736~~, and all  
 2476 persons of record claiming a lien against the vehicle or vessel.  
 2477 The notice must ~~it shall~~ state the fact of possession of the  
 2478 vehicle or vessel, that a lien as provided in subsection (2) is  
 2479 claimed, that charges have accrued and the amount thereof, that  
 2480 the lien is subject to enforcement pursuant to law, ~~and~~ that the  
 2481 owner or lienholder, if any, has the right to a hearing as set  
 2482 forth in subsection (5), and that any vehicle or vessel which  
 2483 remains unclaimed, or for which the charges for recovery,  
 2484 towing, or storage services remain unpaid, may be sold free of  
 2485 all prior liens after 35 days if the vehicle or vessel is more  
 2486 than 3 years of age or after 50 days if the vehicle or vessel is  
 2487 3 years of age or less.

2488 (d) If attempts to locate the name and address of the owner  
 2489 or lienholder prove unsuccessful, the towing-storage operator  
 2490 must shall, after 7 working days, excluding Saturday and Sunday,  
 2491 of the initial tow or storage, notify the public agency of  
 2492 jurisdiction where the vehicle or vessel is stored in writing by  
 2493 certified mail or acknowledged hand delivery that the towing-  
 2494 storage company has been unable to locate the name and address

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2495 of the owner or lienholder and a physical search of the vehicle  
 2496 or vessel has disclosed no ownership information and a good  
 2497 faith effort has been made, including records checks of the  
 2498 Department of Highway Safety and Motor Vehicles database and the  
 2499 National Motor Vehicle Title Information System or an equivalent  
 2500 commercially available system. As used in ~~For purposes of~~ this  
 2501 paragraph and subsection (9), the term "good faith effort" means  
 2502 that the following checks have been performed by the company to  
 2503 establish prior state of registration and for title:

- 2504 1. Check of the Department of Highway Safety and Motor  
 2505 Vehicles database for the owner and any lienholder.
- 2506 2. Check of the electronic National Motor Vehicle Title  
 2507 Information System or an equivalent commercially available  
 2508 system to determine the state of registration when there is not  
 2509 a current registration record for the vehicle on file with the  
 2510 Department of Highway Safety and Motor Vehicles.
- 2511 3. Check of vehicle or vessel for any type of tag, tag  
 2512 record, temporary tag, or regular tag.
- 2513 4. Check of law enforcement report for tag number or other  
 2514 information identifying the vehicle or vessel, if the vehicle or  
 2515 vessel was towed at the request of a law enforcement officer.
- 2516 5. Check of trip sheet or tow ticket of tow truck operator  
 2517 to see if a tag was on vehicle or vessel at beginning of tow, if  
 2518 private tow.
- 2519 6. If there is no address of the owner on the impound  
 2520 report, check of law enforcement report to see if an out-of-  
 2521 state address is indicated from driver license information.
- 2522 7. Check of vehicle or vessel for inspection sticker or  
 2523 other stickers and decals that may indicate a state of possible

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2524 registration.

- 2525 8. Check of the interior of the vehicle or vessel for any  
 2526 papers that may be in the glove box, trunk, or other areas for a  
 2527 state of registration.
- 2528 9. Check of vehicle for vehicle identification number.
- 2529 10. Check of vessel for vessel registration number.
- 2530 11. Check of vessel hull for a hull identification number  
 2531 which should be carved, burned, stamped, embossed, or otherwise  
 2532 permanently affixed to the outboard side of the transom or, if  
 2533 there is no transom, to the outmost seaboard side at the end of  
 2534 the hull that bears the rudder or other steering mechanism.

2535 Section 52. Paragraph (a) of subsection (1), paragraph (c)  
 2536 of subsection (7), paragraphs (a), (b), and (c) of subsection  
 2537 (8), and subsections (9) and (10) of section 817.234, Florida  
 2538 Statutes, are amended to read:

2539 817.234 False and fraudulent insurance claims.—

- 2540 (1) (a) A person commits insurance fraud punishable as  
 2541 provided in subsection (11) if that person, with the intent to  
 2542 injure, defraud, or deceive any insurer:
  - 2543 1. Presents or causes to be presented any written or oral  
 2544 statement as part of, or in support of, a claim for payment or  
 2545 other benefit pursuant to an insurance policy or a health  
 2546 maintenance organization subscriber or provider contract,  
 2547 knowing that such statement contains ~~any~~ false, incomplete, or  
 2548 misleading information concerning any fact or thing material to  
 2549 such claim;
  - 2550 2. Prepares or makes any written or oral statement that is  
 2551 intended to be presented to an ~~any~~ insurer in connection with,  
 2552 or in support of, any claim for payment or other benefit

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2553 pursuant to an insurance policy or a health maintenance  
 2554 organization subscriber or provider contract, knowing that such  
 2555 statement contains ~~any~~ false, incomplete, or misleading  
 2556 information concerning any fact or thing material to such claim;

2557 3.a. Knowingly presents, causes to be presented, or  
 2558 prepares or makes with knowledge or belief that it will be  
 2559 presented to an ~~any~~ insurer, purported insurer, servicing  
 2560 corporation, insurance broker, or insurance agent, or any  
 2561 employee or agent thereof, ~~any~~ false, incomplete, or misleading  
 2562 information or a written or oral statement as part of, or in  
 2563 support of, an application for the issuance of, or the rating  
 2564 of, any insurance policy, or a health maintenance organization  
 2565 subscriber or provider contract; or

2566 b. Knowingly conceals information concerning any fact  
 2567 material to such application; or

2568 4. Knowingly presents, causes to be presented, or prepares  
 2569 or makes with knowledge or belief that it will be presented to  
 2570 any insurer a claim for payment or other benefit under medical  
 2571 payments coverage in a motor vehicle ~~a personal injury~~  
 2572 ~~protection~~ insurance policy if the person knows that the payee  
 2573 knowingly submitted a false, misleading, or fraudulent  
 2574 application or other document when applying for licensure as a  
 2575 health care clinic, seeking an exemption from licensure as a  
 2576 health care clinic, or demonstrating compliance with part X of  
 2577 chapter 400.

2578 (7)

2579 ~~(c) An insurer, or any person acting at the direction of or~~  
 2580 ~~on behalf of an insurer, may not change an opinion in a mental~~  
 2581 ~~or physical report prepared under s. 627.736(7) or direct the~~

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2582 ~~physician preparing the report to change such opinion; however,~~  
 2583 ~~this provision does not preclude the insurer from calling to the~~  
 2584 ~~attention of the physician errors of fact in the report based~~  
 2585 ~~upon information in the claim file. Any person who violates this~~  
 2586 ~~paragraph commits a felony of the third degree, punishable as~~  
 2587 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

2588 (8) (a) It is unlawful for any person intending to defraud  
 2589 any other person to solicit or cause to be solicited any  
 2590 business from a person involved in a motor vehicle accident for  
 2591 the purpose of making, adjusting, or settling motor vehicle tort  
 2592 claims or claims for benefits under medical payments coverage in  
 2593 a motor vehicle insurance policy ~~personal injury protection~~  
 2594 ~~benefits required by s. 627.736.~~ Any person who violates the  
 2595 ~~provisions of~~ this paragraph commits a felony of the second  
 2596 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 2597 775.084. A person who is convicted of a violation of this  
 2598 subsection shall be sentenced to a minimum term of imprisonment  
 2599 of 2 years.

2600 (b) A person may not solicit or cause to be solicited any  
 2601 business from a person involved in a motor vehicle accident by  
 2602 any means of communication other than advertising directed to  
 2603 the public for the purpose of making motor vehicle tort claims  
 2604 or claims for benefits under medical payments coverage in a  
 2605 motor vehicle insurance policy ~~personal injury protection~~  
 2606 ~~benefits required by s. 627.736,~~ within 60 days after the  
 2607 occurrence of the motor vehicle accident. Any person who  
 2608 violates this paragraph commits a felony of the third degree,  
 2609 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2610 (c) A lawyer, health care practitioner as defined in s.

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2611 456.001, or owner or medical director of a clinic required to be  
 2612 licensed pursuant to s. 400.9905 may not, at any time after 60  
 2613 days have elapsed from the occurrence of a motor vehicle  
 2614 accident, solicit or cause to be solicited any business from a  
 2615 person involved in a motor vehicle accident by means of in  
 2616 person or telephone contact at the person's residence, for the  
 2617 purpose of making motor vehicle tort claims or claims for  
 2618 benefits under medical payments coverage in a motor vehicle  
 2619 insurance policy personal injury protection benefits required by  
 2620 s. 627.736. Any person who violates this paragraph commits a  
 2621 felony of the third degree, punishable as provided in s.  
 2622 775.082, s. 775.083, or s. 775.084.

2623 (9) A person may not organize, plan, or knowingly  
 2624 participate in an intentional motor vehicle crash or a scheme to  
 2625 create documentation of a motor vehicle crash that did not occur  
 2626 for the purpose of making motor vehicle tort claims or claims  
 2627 for benefits under medical payments coverage in a motor vehicle  
 2628 insurance policy personal injury protection benefits as required  
 2629 by s. 627.736. Any person who violates this subsection commits a  
 2630 felony of the second degree, punishable as provided in s.  
 2631 775.082, s. 775.083, or s. 775.084. A person who is convicted of  
 2632 a violation of this subsection shall be sentenced to a minimum  
 2633 term of imprisonment of 2 years.

2634 (10) A licensed health care practitioner who is found  
 2635 guilty of insurance fraud under this section for an act relating  
 2636 to a motor vehicle personal injury protection insurance policy  
 2637 loses his or her license to practice for 5 years and may not  
 2638 receive reimbursement under medical payments coverage in a motor  
 2639 vehicle insurance policy for personal injury protection benefits

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2640 for 10 years.

2641 Section 53. Effective upon this act becoming a law, section  
 2642 627.7278, Florida Statutes, is created to read:

2643 627.7278 Applicability and construction; notice to  
 2644 policyholders.-

2645 (1) As used in this section, the term "minimum security  
 2646 requirements" means security that enables a person to respond in  
 2647 damages for liability on account of crashes arising out of the  
 2648 ownership, maintenance, or use of a motor vehicle, in the  
 2649 amounts required by s. 324.021(7).

2650 (2) Effective January 1, 2020:

2651 (a) Motor vehicle insurance policies issued or renewed on  
 2652 or after that date may not include personal injury protection.

2653 (b) All persons subject to s. 324.022, s. 324.032, s.  
 2654 627.7415, or s. 627.742 must maintain at least minimum security  
 2655 requirements.

2656 (c) Any new or renewal motor vehicle insurance policy  
 2657 delivered or issued for delivery in this state must provide  
 2658 coverage that complies with minimum security requirements.

2659 (d) An existing motor vehicle insurance policy issued  
 2660 before that date which provides personal injury protection and  
 2661 property damage liability coverage that meets the requirements  
 2662 of s. 324.022 on December 31, 2019, but which does not meet  
 2663 minimum security requirements on or after January 1, 2020, is  
 2664 deemed to meet the security requirements of s. 324.022 until  
 2665 such policy is renewed, nonrenewed, or canceled on or after  
 2666 January 1, 2020. Sections 627.730-627.7405, 400.9905, 400.991,  
 2667 456.057, 456.072, 627.7263, 627.727, 627.748, 627.9541(1)(i),  
 2668 and 817.234, Florida Statutes 2018, remain in full force and

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2669 effect for motor vehicle accidents covered under a policy issued  
 2670 under the Florida Motor Vehicle No-Fault Law before January 1,  
 2671 2020, until the policy is renewed, nonrenewed, or canceled.

2672 (3) Each insurer shall allow each insured who has a new or  
 2673 renewal policy providing personal injury protection which  
 2674 becomes effective before January 1, 2020, and whose policy does  
 2675 not meet minimum security requirements on or after January 1,  
 2676 2020, to change coverages so as to eliminate personal injury  
 2677 protection and obtain coverage providing minimum security  
 2678 requirements, which shall be effective on or after January 1,  
 2679 2020. The insurer is not required to provide coverage complying  
 2680 with minimum security requirements in such policies if the  
 2681 insured does not pay the required premium, if any, by January 1,  
 2682 2020, or such later date as the insurer may allow. The insurer  
 2683 must also offer each insured medical payments coverage pursuant  
 2684 to s. 627.7265. Any reduction in the premium must be refunded by  
 2685 the insurer. The insurer may not impose on the insured an  
 2686 additional fee or charge that applies solely to a change in  
 2687 coverage; however, the insurer may charge an additional required  
 2688 premium that is actuarially indicated.

2689 (4) By September 1, 2019, each motor vehicle insurer shall  
 2690 provide notice of this section to each motor vehicle  
 2691 policyholder who is subject to this section. The notice is  
 2692 subject to approval by the office and must clearly inform the  
 2693 policyholder that:

2694 (a) The Florida Motor Vehicle No-Fault Law is repealed,  
 2695 effective January 1, 2020, and that on or after that date, the  
 2696 insured is no longer required to maintain personal injury  
 2697 protection insurance coverage, that personal injury protection

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2698 coverage is no longer available for purchase in this state, and  
 2699 that all new or renewal policies issued on or after that date  
 2700 will not contain such coverage.

2701 (b) Effective January 1, 2020, a person subject to the  
 2702 financial responsibility requirements of s. 324.022 must  
 2703 maintain minimum security requirements that enable the person to  
 2704 respond to damages for liability on account of accidents arising  
 2705 out of the use of a motor vehicle in the following amounts:

2706 1. Twenty-five thousand dollars for bodily injury to, or  
 2707 the death of, one person in any one crash and, subject to such  
 2708 limits for one person, in the amount of \$50,000 for bodily  
 2709 injury to, or the death of, two or more persons in any one  
 2710 crash; and

2711 2. Ten thousand dollars for damage to, or destruction of,  
 2712 the property of others in any one crash.

2713 (c) Bodily injury liability coverage protects the insured,  
 2714 up to the coverage limits, against loss if the insured is  
 2715 legally responsible for the death of or bodily injury to others  
 2716 in a motor vehicle accident.

2717 (d) Effective January 1, 2020, each policyholder of motor  
 2718 vehicle liability insurance purchased as proof of financial  
 2719 responsibility must be offered medical payments coverage  
 2720 benefits that comply with s. 627.7265. The insurer must offer  
 2721 medical payments coverage at limits of \$5,000 and \$10,000  
 2722 without a deductible. The insurer may also offer medical  
 2723 payments coverage at other limits greater than \$5,000, and may  
 2724 offer coverage with a deductible of up to \$500. Medical payments  
 2725 coverage pays covered medical expenses, up to the limits of such  
 2726 coverage, for injuries sustained in a motor vehicle crash by the

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2727 named insured, resident relatives, persons operating the insured  
 2728 motor vehicle, passengers in the insured motor vehicle, and  
 2729 persons who are struck by the insured motor vehicle and suffer  
 2730 bodily injury while not an occupant of a self-propelled motor  
 2731 vehicle as provided in s. 627.7265. Medical payments coverage  
 2732 also provides a death benefit of at least \$5,000.

2733 (e) The policyholder may obtain uninsured and underinsured  
 2734 motorist coverage, which provides benefits, up to the limits of  
 2735 such coverage, to a policyholder or other insured entitled to  
 2736 recover damages for bodily injury, sickness, disease, or death  
 2737 resulting from a motor vehicle accident with an uninsured or  
 2738 underinsured owner or operator of a motor vehicle.

2739 (f) If the policyholder's new or renewal motor vehicle  
 2740 insurance policy is effective before January 1, 2020, and  
 2741 contains personal injury protection and property damage  
 2742 liability coverage as required by state law before January 1,  
 2743 2020, but does not meet minimum security requirements on or  
 2744 after January 1, 2020, the policy is deemed to meet minimum  
 2745 security requirements until it is renewed, nonrenewed, or  
 2746 canceled on or after January 1, 2020.

2747 (g) A policyholder whose new or renewal policy becomes  
 2748 effective before January 1, 2020, but does not meet minimum  
 2749 security requirements on or after January 1, 2020, may change  
 2750 coverages under the policy so as to eliminate personal injury  
 2751 protection and to obtain coverage providing minimum security  
 2752 requirements, including bodily injury liability coverage, which  
 2753 are effective on or after January 1, 2020.

2754 (h) If the policyholder has any questions, he or she should  
 2755 contact the person named at the telephone number provided in the

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2756 notice.

2757 Section 54. Section 324.0222, Florida Statutes, is created  
 2758 to read:

2759 324.0222 Application of suspensions for failure to maintain  
 2760 security; reinstatement.—All suspensions for failure to maintain  
 2761 required security as required by law in effect before January 1,  
 2762 2020, remain in full force and effect after January 1, 2020. A  
 2763 driver may reinstate a suspended driver license or registration  
 2764 as provided under s. 324.0221.

2765 Section 55. For the 2019-2020 fiscal year, the sum of  
 2766 \$83,651 in nonrecurring funds is appropriated from the Insurance  
 2767 Regulatory Trust Fund to the Office of Insurance Regulation for  
 2768 the purpose of implementing this act.

2769 Section 56. Except as otherwise expressly provided in this  
 2770 act and except for this section, which shall take effect upon  
 2771 this act becoming a law, this act shall take effect January 1,  
 2772 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator Doug Broxson, Chair  
Committee on Banking and Insurance

**Subject:** Committee Agenda Request

**Date:** March 14, 2019

---

I respectfully request that **Senate Bill #1052**, relating to Motor Vehicle Insurance, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

---

Senator Tom Lee  
Florida Senate, District 20



# 2018 AGENCY LEGISLATIVE BILL ANALYSIS

## AGENCY: Office of Insurance Regulation

<u>BILL INFORMATION</u>	
<b>BILL NUMBER:</b>	SB 518
<b>BILL TITLE:</b>	Relating to Motor Vehicle Insurance Coverage Exclusions
<b>BILL SPONSOR:</b>	Bean, A
<b>EFFECTIVE DATE:</b>	July 1, 2018

<u>COMMITTEES OF REFERENCE</u>
1) Banking & Insurance
2) Commerce & Tourism
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>
Banking & Insurance

<u>SIMILAR BILLS</u>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<u>PREVIOUS LEGISLATION</u>	
<b>BILL NUMBER:</b>	HB 359 and SB 454
<b>SPONSOR:</b>	Santiago and Brandes, J
<b>YEAR:</b>	2017
<b>LAST ACTION:</b>	HB 359 became law 6/23/2017 however, the named driver exclusion section had been removed from the bill.

<u>IDENTICAL BILLS</u>	
<b>BILL NUMBER:</b>	HB 329
<b>SPONSOR:</b>	Ponder, M

<b>Is this bill part of an agency package?</b>
No

<u>BILL ANALYSIS INFORMATION</u>	
<b>DATE OF ANALYSIS:</b>	October 30, 2017
<b>LEAD AGENCY ANALYST:</b>	Sheryl Parker
<b>ADDITIONAL ANALYST(S):</b>	Sandra Starnes, Michelle Brewer, Susanne Murphy, and Caitlin Murray
<b>LEGAL ANALYST:</b>	
<b>FISCAL ANALYST:</b>	



Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?      Y  N**

Revenues:	
Expenditures:	Emergency medical providers, including public hospitals, may not be reimbursed for emergency medical services provided to named excluded drivers injured as a result of auto accidents unless they were injured as passengers.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?      Y  N**

Revenues:	
Expenditures:	Emergency medical providers, including public hospitals, may not be reimbursed for emergency medical services provided to named excluded drivers injured as a result of auto accidents unless they were injured as passengers.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?      Y  N**

Revenues:	Health care providers and motor vehicle repair shops would no longer receive reimbursement due to named driver exclusions. Private sector business may not provide services for these claims and may experience decreased revenues.
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Expenditures:	Due to the named driver exclusions: <ul style="list-style-type: none"> <li>• Certain losses that are currently required to be covered under a private passenger motor vehicle policy would no longer be covered. Premium rates will likely be adjusted to reflect this change.</li> <li>• Health insurers may see increased claims which may also affect health insurance premiums .</li> <li>• Health care providers that offer emergency medical services may be unable to receive reimbursement for some of their services.</li> </ul>
Other:	

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?                      Y  N**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

**1. DOES THE BILL IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?                      Y  N**

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

**FEDERAL IMPACT**

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?                      Y  N**

If yes, describe the anticipated impact including any fiscal impact.	Due to the changes in excluded drivers, Medicare or Medicaid could be responsible for paying for certain medical services that would have otherwise have been payable under the private passenger motor vehicle insurance policy.
--	---

**ADDITIONAL COMMENTS**

As described above, the Office currently requires that insurers provide certain coverages, even when a named driver exclusion is elected. This bill would remove many of these coverages..

The bill removes BI and PD coverage when an excluded driver is driving the vehicle. These coverages represent the minimum financial responsibility requirement that an owner must demonstrate in order to register a vehicle in Florida. This would represent a significant shift from the public policy decision that all vehicles must be accountable for the FR minimums in the event of an accident and would lead to a greater number of accidents in which the at-fault driver is effectively uninsured.

PIP coverage is “no-fault” coverage and applies regardless of who is driving or otherwise responsible for an accident. Allowing insurers to eliminate PIP coverage for an excluded driver would have the effect of excluding these drivers from the no-fault system.

When insurers exclude identified individuals from coverage in the event they operate a motor vehicle, it appears that insurers should not use the characteristics or existence of the identified individual when rating the excluded coverages. It may be necessary to specify that these excluded drivers may not be considered in rating those coverages for the policy.

This bill would allow the application of a named driver exclusion to PD Liability coverage. This appears to be in conflict with Section 324.022, F.S., which establishes the FR minimum for PD and is not addressed in the bill.

Currently, the application of a named driver exclusion to UM coverage (if purchased) is not permitted. Named driver exclusions typically benefit insureds (through reduced premiums) by removing drivers from private passenger motor vehicle policies who are deemed higher liability risks. In the case of UM, the named driver is not at fault, and their risk status does not come into play. The purpose of UM is to protect people from uninsured liable third parties.

Lines 23-26 allow for the exclusion of PIP benefits for the identified individual's injuries, lost wages and death benefits. PIP also includes a component that reimburses injured persons for expenses reasonably incurred for ordinary and necessary services needed because of their injury. Since this component is not explicitly listed, it is unclear if the intent is to exclude or include reimbursement for necessary services.

Lines 28-29 – The language is unclear regarding BI. It seems to only allow the exclusion if BI is required by law AND purchased. If someone voluntarily purchases BI, it appears the named driver exclusion would not be applicable.

Lines 39-42 - This provision requires the Office to determine when an exclusion is unfairly discriminatory. In this context, it is unclear if the determination is in regard to rates (premium as related to risk) or to civil rights (e.g., exclusions based on race or marital status). In addition, the Office will be required to review insurer underwriting guidelines to ensure that named driver exclusions will be offered to named insureds in particular circumstances.

Lines 75-77 – These lines amend Section 627.736, F.S., to state PIP does not have to be provided for resident relatives who are excluded drivers, but does not appear to contemplate other classes of drivers who may fall under a driver exclusion. In addition, this section may be ambiguous as it does not restate that it applies only while that person is driving. It appears that, if they are excluded, PIP does not have to be provided at all, which would appear to conflict with lines 35-38.

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:	
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# THE FLORIDA SENATE APPEARANCE RECORD

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

04.01.16

Meeting Date

1052

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Amendment Barcode (if applicable)

Name Joe Kissane

Job Title \_\_\_\_\_

Address 4686 Sunbeam Road

Street

Phone (904) 672-4031

Jacksonville

FL

32257

Email joseph.kissane@csklegal.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-1-19

*Meeting Date*

1052

*Bill Number (if applicable)*

Topic Insurer Bad Faith Reform

*Amendment Barcode (if applicable)*

Name Michael Carlson

Job Title President/CEO

Address 215 S. Monroe St. Ste. 835

Phone 850-597-7425

*Street*

Tallahassee

FL

32301

Email michael.carlson@piff.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Personal Insurance Federation of Florida, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-1-2019  
Meeting Date

1052  
Bill Number (if applicable)

Topic Motor Vehicle Ins.

Amendment Barcode (if applicable)

Name Kim Driggers

Job Title Lawyer/Lobbyist

Address 3770 Piney Grove Dr  
Street

Phone 850.597.1355

Tallahassee, FL 32311  
City State Zip

Email Kdriggers@driggers-law.com

Speaking:  For  Against  Information

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

Representing Florida Chiropractic Assn.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

01 APR 2019  
Meeting Date

SB1052  
Bill Number (if applicable)

Topic AUTO INSURANCE

Amendment Barcode (if applicable)

Name PAUL JESS

Job Title \_\_\_\_\_

Address 218 S. MONROE ST  
Street

Phone 950-224-9403

TALLAHASSEE FL 32301  
City State Zip

Email pjess@floridajusticeassociation.org

Speaking:  For  Against  Information

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

*Court rule*

*Adm.*  
**THE FLORIDA SENATE**

**APPEARANCE RECORD**

*Receipt*

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

02-01-19  
Meeting Date

SB 1052  
Bill Number (if applicable)

Topic *Wrtg* RIP repeal

Amendment Barcode (if applicable)

Name Carly Hermanson

Job Title Regional Counsel

Address 8333 Bryan Dairy Rd.  
Street

Phone 727-573-1882

Largo, FL 33777  
City State Zip

Email carly.hermanson@allstate.com

Speaking:  For  Against  Information

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

Representing Allstate Insurance Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

03/01/2019

Meeting/Date

CS/SB1053

Bill Number (if applicable)

Topic Infrastructure Security

Amendment Barcode (if applicable)

Name Evelyn Ray Rogas

Job Title Managing Partner - Nationwide Insurance

Address Rdy-Rogas Insurance

Phone 904-642-3333

Street

9550 Regency Sq Blvd, Jacksonville FL

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

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BILL: SB 1208

INTRODUCER: Senator Baxley

SUBJECT: Aircraft Liens

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 1208 declares liens claimed for labor, services, fuel, or material furnished to an aircraft are not possessory liens. Thus, a person claiming such a lien does not need to keep the aircraft in his or her possession to enforce the lien.

The effective date of the bill is July 1, 2019.

**II. Present Situation:**

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>1</sup> A lien can be created by judgment, equity,<sup>2</sup> agreement, or statute.<sup>3</sup> The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.<sup>4</sup> A judicial lien, including an equitable lien, continues until the terms of the judgment are satisfied, the lien expires, or the judgment is overturned, and a consensual lien expires according to the terms of the parties' agreement.<sup>5</sup> A statutory lien expires in the manner and method set forth in statute.<sup>6</sup>

---

<sup>1</sup> Fla. Jur. 2d Liens s. 37:1

<sup>2</sup> Equitable liens are judicial creations designed to prevent unjust enrichment of a party. See Ralph E. Boyer and Barry Kutun, *The Equitable Lien in Florida*, 20 U. Miami L. Rev. 731 (1966).

<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=3127&context=umlr> (last visited Mar. 23, 2019).

<sup>3</sup> Fla. Jur., *supra*, at 1.

<sup>4</sup> *Id.*

<sup>5</sup> Fla. Jur. 2d Liens and Encumbrances on Title s. 4:21.

<sup>6</sup> *Id.*

## Possessory Liens

A possessory lien is only enforceable so long as the lienor retains possession of the subject property.<sup>7</sup> A lienor who releases property on which he or she claims a possessory lien loses his or her right to claim the lien.

## Aircraft Liens

### *Recording, Generally*

The U.S. Congress passed the Federal Aviation Act (Act) in 1958.<sup>8</sup> The Act requires a civil aircraft<sup>9</sup> lien to be recorded with the Federal Aviation Administration<sup>10</sup> (FAA).<sup>11</sup> Until an aircraft lien is recorded with the FAA, it is valid only against those with actual notice of the lien.<sup>12</sup> The purpose of the recording provision was to create a central clearinghouse for the recording of liens affecting civil aircraft in the United States so that a person would know where to find such information.<sup>13</sup> However, the Act preempted state law only as to the priority of liens, meaning a state could impose requirements affecting the enforceability and validity of liens within that state.<sup>14</sup> Further, in 1981, the FAA took the position that aircraft liens could only be recorded with the FAA if the state law creating the lien allows for the creation or perfection of such a lien in this way.<sup>15</sup> Currently, the FAA records liens claimed in thirty-six states, including Florida.<sup>16</sup> Florida specifically provides that no lien affecting title to a civil aircraft is valid until such lien is recorded with the FAA.<sup>17</sup>

### *Lien for Landing*

The governing body of a publicly owned and operated airport may claim a lien upon an aircraft landing at the airport for all unpaid fees and charges for the use of the airport's facilities after demanding payment for such fees and charges from the aircraft's owner or operator.<sup>18</sup> A lien for landing is a possessory lien that attaches to any aircraft, at the airport, owned or operated by the person owing such charges and fees.<sup>19</sup>

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<sup>7</sup> *Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So.3d 887 (3d DCA 2010).

<sup>8</sup> *Creston Aviation, Inc. v. Textron Financial Corp.*, 900 So.2d 727 (2005).

<sup>9</sup> "Aircraft" means any contrivance invented, used, or designed to navigate, or fly in, the air. 49 USC § 40102(a)(g).

<sup>10</sup> The Federal Aviation Administration of the Department of Transportation regulates civil aviation and U.S. commercial space transportation, maintains and operates air traffic control and navigation systems for civil and military aircrafts, and develops and administers programs relating to aviation safety and the National Airspace System. See The Federal Register, *Federal Aviation Administration*, <https://www.federalregister.gov/agencies/federal-aviation-administration> (last visited Mar. 23, 2019).

<sup>11</sup> See 49 U.S.C. § 44107; see also *Creston*, *supra*, at 8.

<sup>12</sup> See 49 U.S.C. § 44108; see also *Creston*, *supra*, at 8.

<sup>13</sup> See *Creston*, *supra*, at 12, citing *Aircraft Trading & Servs., Inc. v. Braniff, Inc.*, 819 F. 2d 1227 (2d Cir. 1987).

<sup>14</sup> See *Creston*, *supra*, at 12, citing *Philko Aviation, Inc. v. Shackel*, 103 S. Ct. 2476 (1983).

<sup>15</sup> Federal Aviation Administration, *Artisan Liens on Aircraft; Recordability*, 70 FR 59800 (Oct. 13, 2005) <https://www.federalregister.gov/documents/2005/10/13/05-20467/artisan-liens-on-aircraft-recordability> (last visited Mar. 23, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> S. 329.01, F.S.

<sup>18</sup> S. 329.40(1), F.S.

<sup>19</sup> S. 329.40(2), F.S.

A lien for landing is enforced in the same manner as a warehouseman's<sup>20</sup> lien, i.e., by public sale of the aircraft after notification to all persons known to claim an interest in the aircraft.<sup>21</sup> The notification must be delivered by certified mail or in person and include:

- An itemized statement of the amount due;
- A description of the aircraft;
- A demand for payment within a specified time; and
- A conspicuous statement that unless the claim is paid within the specified time, the goods will be sold at a specified time and place.<sup>22</sup>

Following the expiration of the timeframe given for payment in the notice, the lienor must publish an advertisement for two consecutive weeks in a newspaper of general circulation where the sale is to occur.<sup>23</sup> The advertisement must state:

- A description of the aircraft;
- The name of the person on whose account the aircraft is held; and
- The time and place of the sale.<sup>24</sup>

### ***Lien for Fuel, Labor, Services, or Material***

A person who provides fuel for an aircraft may claim a lien on the aircraft for any unpaid fuel charges.<sup>25</sup> A person who performs labor or services on or for an aircraft may claim a lien on the aircraft for any unpaid costs for the labor or services performed and for the materials used.<sup>26</sup>

A lien for fuel, labor, services, or material under ss. 329.41 or 713.58, F.S., is a possessory lien.<sup>27</sup> To enforce such a lien, a lienor must record a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the fuel, labor, services, or material was last provided.<sup>28</sup> Such notice must be recorded within 90 days of the date the fuel, labor, services, or material was last furnished and must state:

- The name of the lienor;
- The name of the aircraft's owner;
- A description of the subject aircraft;
- The amount for which the lien is claimed; and
- The date the expenditure was completed.<sup>29</sup>

---

<sup>20</sup> "Warehouse" means a person engaged in the business of storing the goods of others for hire. S. 677.102(1)(m), F.S.

<sup>21</sup> Ss. 329.40(1) and 677.210(1) and (2), F.S.

<sup>22</sup> S. 677.210(2), F.S.

<sup>23</sup> S. 677.201(3), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> S. 329.41, F.S.

<sup>26</sup> S. 713.58(1), F.S.

<sup>27</sup> S. 713.58(3), F.S.; see also *Commercial Jet, Inc, supra*, at 7.

<sup>28</sup> S. 329.51, F.S.

<sup>29</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill declares liens claimed under ss. 329.41 and 713.58, F.S., for labor, services, fuel, or material furnished to an aircraft are not possessory liens. Thus, a person claiming such a lien does not need to keep the aircraft in his or her possession to enforce the lien.

The bill does not affect the possessory nature of liens for labor or services to other property claimed under s. 713.58, F.S.,<sup>30</sup> or liens for landing claimed under s. 329.40, F.S. These liens remain possessory liens unless categorized otherwise in statute.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

A person enforcing a lien for fuel, labor, services, or material furnished to an aircraft would be allowed to release the aircraft to the owner or operator. This may make it easier for a lienor to recover money owed to him or her without keeping a commercial aircraft out of service and potentially disrupting commercial air travel. This may also allow the owner or operator of an aircraft on which a lien is claimed to keep using the aircraft while he or she works to satisfy the lien.

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<sup>30</sup> E.g., a lien claimed under s. 718.58, F.S., for labor or services performed on a motor vehicle.

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: 329.41 and 329.51.

**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 Baxley

12-01238-19

20191208\_\_

1 A bill to be entitled  
 2 An act relating to aircraft liens; amending ss. 329.41  
 3 and 329.51, F.S.; specifying that a lienor is not  
 4 required to possess an aircraft to perfect certain  
 5 liens; providing an effective date.  
 6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8  
 9 Section 1. Section 329.41, Florida Statutes, is amended to  
 10 read:  
 11 329.41 Lien for fuel furnished to aircraft.—A person who  
 12 has furnished fuel to an aircraft has a lien upon the aircraft  
 13 for any unpaid fuel charges and possession of the aircraft is  
 14 not required in order to perfect such lien. The lien is  
 15 enforceable in the same manner as provided in s. 329.51.  
 16 Section 2. Section 329.51, Florida Statutes, is amended to  
 17 read:  
 18 329.51 Liens for labor, services, fuel, or material  
 19 expended upon aircraft; notice.—Any lien claimed on an aircraft  
 20 under s. 329.41 or s. 713.58 is enforceable when the lienor  
 21 records a verified lien notice with the clerk of the circuit  
 22 court in the county where the aircraft was located at the time  
 23 the labor, services, fuel, or material was last furnished. The  
 24 lienor is not required to possess the aircraft to perfect such  
 25 lien. The lienor must record such lien notice within 90 days  
 26 after the time the labor, services, fuel, or material was last  
 27 furnished. The notice must state the name of the lienor; the  
 28 name of the owner; a description of the aircraft upon which the  
 29 lienor has expended labor, services, fuel, or material; the

Page 1 of 2

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

12-01238-19

20191208\_\_

30 amount for which the lien is claimed; and the date the  
 31 expenditure was completed. This section does not affect the  
 32 priority of competing interests in any aircraft or the lienor's  
 33 obligation to record the lien under s. 329.01.  
 34 Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

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

# THE FLORIDA SENATE

**COMMITTEES:**

Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

**JOINT COMMITTEE:**

Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**

12th District

March 8, 2019

The Honorable Chairman Doug Broxson  
318 Senate Office Building  
Tallahassee, FL 32399

Dear Chairman Broxson,

I would like to request SB 1208 Aircraft Liens be heard in your next Banking and Insurance committee meeting.

This bill allows a person who has furnished fuel to an aircraft to have a lien upon the aircraft for any unpaid fuel charges and the possession of the aircraft is not required in order to perfect such lien.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: James Knudson, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

**Bill Galvano**  
President of the Senate

**David Simmons**  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

1208  
Bill Number (if applicable)

Topic Aircraft Leasing

Amendment Barcode (if applicable)

Name Steven Popilek

Job Title Board Member FABAA

Address 2838 65th Way N.  
Street

Phone 227-460-4476

St. Petersburg FL 33710  
City State Zip

Email Popilek1@aol.com

Speaking:  For  Against  Information

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

Representing Florida Aviation Business Association (FABAA)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1252

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Public Accountancy

DATE: April 2, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1252 adds an attestation engagement to the services that require a certified public accountant license (CPA) for a person to perform or offer to perform. An attestation engagement is an arrangement with a client where an independent third party CPA investigates and reports on subject matter created by a client. Examples of attestation engagements include reporting on financial information formulated by a client, and reporting on how well the client's internal controls process functions. An attestation engagement gives users a higher level of confidence regarding the subject of the engagement.

The bill decreases the percentage of the required total hours of CPA continuing education that must relate to accounting-related and auditing-related subjects from 25 percent to 10 percent.

The bill also eliminates the process and the separate continuing education requirements for reactivation of a license that was inactive or delinquent on June 30, 2014. Under the bill, all inactive licensees must satisfy the same minimum continuing education requirements.

The effective date of the bill is July 1, 2019.

**II. Present Situation:**

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000

active and inactive CPAs and more than 5,400 accounting firms in Florida.<sup>1</sup> The Division of Certified Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.<sup>2</sup>

A certified public accountant is a person who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.<sup>3</sup>

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparations, management advisory or consulting services, or preparation of financial statements.<sup>4</sup> To engage in the practice of public accounting, as defined in s. 473.302(8)(a), F.S., an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

### Definitions

Section 473.302(8), F.S., define the terms “practice of,” “practicing public accountancy,” or “public accounting” to mean:

- (a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
- (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, [F.S.,] including the performance of such services by a certified public accountant in the employ of a person or firm; or
- (c) Offering to perform or performing for the public one or more types of services involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice

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<sup>1</sup> Florida Department of Business and Professional Regulation, Fiscal Year 2017-2018 Annual Report, page 14, available at <http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf> (last visited Mar. 1, 2019).

<sup>2</sup> Section 473.303, F.S.

<sup>3</sup> See s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.

<sup>4</sup> Section 473.302(8), F.S.

public accounting pursuant to the practice privileges granted in s. 473.3141[, F.S.]; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

(Emphasis added.)

A “client” is any person, public officer, corporation, association, or other organization or entity, either public or private, who agrees with an accountant or accountant’s employer to receive professional services.<sup>5</sup>

### **Continuing Education**

Certified public accountants, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to their application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.<sup>6</sup> The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.<sup>7</sup>

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.<sup>8</sup> Not less than 5 percent of the total hours required by the board must be in ethics applicable to the practice of public accounting.<sup>9</sup>

### **Inactive Licenses**

Section 473.313(1), F.S., allows Florida-licensed CPAs to request that their license be placed on inactive status. Section 473.313(2), F.S., authorizes the board to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.<sup>10</sup>

Section 473.313(2), F.S., provides that a CPA who holds an inactive license due to failure to complete the continuing education requirements in s. 473.312, F.S., may be reactivated under

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<sup>5</sup> See s. 473.316(1)(b), F.S.

<sup>6</sup> Section 473.312(1)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 473.312(1)(b), F.S.

<sup>9</sup> Section 473.312(1)(c), F.S.

<sup>10</sup> See Fla. Admin R. 61H1-33.006.

s. 473.311, F.S.,<sup>11</sup> upon application to the department. The minimum continuing education requirements are those required by board rule, the required hours for the most recent biennium reporting period, and one-half of the requirements under s. 473.312, F.S.<sup>12</sup>

A different continuing education requirement applies to a license that was inactive on June 30, 2014. To reactivate a license that was inactive on June 30, 2014, an applicant must have completed 120 hours of continuing education, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board. To reactivate, the applicant must also have notified the board by December 31, 2014, of his or her intention to reactivate such a license and have completed such reactivation by June 30, 2016.<sup>13</sup>

During the 2014 Regular Session, the Legislature extended the deadlines in the process for reactivation of licenses that had become inactive due to failure to complete the continuing education requirements. The deadlines or relevant dates were extended from:

- June 30, 2012, to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement; and
- June 30, 2014, to June 30, 2016, the deadline to complete the reactivation of the license.<sup>14</sup>

Section 473.313(3), F.S., permits a license that has become inactive due to failure to meet the continuing education requirements to be renewed upon the licensee applying to the department with payment of the required fee.<sup>15</sup> The applicant must submit proof of satisfactorily completing the continuing education requirements. The applicant must also submit the completed application to the board by March 15 immediately following the inactive period.

### **Attestation Engagements**

An attestation engagement is an arrangement with a client where an independent third party investigates and reports on subject matter created by a client. Examples of attestation engagements include reporting on financial information formulated by a client, and reporting on how well the client's internal controls process functions. An attestation engagement gives users a higher level of confidence regarding the subject of the engagement.<sup>16</sup>

The Auditing Standards Board (ASB) is the senior technical committee designated by the American Institute of Certified Public Accountants (AICPA) to issue auditing, attestation, and

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<sup>11</sup> Section 473.311, F.S., provides for the renewal of licenses upon the satisfaction of continuing education requirements.

<sup>12</sup> Section 473.312(1), F.S., requires that at least 48, but not more than 80 hours, of continuing education must be completed within 2 years prior to the application for renewal.

<sup>13</sup> Section 473.312(2), F.S.

<sup>14</sup> See ch. 2014-88, s. 2, Laws of Fla.

<sup>15</sup> Section 473.305, F.S., authorizes the board to establish, by rule, a reactivation fee, and a delinquency fee not to exceed \$50 for continuing professional education reporting forms. This section also provides that the board must "establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants." The fees established by the board must be based on department estimates of the revenue required to implement ch. 473, F.S., and the provisions of law with respect to the regulation of certified public accountants.

<sup>16</sup> See Accounting Tools, *Attestation Engagement*, Nov. 11, 2018, available at: <https://www.accountingtools.com/articles/2017/5/7/attestation-engagement> (last visited Mar. 13, 2019).

quality control standards applicable to the performance and issuance of audit and attestation reports.<sup>17</sup> The ASB has issued a Statement on Standards for Attestation Engagements to be followed by a CPA performing an attestation engagement.<sup>18</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 473.302(8)(d), F.S., to add an attestation engagement within the types of services that require a CPA license for a person to perform or offer to perform. Pursuant to the bill, a person who performs or offers to perform one or more types of services involving any attestation engagement in accordance with the Statements on Standards for Attestation Engagements<sup>19</sup> promulgated by the American Institute of Certified Public Accountants is practicing public accounting. The “Statements on Standards for Attestation Engagements” applicable would be the version in effect at the time the Legislature acts but would not include future revisions unless those revisions are adopted by a future Legislature.<sup>20</sup>

**Section 4** amends s. 473.322(1)(c), F.S., which prohibits offering or performing specified services without a CPA license, to incorporate the offering or performance of an attestation engagement as provided by the bill.

**Section 2** amends s. 473.312(2), F.S., to decrease the percentage of the required total hours of CPA continuing education that must relate to accounting-related and auditing-related subjects from 25 percent to 10 percent.

**Section 3** amends s. 473.313(2), F.S., to eliminate the process and separate continuing education requirements for reactivation of a license that was inactive or delinquent on June 30, 2014. Under the bill, all inactive licensees must satisfy the same minimum continuing education requirements. The bill provides that the maximum number of continuing education hours necessary to reactivate a license is 120.

**Section 5** provides an effective date of July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>17</sup> See Auditing Standards Board, at: <https://www.aicpa.org/research/standards/auditattest/asb.html> (last visited: Mar. 4, 2019).

<sup>18</sup> See Clarified Statements on Standards for Attestation Engagements at: <https://www.aicpa.org/research/standards/auditattest/ssae.html> (last visited: Mar. 4, 2019).

<sup>19</sup> The bill does not specify that the “Statements on Standards for Attestation Engagements” are promulgated by the American Institute of Certified Public Accountants.

<sup>20</sup> See *Galaxy Fireworks, Inc. v. City of Orlando*, 842 So.2d 160, 167 (Fla. 5<sup>th</sup> DCA 2003)(noting that the “adoption of future code provisions may constitute an unlawful delegation of powers by a legislative body”).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 473.302, 473.312, 473.313, and 473.322.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Banking and Insurance on April 1, 2019:**

The CS provides that the attestation standards are promulgated by the American Institute of Certified Public Accountants and provides that the maximum number of continuing education hours that are required to reactivate an inactive license is 120 hours.

B. Amendments:

None.

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

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337902

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 59 - 85  
and insert:  
Engagements promulgated by the American Institute of Certified  
Public Accountants.

However, these terms shall not include services provided by the  
American Institute of Certified Public Accountants or the  
Florida Institute of Certified Public Accountants, or any full



337902

11 service association of certified public accounting firms whose  
12 plans of administration have been approved by the board, to  
13 their members or services performed by these entities in  
14 reviewing the services provided to the public by members of  
15 these entities.

16 Section 2. Paragraph (b) of subsection (1) of section  
17 473.312, Florida Statutes, is amended to read:

18 473.312 Continuing education.—

19 (1)

20 (b) Not less than 10 ~~25~~ percent of the total hours required  
21 by the board shall be in accounting-related and auditing-related  
22 subjects, as distinguished from federal and local taxation  
23 matters and management services.

24 Section 3. Subsection (2) of section 473.313, Florida  
25 Statutes, is amended to read:

26 473.313 Inactive status.—

27 (2) A license that has become inactive under subsection (1)  
28 or for failure to complete the requirements in s. 473.312 may be  
29 reactivated under s. 473.311 upon application to the department.  
30 The board may prescribe by rule continuing education  
31 requirements as a condition of reactivating a license. The  
32 maximum ~~minimum~~ continuing education requirements for  
33 reactivating a

By Senator Gruters

23-02045A-19

20191252\_\_

A bill to be entitled

An act relating to public accountancy; amending s. 473.302, F.S.; revising a definition; amending s. 473.312, F.S.; revising the percentage of total hours of accounting-related and auditing-related continuing education required by the Board of Accountancy for license renewal; amending s. 473.313, F.S.; updating provisions relating to license reactivation; amending s. 473.322, F.S.; prohibiting a person from performing or offering to perform certain services without a license; revising criminal penalties; providing an effective date.

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

Section 1. Subsection (8) of section 473.302, Florida Statutes, is amended to read:

473.302 Definitions.—As used in this chapter, the term:

(8) "Practice of," "practicing public accountancy," or "public accounting" means:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability

Page 1 of 4

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

23-02045A-19

20191252\_\_

of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, including the performance of such services by a certified public accountant in the employ of a person or firm; ~~or~~

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph; or

(d) Offering to perform or performing for the public one or more types of services involving any attestation engagements in accordance with the Statements on Standards for Attestation

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23-02045A-19

20191252\_\_

59 Engagements.

60  
61 However, these terms shall not include services provided by the  
62 American Institute of Certified Public Accountants or the  
63 Florida Institute of Certified Public Accountants, or any full  
64 service association of certified public accounting firms whose  
65 plans of administration have been approved by the board, to  
66 their members or services performed by these entities in  
67 reviewing the services provided to the public by members of  
68 these entities.

69 Section 2. Paragraph (b) of subsection (1) of section  
70 473.312, Florida Statutes, is amended to read:

71 473.312 Continuing education.—

72 (1)

73 (b) Not less than 10 ~~25~~ percent of the total hours required  
74 by the board shall be in accounting-related and auditing-related  
75 subjects, as distinguished from federal and local taxation  
76 matters and management services.

77 Section 3. Subsection (2) of section 473.313, Florida  
78 Statutes, is amended to read:

79 473.313 Inactive status.—

80 (2) A license that has become inactive under subsection (1)  
81 or for failure to complete the requirements in s. 473.312 may be  
82 reactivated under s. 473.311 upon application to the department.  
83 The board may prescribe by rule continuing education  
84 requirements as a condition of reactivating a license. The  
85 minimum continuing education requirements for reactivating a  
86 license are ~~those prescribed by board rule and those of the most~~  
87 ~~recent biennium plus one-half of the requirements in s. 473.312.~~

Page 3 of 4

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23-02045A-19

20191252\_\_

88 ~~Notwithstanding any other provision of this section, the~~  
89 ~~continuing education requirements are 120 hours, including at~~  
90 ~~least 30 hours in accounting-related and auditing-related~~  
91 ~~subjects, not more than 30 hours in behavioral subjects, and a~~  
92 ~~minimum of 8 hours in ethics subjects approved by the board, for~~  
93 ~~the reactivation of a license that is inactive or delinquent on~~  
94 ~~June 30, 2014, if the Florida certified public accountant~~  
95 ~~notifies the Board of Accountancy by December 31, 2014, of an~~  
96 ~~intention to reactivate such a license and completes such~~  
97 ~~reactivation by June 30, 2016.~~

98 Section 4. Paragraph (c) of subsection (1) of section  
99 473.322, Florida Statutes, is amended, and subsection (2) of  
100 that section is republished, to read:

101 473.322 Prohibitions; penalties.—

102 (1) A person may not knowingly:

103 (c) Perform or offer to perform any services described in  
104 s. 473.302(8) (a) or (d) unless such person holds an active  
105 license under this chapter and is a licensed firm, provides such  
106 services through a licensed firm, or complies with ss. 473.3101  
107 and 473.3141. This paragraph does not prohibit the performance  
108 by persons other than certified public accountants of other  
109 services involving the use of accounting skills, including the  
110 preparation of tax returns and the preparation of financial  
111 statements without expression of opinion thereon;

112 (2) Any person who violates any provision of this section  
113 commits a misdemeanor of the first degree, punishable as  
114 provided in s. 775.082 or s. 775.083.

115 Section 5. This act shall take effect July 1, 2019.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-19

Meeting Date

1252

Bill Number (if applicable)

Topic Public Accountancy

Name Justin Thames

Job Title Director of Governmental Affairs

Address 119 S. Monroe St., Suite 121

Street

Phone 850-528-2209

Tallahassee FL 32301

City

State

Zip

Email justin@fipa.org

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

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

Representing Florida Institute of CPAs

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-19

Meeting Date

1252

Bill Number (if applicable)

337902

Amendment Barcode (if applicable)

Topic Public Accountancy

Name Justin Thames

Job Title Director of Governmental Affairs

Address 119 S. Monroe St., Suite 121

Street

Phone

Tallahassee

FL

32301

City

State

Zip

Email Justin@fipa.org

Speaking: [ ] For [ ] Against [ ] Information

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1466

INTRODUCER: Banking and Insurance Committee and Senators Gibson and Broxson

SUBJECT: Protection for Vulnerable Investors

DATE: April 2, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1466 addresses financial exploitation of vulnerable adults and the elderly. The bill adds financial securities dealers and investment advisers to the list of specified persons to report abuse or exploitation to the central abuse hotline.

The bill creates a new section of statute in ch. 517, F.S., relating to securities transactions, to allow securities dealers and investment advisers to place a temporary hold on financial transactions when exploitation of a vulnerable adult or person 65 years of age or older is reasonably suspected. The dealer or adviser must notify the persons who have access to the account and the Office of Financial Regulation of the hold. The bill provides civil and administrative immunity to dealers or advisers for placing a delay or hold on a transaction if they comply with the provisions of the bill.

The bill is not expected to have a fiscal impact to the state and has an effective date of July 1, 2019.

**II. Present Situation:**

**Adult and Elder Abuse**

The Adult Protective Services Act (ch. 415, F.S.) defines abuse as any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to harm a vulnerable

adult's physical, mental, or emotional health. Abuse includes acts as well as omissions.<sup>1</sup> A vulnerable adult is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.<sup>2</sup>

Section 415.1034, F.S., requires anyone who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited to immediately report suspected abuse to the central abuse hotline. The central abuse hotline is maintained by the Department of Children and Families (department). Once reported, the department must begin a protective investigation within 24 hours.<sup>3</sup> If a caregiver refuses to allow the department to begin a protective investigation or interferes with the investigation, the department can contact the appropriate law enforcement agency for assistance. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement agency and state attorney must be notified. The department shall make a preliminary written report to the law enforcement agencies within 5 working days after the oral report and complete the investigation within 60 days.<sup>4</sup>

Financial exploitation occurs when a person misuses or takes the assets of a vulnerable adult for his or her own personal benefit. This frequently occurs without the knowledge or consent of a senior or disabled adult, depriving him or her of financial resources for personal needs. Assets are commonly taken by deception, false pretenses, coercion, harassment, duress and threats. These are commonly reported forms of financial exploitation reported to Adult Protective Services:<sup>5</sup>

- Theft - involves taking assets without knowledge, consent or authorization and may include taking of cash, valuables, medications other personal property.
- Fraud - involves acts of dishonesty by persons entrusted to manage assets and may include falsification of records, forgeries, unauthorized check-writing, and Ponzi-type financial schemes.
- Real Estate - involves unauthorized sales, transfers or changes to property, and may include unauthorized or invalid changes to estate documents.
- Contractor - includes building contractors or handymen who receive payment for building repairs, but fail to initiate or complete the project and may include invalid liens by contractors.
- Lottery scams - involves payments to collect unclaimed property or "prizes" from lotteries or sweepstakes.
- Electronic - includes "phishing" e-mail messages to trick persons into unwittingly surrendering bank passwords and may include faxes, wire transfers, telephonic communications.

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<sup>1</sup> Section 415.102, F.S.

<sup>2</sup> Section 415.102, F.S.

<sup>3</sup> Section 415.104, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> National Adult Protective Services Association website, see <http://www.napsa-now.org/get-informed/what-is-financial-exploitation/> last visited March 28, 2019.



- Mortgage - includes financial products which are unaffordable or out-of-compliance with regulatory requirements and may include loans issued against property by unauthorized parties.
- Investment - includes investments made without knowledge or consent and may include high-fee funds (front or back-loaded) or excessive trading activity to generate commissions for financial advisors.
- Insurance - involves sales of inappropriate products, such as a thirty-year annuity for an elderly person and may include unauthorized trading of life insurance policies.

### **Regulation of Securities and Investments**

The Division of Securities within the Office of Financial Regulation (OFR) protects the investing public from unlawful securities activities through regulating the sale of securities and investment advice from Florida securities dealers, issuer dealers, and investment advisers, branch offices, and individuals affiliated with these firms.<sup>6</sup> As of January 31, 2019, there were:

- 2,501 securities dealers,
- 6,342 investment advisers,
- 10,676 branches, and
- 328,217 associated persons.<sup>7</sup>

The North American Securities Administrators Association (NASAA) is an international organization devoted to investor protection. Its membership consists of securities administrators. On January 22, 2016, the NASAA approved model “Legislation to Protect Vulnerable Adults from Financial Exploitation” (the Model Act).<sup>8</sup> The Model Act focuses on the reporting and prevention of senior financial exploitation. The Model Act has the following features:

- A mandatory reporting requirement applicable to qualified individuals of broker-dealers and investment advisers;
- Notification to third-parties of potential financial exploitation with advance consent of the investor;
- Authority to temporarily delay disbursement of funds;
- Immunity from civil and administrative liability for reporting, notifications, delays; and
- Mandatory sharing of records related to exploitation with law enforcement and state adult protective services agencies.

As of January 1, 2019, twenty-one states have adopted legislation and in the case of one state, a regulation comparable to the Model Act.<sup>9</sup>

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<sup>6</sup> Florida Office of Financial Regulation bill analysis, dated March 7, 2019.

<sup>7</sup> “Associated person” means, with respect to a dealer or investment adviser, any of the following:

- Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
- Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
- Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section. *See* s.517.021, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

In addition, the Financial Industry Regulatory Authority, a private self-regulatory organization that regulates certain aspects of the securities industry, adopted Rule 2165 on February 5, 2018. This rule is aimed at preventing financial exploitation of the elderly. The rule permits a member that reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a customer.

### **III. Effect of Proposed Changes:**

#### **Reporting Exploitation to the Department of Children and Families**

**Section 1** amends s. 415.1034, F.S., relating to reporting of abuse, neglect, or exploitation of a vulnerable adult. The bill adds a dealer of securities, investment advisor, or person regulated by ch. 517, F.S., to the list of specified reporters of abuse. The bill also retains current law that all persons who suspect abuse, neglect, or exploitation must report to the central abuse hotline.

#### **Allowing the Delay of Financial Transactions or Disbursements Based Upon the Reasonable Belief a Senior Adult is Being Exploited**

**Section 2** creates s. 517.34, F.S., which allows a securities dealer (dealer) or investment adviser to delay a transaction or disbursement of funds or securities from the account of a specified adult if the dealer or investment adviser reasonably believes that exploitation<sup>10</sup> of the specified adult has occurred, is occurring, has been attempted, or will be attempted. A specified adult is defined as a person 65 years or older or a vulnerable adult.<sup>11</sup> The reasonable belief of exploitation may be based on the facts and circumstances observed in the business relationship with the specified adult.

The bill requires the dealer or investment adviser to provide written or electronic notice of the temporary hold and the reason for the hold to all parties authorized to transact business on the account and any trusted contact<sup>12</sup> within 3 business days after the date on which the delay was first placed. The dealer or investment adviser must also notify the OFR of the temporary hold and the reason for the temporary hold.

The bill requires a dealer or investment adviser subject to the jurisdiction of the OFR to make all records relating to a delay or report available to the OFR upon request.

#### ***Length of the Delay***

A delay on a transaction or disbursement expires 15 business days after the date on which the delay was first placed. The delay may be terminated after communication with the parties authorized to transact business on the account or any trusted contact on the account. The bill allows the dealer or investment adviser to extend the delay for up to 10 additional business days

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<sup>10</sup> The bill's definition of "exploitation" is similar to the definition in the Model Act. See <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Model-Act-and-Updated-Commentary-for-2018-Session.pdf> (last visited April 2, 2019).

<sup>11</sup> "Vulnerable adult" is defined in s. 415.102, F.S.

<sup>12</sup> The bill defines "trusted contact" as a natural person 18 years of age or older, whom the account owner has expressly identified as a person who may be contacted about the account.

if the review of the available facts and circumstances continues to support its good faith belief regarding exploitation of the specified adult. The dealer or investment adviser extending the delay must notify the OFR within 3 business days after the start of the extension. The length of the delay may be shortened or extended at any time by a court. A dealer, investment adviser, or associated person may terminate a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

### ***Requirement to Develop Policies and Procedures Regarding Exploitation***

The bill requires the dealer or investment adviser, before placing a delay on a transaction or disbursement, to develop training policies or programs reasonably designed to educate associated persons on issues pertaining to exploitation, to develop and maintain written procedures regarding the manner in which suspected exploitation must be reported to supervisory personnel, and to conduct training for all associated persons. The dealer or investment adviser must maintain a written record of compliance with the training provisions of the bill.

### ***Immunity Provision***

The bill provides that a dealer, investment adviser, or associated person who:

- delays a transaction or disbursement pursuant to this section;
- provides records to an agency of competent jurisdiction pursuant to this section; or
- participates in a judicial or arbitration proceeding resulting in the delay or provision of records

is presumed to be acting based upon a reasonable belief<sup>13</sup> of exploitation and is immune from any civil or administrative liability that otherwise might be incurred or imposed. The immunity does not apply if the lack of such reasonable belief is shown by a preponderance of the evidence. The bill does not supersede or diminish any immunity under ch. 415.

### ***Other Provisions***

In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation are confidential and exempt from public record provisions under s. 119.07(1), F.S. The records may not be disclosed, except as specifically authorized by ss. 415.101-415.113, F.S., which provides a few exceptions. The bill provides that the Department of Children and Families may share the status and result of any investigation with the reporting dealer or investment adviser.

The bill provides that it does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules and does not limit the right to refuse to

---

<sup>13</sup> The bill does not define “reasonable belief.” The term generally creates an objective standard where the court determines how a reasonable person would have acted under the circumstances. *See e.g., Mobley v. State*, 132 So.3d 1160 (Fla. 3d DCA 2014)(applying the objective reasonable person standard to a self-defense statute allowing the use of deadly force when a person reasonably believes it is necessary to prevent great bodily harm); *Lopez v. Regalado*, 257 So.3d 550 (Fla. 3d DCA 2018)(holding a domestic violence injunction under s. 741.30, F.S., was appropriate when the victim had an “objectively reasonable cause to believe” she was in imminent danger); *Habie v. Krischer*, 642 So.2d 138 (Fla. 4<sup>th</sup> DCA 1994)(holding the phrase “reasonably believes” in a criminal statute was not void for vagueness and noting that a court had held “reasonable belief” is an objective standard); *Kaplan v. DaimlerChrysler*, 331 F.3d 1251 (11<sup>th</sup> Cir. 2003)(applying an objective reasonable person standard in interpreting a federal rule asking whether an attorney has reasonable factual basis for a claim).

place a delay on a transaction or disbursement under other applicable laws or rules or under an applicable customer agreement.

The bill provides that absent a reasonable belief of exploitation, it does not alter a dealer's, investment adviser's, or associated person's obligation to comply with instructions from a client to close an account or transfer an account to another dealer, investment adviser, or associated person.

**Section 3** provides an effective date of July 1, 2019.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fewer vulnerable adults and elders would experience financial exploitation under the bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Financial Regulation may need rule making authority to implement the provisions of the bill.

**VIII. Statutes Affected:**

This bill substantially amends section 415.1034 of the Florida Statutes.

This bill creates section 517.34 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Banking and Insurance on April 1, 2019:**

The CS:

- Changes the definition of “exploitation” to make it more like the definition used in the Model Act;
- Removes incorrect references to “law enforcement agency;”
- Removes provisions allowing associated persons to delay transactions; and
- Requires dealers and investment advisors to notify OFR of any extension of a delay.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2019	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (a) of subsection (1) of section  
415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or  
exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:



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- 11           1. Physician, osteopathic physician, medical examiner,  
12 chiropractic physician, nurse, paramedic, emergency medical  
13 technician, or hospital personnel engaged in the admission,  
14 examination, care, or treatment of vulnerable adults;
- 15           2. Health professional or mental health professional other  
16 than one listed in subparagraph 1.;
- 17           3. Practitioner who relies solely on spiritual means for  
18 healing;
- 19           4. Nursing home staff; assisted living facility staff;  
20 adult day care center staff; adult family-care home staff;  
21 social worker; or other professional adult care, residential, or  
22 institutional staff;
- 23           5. State, county, or municipal criminal justice employee or  
24 law enforcement officer;
- 25           6. Employee of the Department of Business and Professional  
26 Regulation conducting inspections of public lodging  
27 establishments under s. 509.032;
- 28           7. Florida advocacy council or Disability Rights Florida  
29 member or a representative of the State Long-Term Care Ombudsman  
30 Program; ~~or~~
- 31           8. Bank, savings and loan, or credit union officer,  
32 trustee, or employee; or
- 33           9. Dealer, investment adviser, or associated person under  
34 chapter 517,  
35  
36 who knows, or has reasonable cause to suspect, that a vulnerable  
37 adult has been or is being abused, neglected, or exploited must  
38 ~~shall~~ immediately report such knowledge or suspicion to the  
39 central abuse hotline.



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40 Section 2. Section 517.34, Florida Statutes, is created to  
41 read:

42 517.34 Protection of specified adults.—

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

44 (a) "Exploitation" means the wrongful or unauthorized  
45 taking, withholding, appropriation, or use of money, assets, or  
46 property of a specified adult, or any act or omission by a  
47 person, including through the use of a power of attorney,  
48 guardianship, or conservatorship of a specified adult, to:

49 1. Obtain control over the specified adult's money, assets,  
50 or property through deception, intimidation, or undue influence  
51 to deprive him or her of the ownership, use, benefit, or  
52 possession of the money, assets, or property; or

53 2. Convert the specified adult's money, assets, or property  
54 to deprive him or her of the ownership, use, benefit, or  
55 possession of the money, assets, or property.

56 (b) "Specified adult" means a natural person 65 years of  
57 age or older or a vulnerable adult as defined in s. 415.102.

58 (c) "Trusted contact" means a natural person 18 years of  
59 age or older whom the account owner has expressly identified and  
60 who is recorded in a dealer's or an investment adviser's books  
61 and records as the person who may be contacted about the  
62 account.

63 (2) A dealer or an investment adviser may delay a  
64 transaction on, or a disbursement of funds or securities from,  
65 an account of a specified adult or an account for which a  
66 specified adult is a beneficiary or beneficial owner if the  
67 dealer or investment adviser reasonably believes that  
68 exploitation of the specified adult has occurred, is occurring,





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69 has been attempted, or will be attempted in connection with the  
70 transaction or disbursement.

71 (a) The dealer's or investment adviser's reasonable belief  
72 of exploitation may be based on the facts and circumstances  
73 observed in such dealer's, investment adviser's, or associated  
74 person's relationship with the specified adult.

75 (b)1. Within 3 business days after the date on which the  
76 delay was first placed, the dealer or investment adviser must  
77 notify in writing, which may be provided electronically, all  
78 parties authorized to transact business on the account and any  
79 trusted contact on the account, using the contact information  
80 provided for the account, of the delay and the reason for the  
81 delay, unless the dealer or investment adviser reasonably  
82 believes that any such party engaged or is engaging in the  
83 suspected exploitation of the specified adult.

84 2. Within 3 business days after the date on which the delay  
85 was first placed, the dealer or investment adviser must notify  
86 the office by telephone using a number designated by the office  
87 for such purpose, or in writing, which may be provided  
88 electronically, of the delay and the reason for the delay.

89 3. Notwithstanding any law to the contrary, the Department  
90 of Children and Families may provide the status or result of any  
91 investigation with the reporting dealer or investment adviser.

92 (3) A delay on a transaction or disbursement under  
93 subsection (2) expires 15 business days after the date on which  
94 the delay was first placed. However, the dealer or investment  
95 adviser may extend the delay for up to 10 additional business  
96 days if the dealer's or investment adviser's review of the  
97 available facts and circumstances continues to support such



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98 dealer's or investment adviser's reasonable belief that  
99 exploitation of the specified adult has occurred, is occurring,  
100 has been attempted, or will be attempted. A dealer or investment  
101 adviser extending the delay shall notify the office within 3  
102 business days after the start of the extension using the  
103 procedure specified in subparagraph (2)(b)2. The length of the  
104 delay may be shortened or extended at any time by a court of  
105 competent jurisdiction. This subsection does not prevent a  
106 dealer or investment adviser from terminating a delay after  
107 communication with the parties authorized to transact business  
108 on the account and any trusted contact on the account.

109 (4) A dealer or investment adviser subject to the  
110 jurisdiction of the office must make available to the office,  
111 upon request, all records relating to a delay or notification  
112 made by the dealer or investment adviser pursuant to this  
113 section.

114 (5) A dealer, investment adviser, or associated person who  
115 delays or participates in the delay of a transaction or  
116 disbursement pursuant to this section, who provides records to  
117 an agency of competent jurisdiction pursuant to this section, or  
118 who participates in a judicial or arbitration proceeding  
119 resulting therefrom is presumed to be acting based upon a  
120 reasonable belief of exploitation and is immune from any civil  
121 or administrative liability that otherwise might be incurred or  
122 imposed, unless lack of such reasonable belief is shown by a  
123 preponderance of the evidence. This subsection does not  
124 supersede or diminish any immunity under chapter 415.

125 (6) (a) Before placing a delay on a transaction or  
126 disbursement pursuant to this section, a dealer or investment



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127 adviser shall develop training policies or programs reasonably  
128 designed to educate associated persons on issues pertaining to  
129 exploitation, develop and maintain written procedures regarding  
130 the manner in which suspected exploitation is required to be  
131 reported to supervisory personnel, when applicable, and conduct  
132 periodic training for all associated persons.

133 (b) The dealer or investment adviser shall maintain a  
134 written record of compliance with this subsection.

135 (7) This section does not create new rights or obligations  
136 of a dealer, investment adviser, or associated person under  
137 other applicable laws or rules. In addition, this section does  
138 not limit the right of a dealer, an investment adviser, or an  
139 associated person to otherwise refuse or place a delay on a  
140 transaction or disbursement under other applicable laws or rules  
141 or under an applicable customer agreement.

142 (8) Absent a reasonable belief of exploitation as provided  
143 in this section, this section does not alter a dealer's, an  
144 investment adviser's, or an associated person's obligation to  
145 comply with instructions from a client to close an account or  
146 transfer an account to another dealer, investment adviser, or  
147 associated person.

148 Section 3. This act shall take effect July 1, 2019.

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

151 And the title is amended as follows:

152 Delete everything before the enacting clause  
153 and insert:

154 A bill to be entitled  
155 An act relating to the protection of vulnerable



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156 investors; amending s. 415.1034, F.S.; requiring  
157 securities dealers, investment advisers, and  
158 associated persons to immediately report knowledge or  
159 suspicion of abuse, neglect, or exploitation of  
160 vulnerable adults to the Department of Children and  
161 Families' central abuse hotline; creating s. 517.34,  
162 F.S.; defining terms; authorizing dealers and  
163 investment advisers to delay certain transactions or  
164 disbursements based on a reasonable belief of  
165 exploitation of a specified adult; specifying the  
166 basis for such reasonable belief; requiring a dealer  
167 or investment adviser to notify certain persons and  
168 the Office of Financial Regulation of such delays  
169 within a specified timeframe; authorizing the  
170 Department of Children and Families to provide  
171 information regarding certain investigations;  
172 specifying the expiration of such delays; authorizing  
173 a dealer or investment adviser to extend a delay under  
174 certain circumstances; providing that the length of  
175 such delays may be shortened or extended by a court of  
176 competent jurisdiction; providing that delays may be  
177 terminated by dealers or investment advisers under  
178 certain circumstances; requiring that certain records  
179 be made available to the office; providing immunity  
180 from civil and administrative liability for dealers,  
181 investment advisers, and associated persons for  
182 certain actions based on a reasonable belief of  
183 exploitation; requiring dealers and investment  
184 advisers to develop and conduct periodic training for



185 associated persons and to maintain written records of  
186 compliance with such requirement; providing  
187 construction; providing an effective date.

By Senator Gibson

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1 A bill to be entitled  
 2 An act relating to protection for vulnerable  
 3 investors; amending s. 415.1034, F.S.; requiring  
 4 securities dealers, investment advisers, and  
 5 associated persons to immediately report knowledge or  
 6 suspicion of abuse, neglect, or exploitation of  
 7 vulnerable adults to the Department of Children and  
 8 Families' central abuse hotline; creating s. 517.34,  
 9 F.S.; defining terms; authorizing dealers, investment  
 10 advisers, and associated persons to delay certain  
 11 transactions or disbursements if such persons  
 12 reasonably believe exploitation of specified adults  
 13 has occurred, is occurring, has been attempted, or  
 14 will be attempted; providing that such reasonable  
 15 belief may be based on certain facts and  
 16 circumstances; specifying requirements for dealers,  
 17 investment advisers, and associated persons in  
 18 notifying certain parties and the Office of Financial  
 19 Regulation after placing delays on transactions or  
 20 disbursements; requiring the office to specify certain  
 21 means of receiving notice; authorizing the department  
 22 to share certain information with the reporting  
 23 dealer, investment adviser, or associated person;  
 24 specifying the expiration of the delays; authorizing  
 25 dealers or investment advisers to extend delays, under  
 26 certain circumstances, for a specified time period;  
 27 providing that delays may be shortened or extended by  
 28 a court of competent jurisdiction; requiring dealers,  
 29 investment advisers, and associated persons to make

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

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30 certain records available to the office; providing  
 31 immunity from civil or administrative liability to  
 32 dealers, investment advisers, or associated persons  
 33 under certain circumstances; requiring dealers and  
 34 investment advisers to develop certain training  
 35 policies and programs, develop and maintain certain  
 36 procedures, conduct training for associated persons,  
 37 and maintain certain records; providing construction;  
 38 providing an effective date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Paragraph (a) of subsection (1) of section  
 43 415.1034, Florida Statutes, is amended to read:  
 44 415.1034 Mandatory reporting of abuse, neglect, or  
 45 exploitation of vulnerable adults; mandatory reports of death.—  
 46 (1) MANDATORY REPORTING.—  
 47 (a) Any person who knows, or who has reasonable cause to  
 48 suspect, that a vulnerable adult has been or is being abused,  
 49 neglected, or exploited shall immediately report such knowledge  
 50 or suspicion to the central abuse hotline. Such person includes,  
 51 ~~including,~~ but is not limited to, any:  
 52 1. Physician, osteopathic physician, medical examiner,  
 53 chiropractic physician, nurse, paramedic, emergency medical  
 54 technician, or hospital personnel engaged in the admission,  
 55 examination, care, or treatment of vulnerable adults.~~†~~  
 56 2. Health professional or mental health professional other  
 57 than one listed in subparagraph 1.~~†~~  
 58 3. Practitioner who relies solely on spiritual means for

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

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59 healing\_+  
60

61 4. Nursing home staff; assisted living facility staff;  
62 adult day care center staff; adult family-care home staff;  
63 social worker; or other professional adult care, residential, or  
64 institutional staff\_+  
65

66 5. State, county, or municipal criminal justice employee or  
67 law enforcement officer\_+  
68

69 6. Employee of the Department of Business and Professional  
70 Regulation conducting inspections of public lodging  
71 establishments under s. 509.032\_+  
72

73 7. Florida advocacy council or Disability Rights Florida  
74 member or a representative of the State Long-Term Care Ombudsman  
75 Program\_+ ~~or~~  
76

77 8. Bank, savings and loan, or credit union officer,  
78 trustee, or employee\_+  
79

80 9. Dealer, investment adviser, or associated person under  
81 chapter 517.  
82

83 ~~who knows, or has reasonable cause to suspect, that a vulnerable~~  
84 ~~adult has been or is being abused, neglected, or exploited shall~~  
85 ~~immediately report such knowledge or suspicion to the central~~  
86 ~~abuse hotline\_+.~~  
87

Section 2. Section 517.34, Florida Statutes, is created to  
read:

517.34 Protection of specified adults.-

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

(a)1. "Exploitation" means:

a. With respect to a person who stands in a position of  
trust and confidence with a specified adult, knowingly, by

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88 deception or intimidation, obtaining or using, or endeavoring to  
89 obtain or use, the specified adult's funds, assets, or property  
90 with the intent to temporarily or permanently deprive the  
91 specified adult of the use, benefit, or possession of the funds,  
92 assets, or property for the benefit of someone other than the  
93 specified adult;

94 b. With respect to a person who knows or should know that a  
95 specified adult lacks the capacity to consent, obtaining or  
96 using, or endeavoring to obtain or use, the specified adult's  
97 funds, assets, or property with the intent to temporarily or  
98 permanently deprive the specified adult of the use, benefit, or  
99 possession of the funds, assets, or property for the benefit of  
100 someone other than the specified adult; or

101 c. The wrongful or unauthorized taking, withholding,  
102 appropriation, or use of money, assets, or property of a  
103 specified adult, or any act or omission by a person, including  
104 through the use of a power of attorney, guardianship, or  
105 conservatorship of an eligible adult, to:

106 (I) Obtain control over the specified adult's money,  
107 assets, or property through deception, intimidation, or undue  
108 influence to deprive him or her of the ownership, use, benefit,  
109 or possession of the money, assets, or property; or

110 (II) Convert the specified adult's money, assets, or  
111 property to deprive him or her of the ownership, use, benefit,  
112 or possession of the money, assets, or property.

2. "Exploitation" may include, but is not limited to:

114 a. A breach of a fiduciary relationship, such as the misuse  
115 of a power of attorney or the abuse of guardianship duties,  
116 resulting in the unauthorized appropriation, sale, or transfer

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117 of property.

118 b. An unauthorized taking of personal assets.

119 c. Misappropriation, misuse, or transfer of moneys

120 belonging to a specified adult from a personal or joint account.

121 d. The intentional or negligent failure to effectively use

122 a specified adult's income and assets for the necessities

123 required for the specified adult's support and maintenance.

124 (b) "Law enforcement agency" means an agency or political

125 subdivision of this state or of the United States whose primary

126 responsibility is the prevention and detection of crime or the

127 enforcement of the penal laws of this state or the United

128 States, and whose agents and officers are empowered by law to

129 conduct criminal investigations or to make arrests.

130 (c) "Specified adult" means a natural person 65 years of

131 age or older, or a vulnerable adult as defined in s. 415.102.

132 (d) "Trusted contact" means a natural person 18 years of

133 age or older, whom the account owner has expressly identified as

134 a person who may be contacted about the account.

135 (2) A dealer, investment adviser, or associated person may

136 delay a transaction on, or a disbursement of funds or securities

137 from, an account of a specified adult or an account for which a

138 specified adult is a beneficiary or beneficial owner, if the

139 dealer, investment adviser, or associated person reasonably

140 believes that exploitation of the specified adult has occurred,

141 is occurring, has been attempted, or will be attempted in

142 connection with the transaction or disbursement.

143 (a) The dealer's, investment adviser's, or associated

144 person's reasonable belief of exploitation may be based on the

145 facts and circumstances observed in such dealer's, investment

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146 adviser's, or associated person's business relationship with the

147 specified adult.

148 (b)1. Within 3 business days after the date on which the

149 delay was first placed, the dealer, investment adviser, or

150 associated person shall:

151 a. Provide written notice of the temporary hold and the

152 reason for the hold to all parties authorized to transact

153 business on the account and any trusted contact on the account

154 via the contact information provided in the account, unless the

155 dealer, investment adviser, or associated person reasonably

156 believes that any such party engaged or is engaging in the

157 suspected exploitation of the specified adult. Such written

158 notice may be provided electronically.

159 b. Notify the office, either by telephone or in writing, of

160 the temporary hold and the reason for the temporary hold. The

161 office shall specify a telephone number for receiving such

162 notice and the means by which such notice may be electronically

163 submitted.

164 2. Notwithstanding any law to the contrary, the Department

165 of Children and Families may share the status and result of any

166 investigation with the reporting dealer, investment adviser, or

167 associated person.

168 (3) A delay on a transaction or disbursement under

169 subsection (2) expires 15 business days after the date on which

170 the delay was first placed. However, the dealer or investment

171 adviser may extend the delay for up to 10 additional business

172 days if its review of the available facts and circumstances

173 continues to support its good faith belief that exploitation of

174 the specified adult has occurred, is occurring, has been



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175 attempted, or will be attempted. The length of the delay may be  
 176 shortened or extended at any time by a court of competent  
 177 jurisdiction. This subsection does not prevent a dealer,  
 178 investment adviser, or associated person from terminating a  
 179 delay after communication with the parties authorized to  
 180 transact business on the account and any trusted contact on the  
 181 account.

182 (4) A dealer, investment adviser, or associated person  
 183 subject to the jurisdiction of the office shall make available  
 184 to the office, upon request, all records relating to a delay or  
 185 report made by the dealer, investment adviser, or associated  
 186 person pursuant to this section.

187 (5) A dealer, investment adviser, or associated person who  
 188 delays a transaction or disbursement pursuant to this section,  
 189 who provides records to an agency of competent jurisdiction  
 190 pursuant to this section, or who participates in a judicial or  
 191 arbitration proceeding resulting therefrom, is presumed to be  
 192 acting based upon a reasonable belief of exploitation and is  
 193 immune from any civil or administrative liability that otherwise  
 194 might be incurred or imposed, unless lack of such reasonable  
 195 belief is shown by a preponderance of the evidence. This  
 196 subsection does not supersede or diminish any immunity under  
 197 chapter 415.

198 (6) (a) Before placing a delay on a transaction or  
 199 disbursement pursuant to this section, a dealer or investment  
 200 adviser must develop training policies or programs reasonably  
 201 designed to educate associated persons on issues pertaining to  
 202 exploitation, must develop and maintain written procedures  
 203 regarding the manner in which suspected exploitation must be

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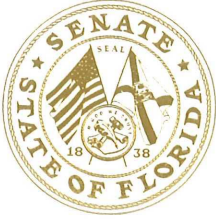
204 reported to supervisory personnel, and must conduct training for  
 205 all associated persons.

206 (b) The dealer or investment adviser shall maintain a  
 207 written record of compliance with this subsection.

208 (7) This section does not create new rights or obligations  
 209 of a dealer, investment adviser, or associated person under  
 210 other applicable laws or rules. In addition, this section does  
 211 not limit the right of a dealer, investment adviser, or  
 212 associated person to otherwise refuse or place a delay on a  
 213 transaction or disbursement under other applicable laws or rules  
 214 or under an applicable customer agreement.

215 (8) Absent a reasonable belief of exploitation as provided  
 216 in this section, this section does not alter a dealer's,  
 217 investment adviser's, or associated person's obligation to  
 218 comply with instructions from a client to close an account or  
 219 transfer an account to another dealer, investment adviser, or  
 220 associated person.

221 Section 3. This act shall take effect July 1, 2019.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Rules, *Vice Chair*  
Appropriations  
Innovation, Industry, and Technology  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

## SENATOR AUDREY GIBSON

*Minority Leader*  
6th District

March 25, 2019

Senator Doug Broxson, Chair  
Committee on Banking and Insurance  
320 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

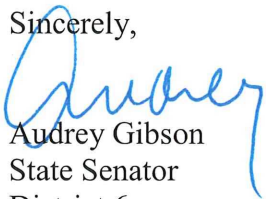
Chair Broxson:

I respectfully request that SB 1466, relating to protecting vulnerable adults particularly those with Dementia and Alzheimer's disease, be placed on the next committee agenda.

SB 1466, requires security dealers, investors, investment advisors among others to immediately report knowledge or suspicion of abuse, neglect or exploitation of vulnerable adults to Department of Children and Families central abuse hotline. The bill passed unanimously in the first committee.

Thank you for your kind consideration.

Sincerely,

  
Audrey Gibson  
State Senator  
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553  
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/1/19  
Meeting Date

SB 1466  
Bill Number (if applicable)

Topic Vulnerable Adults bill

Amendment Barcode (if applicable)

Name Financial Planning Association

Job Title Charlie Fitzgerald  
Financial Planner

Address 200 S. Orange Ave  
Street

Phone 907 461-1878

Orlando FL 32801  
City State Zip

Email charlie@charisandfitzgerald.com

Speaking:  For  Against  Information

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

Representing Financial Planning Assoc. of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# THE FLORIDA SENATE APPEARANCE RECORD

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

04/01/2019

*Meeting Date*

1466

*Bill Number (if applicable)*

Topic Protection for Vulnerable Investors

*Amendment Barcode (if applicable)*

Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909

*Street*

Phone (950) 205-9000

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Securities Industry and Financial Markets Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/11/19

Meeting Date

SB 1466

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Assistant VP of GR - Florida Bankers Association

Address 1001 Thomasville Rd  
Street

Phone 850-209-0061

Tallahassee, FL  
City State Zip

Email clarkin@floridabankers.com

Speaking:  For  Against  Information

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

Representing FL Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/11/19

Meeting Date

SB 1466

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Dorone Barker

Job Title Associate State Director

Address 200 W. College Ave, Ste 304A

Phone 850-228-6387

Gallahassee FL 32301

City

State

Zip

Email dobarker@aarps.org

Speaking:  For  Against  Information

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

Representing AARP Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/11/19

Meeting Date

1464

Bill Number (if applicable)

Topic Protection for Vulnerable Investors

Amendment Barcode (if applicable)

Name Brian Sullivan

Job Title Director of State Affairs

Address Street

Phone 810-335-0150

City State Zip

Email bmsullivan@alz.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Alzheimers Association

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19

Meeting Date

7513 1466

Bill Number (if applicable)

Topic Winnable Investors

Amendment Barcode (if applicable)

Name Alan Williams

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Naita

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/19

Meeting Date

1466

Bill Number (if applicable)

Topic Vulnerable Investors

Amendment Barcode (if applicable)

Name JARED ROSS

Job Title SVP of Governmental Affairs

Address 3692 Coolidge Ct.

Phone (850) 322-6956

Street

Tallahassee FL 32311

City

State

Zip

Email jared.ross@lscu.coop

Speaking:  For  Against  Information

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

Representing Florida Credit Union Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

April 1, 2019

*Meeting Date*

1466

*Bill Number (if applicable)*

560182

*Amendment Barcode (if applicable)*

Topic \_\_\_\_\_

Name Sam Boone

Job Title \_\_\_\_\_

Address 4545 NW 8th Avenue, Suite A

Phone 352-374-8308

*Street*

Gainesville

FL

32605

Email sboone@boonelaw.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Academy of Florida Elder Law Attorneys and Elder Law Section/Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1466

Bill Number (if applicable)

560182

Amendment Barcode (if applicable)

Meeting Date

Topic Vulnerable Investors

Name Sean Stafford

Job Title \_\_\_\_\_

Address 115 E. Park  
Street

Phone 727-8000

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Securities Dealers Assn / Financial Services Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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

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BILL: SB 1560

INTRODUCER: Senator Flores

SUBJECT: Price Transparency in Contracts

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	<b>Pre-meeting</b>
2.			HP	
3.			RC	

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**I. Summary:**

SB 1560 provides that a contract between an insurer and a health care provider may not limit the ability of a health care provider to disclose whether an insured’s cost-sharing obligation exceeds the retail price of a covered service or to disclose the availability of a more affordable service. Further, the bill provides that a contract between an insurer and a health care provider must prohibit the insurer from requiring an insured’s cost-sharing obligation for a covered service exceeding the retail price of a service provided by the health care provider.

The bill may provide consumers with greater affordability options for obtaining health care services.

**II. Present Situation:**

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027, reaching nearly \$6.0 trillion by 2027.<sup>1</sup> Consumers are becoming responsible for a growing proportion of this spending, as demonstrated in the increased use of high deductible health plans, and other forms of cost sharing. Since 2012, the percentage of workers covered by a plan with a deductible of \$1,000 or greater has grown from 34 to 51 percent.<sup>2</sup>

Price transparency and quality transparency enable consumers to obtain more value out of the health care system. Greater awareness and access by consumers to pricing information before obtaining health care services may result in lower overall payments for health care services and higher quality providers. A recent study concluded that the use of private price transparency

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<sup>1</sup> Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), National Health Expenditure Projections 2018-2027, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf> (last viewed March 2, 2019).

<sup>2</sup> North Carolina Medical Journal, 79. 1.34.

platforms was associated with lower claims payments for common medical services.<sup>3</sup> According to a 2017 survey, 98 percent of health plans around the country indicated that they have cost calculator tools, but only 2 percent of policyholders or subscribers use them.<sup>4</sup> Financial incentives may encourage consumer to access price information. Incentives may include reductions in premiums, cash payments, or lower out-of-pocket costs for their members if they select low-price, high quality providers.

### **Regulation of Health Insurance**

The Office of Insurance Regulation is responsible for the regulation of insurers and other risk-bearing entities.<sup>5</sup> Rates and forms of individual and small group policies and contracts are subject to prior approval.

Section 627.6385, F.S., requires health insurers writing individual policies to make available on their website a method for policyholders to estimate their copayments, deductibles, and other cost-sharing responsibilities for health care services and procedures.<sup>6</sup> Insurers are required to provide a hyperlink to health information, including service bundles and quality of care information, developed by the Agency for Health Care Administration. Likewise, the federal Patient Protection and Affordable Care Act<sup>7</sup> requires insurance policies and contracts to provide price and coverage information to enrollees, including cost sharing and payments with respect to out-of-network coverage.<sup>8</sup>

### **Florida Patient's Bill of Rights and Responsibilities**

The Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights) establishes the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.<sup>9</sup> The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity;
- Provision of information;
- Financial information and the disclosure of financial information;
- Access to health care;
- Experimental research; and
- Patient's knowledge of rights and responsibilities.

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<sup>3</sup> JAMA. 2014;312(16):1670-1676.

<sup>4</sup> Catalyst for Payment Reform Survey available at <http://www.catalyzepaymentreform.org/wp-content/uploads/2017/04/National-Scorecard.png> (last viewed March 2, 2019).

<sup>5</sup> Section 20.121, F.S. The Financial Services Commission, composed of the Governor, Attorney General, Commissioner of Agriculture, and the Chief Financial Officer, are the agency head for purposes of rulemaking.

<sup>6</sup> The Agency for Healthcare Administration, available at <http://www.floridahealthfinder.gov/index.html> (last viewed March 2, 2019).

<sup>7</sup> Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010; and amended by the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010.

<sup>8</sup> 45 CFR Part 147 and Section 2715A Public Health Service Act.

<sup>9</sup> S. 381.026(3), F.S.

Section 381.026(4)(c), F.S., provides that a patient has the right to request certain financial information from health care providers and facilities.<sup>10</sup> Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.<sup>11</sup> The provision of a reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.<sup>12</sup>

The Patient's Bill of Rights allows, primary care providers<sup>13</sup> to publish a schedule of charges for the medical services offered to patients, but requires the primary care provider to post the schedule in a conspicuous place in the reception area of the provider's office. The schedule must include price information for at least the 50 services most frequently provided by the primary care provider.<sup>14</sup>

The law requires urgent care centers to publish a schedule of charges for the medical services offered to patients.<sup>15</sup> This applies to any entity that holds itself out to the public, in any manner, as a facility or clinic where immediate, but not emergent, care is provided, expressly including offsite facilities of hospitals or hospital-physician joint ventures; and licensed health care clinics that operate in three or more locations. The schedule requirements for urgent care centers are the same as those established for primary care providers.<sup>16</sup>

### **Health Care Provider and Facility Price Transparency**

Section 395.301, F.S., requires a health care facility<sup>17</sup> to provide, within 7 days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition. Upon request, the facility must also provide revisions to the estimate. The estimate may represent the average charges for that diagnosis related group or the average charges for that procedure. The facility is required to place a notice in the reception area that this information is available. A facility that fails to provide the required estimate is subject to a \$500 fine for each instance of the facility's failure to provide the requested information.

Also pursuant to s. 395.301, F.S., a licensed facility must notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. If requested, within 7 days of discharge or release, the licensed facility must provide an itemized statement, in language comprehensible to an ordinary layperson, detailing the specific nature of charges or expenses incurred by the patient. This initial bill must contain a statement of specific services received and expenses incurred for the items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and

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<sup>10</sup> Section 381.026(4)(c), F.S.

<sup>11</sup> Section 381.026(4)(c)3., F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

<sup>14</sup> *Id.*

<sup>15</sup> Section 395.107(1), F.S.

<sup>16</sup> Section 395.107(2), F.S.

<sup>17</sup> The term, "health care facilities," refers to hospital, ambulatory surgical centers, and mobile surgical centers, all of which are licensed under part I of ch. 395, F.S.

including unit price data on rates charged by the licensed facility. The patient or patient's representative may elect to receive this level of detail in subsequent billings for services.

Health care facilities are required to publish information on their websites detailing the cost of specific health care services and procedures, as well as information on financial assistance that may be available to prospective patients. The facility must disclose to the consumer that these averages and ranges of payments are estimates, and that actual charges will be based on the services provided.<sup>18</sup> The Agency for Health Care Administration contracts with a vendor to collect and publish this cost information to consumers on an internet site.<sup>19</sup> Hospitals and other facilities are required to post a link to this internet site to comply with the price transparency requirements.<sup>20</sup> The cost information is searchable, and based on descriptive bundles of commonly performed procedures and services. At a minimum, the information must provide the estimated average payment received and the estimated range of payment from all non-governmental payers for the bundles available at the facility.<sup>21</sup> The law also establishes the right of a patient to request a personalized estimate on the costs of care from health care practitioners who provide services in a licensed hospital facility or ambulatory surgical center.<sup>22</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 627.4303, F.S., to provide that a contract between a health insurer and a health care provider may not limit a provider's ability to disclose whether a patient's cost-sharing obligation exceeds the retail price for a covered service or to disclose the availability of a more affordable service. Further, a contract between a health insurer and health care provider must prohibit the insurer from requiring the insured to pay an amount for a service that exceeds the retail price of the service in the absence of health insurance.

As used in this section, the term, "health insurance," has the same meaning as provided in s. 627.4301, F.S. Section 627.4301, F.S., defines the term, "health insurer," to mean an authorized insurer offering health insurance as defined in s. 624.603, F.S., a self-insured plan as defined in s. 624.031, F.S., a multiple-employer welfare arrangement as defined in s. 624.437, F.S., a prepaid limited health service organization as defined in s. 636.003, F.S., a health maintenance organization as defined in s. 641.19, F.S., a prepaid health clinic as defined in s. 641.402, F.S., a fraternal benefit society as defined in s. 632.601, F.S., or any health care arrangement whereby risk is assumed. Section 624.603, F.S., defines the term, "health insurance," also known as "disability insurance," as insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.<sup>23</sup>

**Section 2** provides this bill takes effect July 1, 2019.

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<sup>18</sup> S. 395.301, F.S.

<sup>19</sup> S. 408.05(3)(c), F.S.

<sup>20</sup> See Agency for Health Care Administration, <https://pricing.floridahealthfinder.gov/> (last viewed Mar. 3, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> S. 456.0575(2), F.S.

<sup>23</sup> Section 624.603, F.S., also provides that health insurance does not include workers' compensation coverages, except as provided in s. 624.406(4). F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

The bill does not address whether the provisions apply prospectively to future contracts between a person and an insurer or an HMO or to contracts in existence on the effective date of the bill. However, s. 624.21, F.S., provides that any amendment to the Insurance Code<sup>24</sup> will be deemed to operate prospectively where no contrary intent is specified.

Article I, section 10 of the State Constitution provides:

**Prohibited laws.**—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill will allow a health care provider to discuss freely information to an insured that may reduce an insured's out-of-pocket costs if that information was previously prohibited by contract.

The bill may cause health care providers to incur indeterminate, additional administrative costs to ensure that pricing information is available to insureds during an appointment or at the time of payment.

<sup>24</sup> See s. 624.01, F.S. ("Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the 'Florida Insurance Code.'")



C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill provides that a contract between a health insurer and a health care provider must prohibit the insurer from requiring an insured to pay an amount for services that exceeds the retail price of the service in the absence of health insurance. It appears that this contractual prohibition should be placed in the contract between the insurer and the insured since it relates to the contractual duties and obligations between the insurer and insured.

The bill addresses contractual provisions, rather than the actions of insurers, which limits the OIR's enforcement authority to determining whether contracts between health insurers and health care providers violate the statute. If the bill prohibited insurers from taking certain actions, it would allow the OIR to oversee the market conduct of insurers and would also prohibit contractual provisions requiring such actions as insurers may not enter into contracts requiring violations of the Insurance Code.

It is unclear what the term, "retail price," means, as well as how often it would be determined. The bill appears to be referring to the amount a consumer would pay in the absence of insurance coverage.

**VII. Related Issues:**

The broad definition of the terms, "health insurer" and "health insurance," provided in the bill may result in the application of the bill's contractual requirements on health insurers that write insurance products that are not major medical or comprehensive coverage, such as excepted benefit, limited benefit, indemnity benefit, and supplemental benefit policies. It is unclear if the contractual prohibitions would apply to a prepaid health clinic since a prepaid health clinic contract is a contract entered into with a subscriber or group of subscribers to provide basic services.<sup>25</sup>

**VIII. Statutes Affected:**

This bill creates section 627.4303 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.

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<sup>25</sup> Section 641.402, F.S.

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

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By Senator Flores

39-01638-19

20191560\_\_

A bill to be entitled

An act relating to price transparency in contracts; creating s. 627.4303, F.S.; defining the term "health insurer"; providing that a contract between a health insurer and a health care provider may not limit certain disclosures and must prohibit the insurer from requiring payments for services from an insured which exceed certain amounts; providing an effective date.

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

Section 1. Section 627.4303, Florida Statutes, is created to read:

627.4303 Price transparency in contracts between health insurers and health care providers.-

(1) As used in this section, the term "health insurer" has the same meaning as in s. 627.4301.

(2) A contract between a health insurer and a health care provider may not limit a provider's ability to disclose whether a patient's cost-sharing obligation exceeds the retail price for a covered service or to disclose the availability of a more affordable service.

(3) A contract between a health insurer and a health care provider must prohibit the insurer from requiring an insured to make a payment for a service in an amount that exceeds the retail price of the service in the absence of health insurance.

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Doug Broxson, Chair  
Committee on Banking and Insurance

**Subject:** Committee Agenda Request

**Date:** March 12, 2019

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I respectfully request that **Senate Bill #1560**, relating to Price Transparency in Contracts, be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

---

Senator Anitere Flores  
Florida Senate, District 39

**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.)

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

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BILL: SB 1632

INTRODUCER: Senator Taddeo

SUBJECT: Mortgage Lending

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	<b>Pre-meeting</b>
2.			CM	
3.			RC	

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**I. Summary:**

SB 1632 amends the definition of “mortgage loan” such that a residential mortgage loan made for a business purpose will be included in the definition of a “mortgage loan.” Persons originating, brokering, or lending such loans will be subject to licensure and regulation by the Office of Financial Regulation (OFR), unless they are otherwise exempt. Pursuant to ch. 494, F.S., conditions currently requiring licensure by the OFR include whether a person takes part in making a mortgage loan, which requires such a loan be made primarily for personal, family, or household use.

In recent years, private lenders and representatives of a South Florida building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.

Consumers who obtain a residential mortgage loan, regardless of the loan’s purpose, will have to use the services of a licensed loan originator, mortgage broker, or mortgage lender. To the extent that such licensed mortgage professionals comply with TILA and RESPA mortgage disclosures as a matter of course, even on business purpose mortgage loans, the consumer is afforded more protection in the form of disclosures regarding the terms and costs of the mortgage loan.

The bill has an indeterminate positive impact on state revenues since an unknown number of additional persons would be subject to licensure and licensure fees by the OFR. The fiscal impact of the additional licensees is indeterminate at this time.

The bill provides an effective date of July 1, 2019.

## II. Present Situation:

### Shadow Real Estate Transactions

In 2017, the federal Financial Crimes Enforcement Network (FinCEN)<sup>1</sup> announced the renewal of an existing Geographic Targeting Order (GTO) that requires covered businesses to collect and report information about certain residential real estate transactions. The GTOs are one of the tools that FinCEN uses to combat money laundering. This GTO temporarily extends the requirement that U.S. title insurance companies in six metropolitan areas in the U.S., including Miami-Dade County, Florida, identify the natural persons behind shell companies used to pay “all cash” for high-end residential real estate.<sup>2</sup> The FinCEN has found that about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report. According to FinCEN, this corroborates their concerns about the use of shell companies to buy luxury real estate in “all-cash” transactions. In an earlier GTO issued in January 2016, FinCEN indicated that it was prioritizing anti-money laundering protections on real estate transactions involving lending.

In recent years, private lenders and representatives of a local building association have reported alleged unlicensed mortgage lending activity in South Florida. According to these reports, some lending entities were providing residential loans with usurious interest rates and high fees made under the guise of business purpose loans in order to avoid licensure and disclosure requirements under ch. 494, F.S., as a mortgage lender. These groups also claimed that some of these unscrupulous lenders would not make the “residential loan” unless the borrower formed a limited liability company.<sup>3</sup> In another example described by the private lenders and local building association, an offshore shell company buys a parcel of real estate. Shortly thereafter, a Florida corporation, which is formed to participate in the scheme, obtains a mortgage loan on the property through an unlicensed mortgage lender. Next, the shell company pays the Florida corporation’s monthly mortgage payments and ultimately pays off the mortgage. As a result, the perpetrator successfully launders money in the United States.<sup>4</sup>

### Federal Oversight of Mortgage Brokerage Industry

#### *Secure and Fair Enforcement for Mortgage Licensing Act of 2008*

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.<sup>5</sup> Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of

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<sup>1</sup> Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury, serves as the nation’s financial intelligence unit, and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crime. FinCEN administers the federal Bank Secrecy Act. FinCEN analyzes and shares financial intelligence with law enforcement and regulatory agencies. In addition, FinCEN works with the financial industry to deter, detect, investigate, and prosecute money laundering, terrorist financing, and other crimes. See <https://www.fincen.gov/> (last viewed Mar. 13, 2019).

<sup>2</sup> FinCEN Press Release (Feb. 23, 2017) available at <https://www.fincen.gov/news/news-releases/fincen-renews-real-estate-geographic-targeting-orders-identify-high-end-cash> (last viewed Mar. 5, 2019).

<sup>3</sup> Latin Builders Association, Letter to Governor Rick Scott (May 4, 2017) (on file with the Senate Committee on Banking and Insurance.).

<sup>4</sup> Latin Builders Association, Resolution Urging the Florida Legislature to Revise Section 494.001, F.S. (June. 13, 2016) (on file with Senate Committee on Banking and Insurance).

<sup>5</sup> Pub. L. No. 110-289.

2008” or the “S.A.F.E. Mortgage Licensing Act of 2008” (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.<sup>6</sup>

### ***Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010***

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.<sup>7</sup> The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)<sup>8</sup> and the Real Estate Settlement Procedures Act (RESPA).<sup>9</sup> The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made “primarily for a business, commercial or agricultural purpose;”<sup>10</sup> and regulate “consumer purpose” mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower’s total income.

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<sup>6</sup> NLMS Resource Center, available at <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (last viewed Feb. 5, 2018).

<sup>7</sup> Pub. L. No. 111-203.

<sup>8</sup> 15 U.S.C. s. 1601, *et. seq.*

<sup>9</sup> 15 U.S.C. s. 2601, *et. seq.*

<sup>10</sup> Consumer Financial Protection Bureau (CFPB), *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/> (last viewed Mar. 5, 2019). The CFB believed that most loans that fall into this category are separately exempt under a provision excluding extensions of credit primarily for business, commercial, or agricultural purposes, set forth in s.1024.5(b)(2).

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,<sup>11</sup> and the CFPB issued final rules in 2015.<sup>12</sup> The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule. However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.<sup>13</sup>

### **State Regulation of Mortgage Loans**

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.<sup>14</sup>

Section 494.001(24), F.S., defines the term “mortgage loan” to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,<sup>15</sup> or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

### ***Licensure of Loan Originators, Mortgage Brokers, and Mortgage Broker Lenders***

An individual who acts as a loan originator must obtain a loan originator license.<sup>16</sup> A “loan originator” means an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.<sup>17</sup>

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<sup>11</sup> 12 U.S.C. ss. 5532(f), 2603; 15 U.S.C. s. 1604(b).

<sup>12</sup> 78 Fed Reg 79730.

<sup>13</sup> See CFPB, *Small Entity Compliance Guide*, available at

[http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo\\_smallentitycomplianceguide\\_v4\\_10072016.pdf](http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf) (last viewed Mar. 5, 2019).

<sup>14</sup> Ch. 2009-241, L.O.F.

<sup>15</sup> The term “dwelling” means a residential structure or mobile home, which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of “material disclosure” under s. 103(v), rather than the term “dwelling,” which is defined under s. 103(w). See 15 U.S.C. 1602.

<sup>16</sup> Section 494.00312, F.S.

<sup>17</sup> Section 494.001(17), F.S.



The term “loan originator” includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.<sup>18</sup>

A “mortgage broker” means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker<sup>19</sup> and such persons are required to be licensed as mortgage brokers.<sup>20</sup>

A “mortgage lender” means any person making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor,<sup>21</sup> and such persons are required to be licensed as mortgage lenders.<sup>22</sup> “Making a mortgage loan” means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.<sup>23</sup>

The following persons are exempt from regulation as a mortgage lender under part III of ch. 494, F.S.:

- A person acting in a fiduciary capacity conferred by the authority of a court;
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction;
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for servicing mortgage loans;
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors;
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business; and
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.<sup>24</sup>

### ***The OFR's Enforcement Authority***

The OFR may conduct investigations, examinations, and investigate complaints.<sup>25</sup> The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.<sup>26</sup> Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but would not necessarily be required to provide the

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<sup>18</sup> *Id.*

<sup>19</sup> Section 494.001(22), F.S.

<sup>20</sup> Section 494.00321, F.S.

<sup>21</sup> Section 494.001(23), F.S.

<sup>22</sup> Section 494.00611, F.S.

<sup>23</sup> Section 494.001(20), F.S.

<sup>24</sup> Section 494.00115(2), F.S.

<sup>25</sup> Section 494.0012, F.S.

<sup>26</sup> *See* s. 494.00255, F.S.

disclosures required under RESPA and TILA if the residential mortgage loan is made for a business purpose.

In recent years, the OFR has closed cases involving approximately 24 entities allegedly making residential mortgage loans for business purposes. Of these cases, the OFR imposed administrative fines on three entities engaging in unlicensed mortgage lending. The OFR was unable to take disciplinary action on 15 other cases because the residential loans were determined to be for business purposes, which are currently outside of the jurisdiction of the OFR.<sup>27</sup> Since March 2018, the OFR has received four additional complaints, and the investigation of the complaints is ongoing.<sup>28</sup>

### ***2019 Business Purpose Loan Law***

In 2018, legislation<sup>29</sup> was enacted that revises provisions of ch. 494, F.S., to provide greater consumer protections. The act defines the term “business purpose loan” and prohibits any person from directly or indirectly misrepresenting a residential mortgage loan as a business purpose loan in any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation (pledging collateral without delivery of title or possession) of mortgage loan transactions. A business purpose loan is a mortgage loan, the proceeds of which the borrower intends to use primarily for a business purpose and not primarily for a personal, family, or household purpose. In determining if the loan is for a business purpose, a person must refer to the official interpretation by the Consumer Financial Protection Bureau of 12 C.F.R. s. 1026.3(a). A violation of this prohibition is punishable as a third-degree felony or as a first-degree felony if the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims.

Two current exemptions in ch. 494, F.S., allow an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, so long as the individual does not “hold himself or herself out to the public as being in the mortgage lending business.” The act provides a definition for the phrase “hold himself or herself out to the public as being in the mortgage lending business.” The act provides that it is unlawful for any person to misrepresent a residential mortgage loan as a business purpose loan, and defines the term, “business purpose loan.”

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 494.001, F.S., to revise the definition of “mortgage loan” by removing the requirement that a residential mortgage loan be used primarily for personal, family, or household purposes. As a result, a residential mortgage loan made for a business purpose will fall under the definition of a “mortgage loan.” Persons originating, brokering, or lending for such loans will be subject to licensure by the OFR, unless otherwise exempt under s. 494.00115, F.S.

**Section 2** provides the bill takes effect July 1, 2019.

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<sup>27</sup> OFR *Analysis of SB 1632* (Mar. 27, 2019) (on file with Senate Banking and Insurance Committee).

<sup>28</sup> OFR correspondence (Mar. 28, 2019) (on file with Senate Banking and Insurance Committee).

<sup>29</sup> Ch. 2018-61, L.O.F. The act is effective July 1, 2019.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

Upon implementation of the bill, individuals subject to licensure under the bill as a loan originator would incur an initial licensure fee of \$300.25, and an annual renewal fee of \$237.25. Companies engaging in these transactions would also be subject to an initial licensure fee of \$578.50 and a renewal fee of \$490.<sup>30</sup> However, the number of additional individuals and businesses who would be subject to regulation and licensure fees is indeterminate at this time.

## B. Private Sector Impact:

Consumers who obtain a residential mortgage loan, regardless of the loan's purpose, will have to use the services of a licensed loan originator, mortgage broker, or mortgage lender. To the extent that such licensed mortgage professionals comply with TILA and RESPA mortgage disclosures as a matter of course, even on business purpose mortgage loans, the consumer is afforded more protection in the form of disclosures regarding the terms and costs of the mortgage loan.

Any person who is currently making a residential mortgage loan for a business purpose, and is not licensed, will be subject to licensure under ch. 494, F.S., in order to continue such activity. However, the fiscal impact to the private sector is indeterminate at this time.

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<sup>30</sup> OFR Correspondence (March. 28, 2019) (on file with Senate Banking and Insurance Company).

**C. Government Sector Impact:**

The bill may have an indeterminate positive impact on revenue to the state due to additional persons being subject to licensure and licensure fees by the OFR. At this time, the OFR is unable to determine how many additional persons would be required to be licensed as result of the implementation of this bill, and consequently cannot project the amount of staff needed to process the increase in license applications or conduct examinations. The OFR can initially absorb the added workload through the hiring of OPS staff. However, the OFR may need additional staff later to handle the increased number of licensed persons.<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On June 26, 2017, Governor Scott vetoed a similar bill that revised the definition of the term, “mortgage loan,” as provided in SB 1632. In his veto letter, Governor Scott provided the following concerns:

“...it expands the regulatory environment on residential mortgages and adds overly prescriptive regulations pertaining to mortgage lending. These requirements would make Florida one of the most restrictive states in the nation in the residential mortgage lending area. In certain circumstances, this could mean a parent or other relative who decides to make a residential mortgage loan to a child or another loved one would be required to be licensed with the Florida Office of Financial Regulation. This concerns me and seems overly burdensome on Florida families.”<sup>32</sup>

***Implementation Issues***<sup>33</sup>

The current definition of a “mortgage loan” is consistent with the definitions used in the Federal Truth in Lending Act and the Real Estate Settlement Procedures Act. Implementation of the bill will result in inconsistent definition of the term, “mortgage loan,” at the state and federal level.

The bill provides an effective date of July 1, 2019; however, the current annual licensure is period is effective for a 12-month calendar year. An effective date of January 1, 2020 for the bill would allow additional time for individuals and businesses subject to regulation under the bill to comply with regulatory requirements, such as, undergoing a criminal background check, authorizing the release of a credit report, and meeting pre-licensure education and testing prerequisites.<sup>34</sup>

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<sup>31</sup> OFR, *Analysis of SB 1632* (Mar. 27, 2019) (on file with Senate Banking and Insurance Committee).

<sup>32</sup> Correspondence from Governor Rick Scott to Ken Detzner, Secretary of State, Veto Message CS/CS/HB 747, June 6, 2017, (on file with Senate Committee on Banking and Insurance).

<sup>33</sup> OFR, see fn. 31.

<sup>34</sup> Nationwide Multistate Licensing System Resource Center, *State Licensing*, available at <https://mortgage.nationwidelicensingsystem.org/slr/Pages/default.aspx> (last viewed Mar. 20, 2019).

**VIII. Statutes Affected:**

This bill substantially amends section 494.001 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.

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

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By Senator Taddeo

40-01320A-19

20191632\_\_

1 A bill to be entitled  
2 An act relating to mortgage lending; amending s.  
3 494.001, F.S.; revising the definition of the term  
4 "mortgage loan" to remove a condition that residential  
5 loans be primarily for personal, family, or household  
6 use; correcting a cross-reference; providing an  
7 effective date.

8  
9 WHEREAS, the Legislature finds that Florida borrowers who  
10 apply for and receive business purpose loans, which are mortgage  
11 loans for business purposes which are secured by dwellings, are  
12 afforded limited consumer protection, and

13 WHEREAS, the Legislature finds it is in the public interest  
14 to provide regulatory oversight over persons originating,  
15 brokering, or lending such business purpose loans, NOW,  
16 THEREFORE,

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsection (25) of section 494.001, Florida  
21 Statutes, as amended by section 1 of chapter 2018-61, Laws of  
22 Florida, is amended to read:

23 494.001 Definitions.—As used in this chapter, the term:

24 (25) "Mortgage loan" means any:

25 (a) Residential loan that primarily for personal, family,  
26 ~~or household use which~~ is secured by a mortgage, deed of trust,  
27 or other equivalent consensual security interest on a dwelling,  
28 as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in  
29 Lending Act, 15 U.S.C. s. 1602(w), or for the purchase of

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

40-01320A-19

20191632\_\_

30 residential real estate upon which a dwelling is to be  
31 constructed;

32 (b) Loan on commercial real property if the borrower is an  
33 individual or the lender is a noninstitutional investor; or

34 (c) Loan on improved real property consisting of five or  
35 more dwelling units if the borrower is an individual or the  
36 lender is a noninstitutional investor.

37 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



**LATIN BUILDERS ASSOCIATION, INC.®**

May 4, 2017

Governor Rick Scott  
State of Florida  
The Capitol  
400 South Monroe Street  
Tallahassee, FL 32399-0001

Esteemed Governor Scott:

I hope this letter finds you well.


As you may recall, we have discussed the issue of non-licensed lenders, which as we both know is bad for business and consumers. For the last four legislative sessions we, along with the Florida Association of Mortgage Professionals (FAMP), have asked you and the legislature to close the loophole in Chapter 494 of the Florida Statutes. This loophole allows non-licensed lenders to operate in the shadows of the lending industry with no oversight.

For the last four legislative sessions we have come up empty in modifying Chapter 494 of the Florida Statutes. However, this year through lots of hard work and determination we had a positive outcome with the Legislature. We worked with all the stakeholders to ensure that everyone was onboard. Some of the groups we worked with include: Florida Bankers Association (FBA), Florida International Bankers Association (FIBA), Florida Credit Union Association (FCUA), and Mortgage Bankers Association (MBA).

We are happy to report that HB 747 has cleared the House and Senate and is headed to your office for signature. **We implore you to sign HB 747 and close the loophole in Chapter 494 of the Florida Statutes.** Non-licensed lenders are abusing the system and taking advantage of consumers. Non licensed lending also lends itself to money laundering. As the largest Hispanic construction and real estate association in the United States with over 750 member companies, we have been committed to make this issue one of our top Legislative priorities. We are hopeful that with your leadership HB 747 will become law and end this illicit activity once and for all.

Thank you in advance for consideration in signing HB 747 into law.

Warmest personal regards,



Alex Lastra  
President

cc. Carlos Lopez Cantera,  
Lieutenant Governor

Jeff Atwater  
Chief Financial Officer

Senator Anitere Flores  
President Pro Tempore  
Chair, Banking and Insurance Subcommittee

Senator Dennis Baxley

Representative Richard Stark  
Ranking Member, Banking and Insurance Subcommittee





RESOLUTION BY THE LATIN BUILDERS ASSOCIATION URGING THE FLORIDA LEGISLATURE TO REVISE § 494.001, FLORIDA STATUTES, TO STRENGTHEN THE DEFINITIONS FOR A "MORTGAGE" AND "MAKING A MORTGAGE LOAN" IN ORDER TO PREVENT THE PROLIFERATION OF UNLICENSED LENDERS IN THE STATE AND THEIR NEGATIVE IMPACT ON THE FLORIDA REAL ESTATE MARKET.

WHEREAS, for over 40 years, the Latin Builders Association has embodied the interests of South Florida's vibrant construction industry, while pursuing sustainable development for a prosperous future; and

WHEREAS, the Latin Builders Association serves as a vital forum for the open discussion and advocacy of issues affecting our community and industry; and

WHEREAS, pursuant to Section 24(a) of § 494.001, Florida Statutes, a mortgage loan is currently defined as a "residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(y) of the Truth in Lending Act, or for the purchase of the residential real estate upon which a dwelling is to be constructed"; and

WHEREAS, Section 20 of § 494.001, Florida Statutes, defines "making a mortgage loan" as "closing a mortgage loan in a person's name"; and

WHEREAS, the current language in § 494.001, Florida Statutes, has created a loophole that has allowed the number of unlicensed lenders in the Florida real estate market to proliferate and operate with no oversight; and

WHEREAS, as publicized by the release of the "Panama Papers", this loophole has been exploited by criminal enterprises to launder illegal profits by purchasing Florida real estate under a shell company, then creating a Florida corporation whose sole purpose is to place a mortgage loan on that property, which is then be paid off by the criminal enterprise's shell company and launders ill-gotten money; and

WHEREAS, the current language of Section 24(a) of § 494.001, Florida Statutes, is contradictory and internally inconsistent, as illustrated in its citation of Section 103(y) of the Truth in Lending Act's definition of a "mortgage loan," which excludes the language "primarily for personal, family, or household use"; and

WHEREAS, pursuant to Section 34 of § 494.001, Florida Statutes, the practice of unlicensed mortgage lending is illegal if an unlicensed lender services a loan for more than four months; and


**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LATIN BUILDERS ASSOCIATION:**

That we urge the Florida Legislature to amend Chapter 494, Florida Statutes, as follows, in order to prevent unlicensed mortgage lenders and criminal enterprises from exploiting the Florida real estate market:

1. Removal of the language "primarily for personal, family, or household use" from Section 24(a)'s definition of a "mortgage"; and
2. Removal of the language "in a person's name" from Section 20's definition of what constitutes a "making a mortgage loan."

**PASSED and ADOPTED** in witness thereof, the undersigned has executed this Resolution effective as of this 13th day of June, 2016

LATIN BUILDERS ASSOCIATION, INC.®

  
BY: Alex Lastra  
President

7955 NW 12th Street, Suite 415, Doral, FL 33126



## 2019 AGENCY LEGISLATIVE BILL ANALYSIS Florida Office of Financial Regulation

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 1632
<b>BILL TITLE:</b>	An Act Relating to Mortgage Lending
<b>BILL SPONSOR:</b>	Senator Annette Taddeo
<b>EFFECTIVE DATE:</b>	7/1/2019

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Banking and Insurance
2) Commerce and Tourism
3) Rules
4)
5)

<b><u>CURRENT COMMITTEE</u></b>

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	None
<b>SPONSOR:</b>	

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	SB 1298
<b>SPONSOR:</b>	Rep. Garcia
<b>YEAR:</b>	2018
<b>LAST ACTION:</b>	Died in Insurance and Banking Subcommittee

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	None
<b>SPONSOR:</b>	

<b>Is this bill part of an agency package?</b>
No

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	March 27, 2019
<b>LEAD AGENCY ANALYST:</b>	Alexander J. Anderson, Director of Legislative Affairs (850) 410-9601
<b>ADDITIONAL ANALYST(S):</b>	Gregory C. Oaks, Director, Division of Consumer Finance (850) 410-9601
<b>LEGAL ANALYST:</b>	Tony Cammarata, General Counsel (850) 410-9601
<b>FISCAL ANALYST:</b>	Mark Hammett, Budget Director (850) 410-9601

**POLICY ANALYSIS**

**1. EXECUTIVE SUMMARY**

The proposed legislation would amend the definition of “mortgage loan” found in section 494.001, F.S. by removing the requirement that residential loans be used primarily for personal, family, or household purposes. Additionally, the proposed legislation will update a federal cross-reference.

**2. SUBSTANTIVE BILL ANALYSIS**

**1. PRESENT SITUATION:**

Section 494.001(24), F.S., defines a “mortgage loan” to mean:

- (a) Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on dwelling, as defined in s.103(v) of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;
- (b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- (c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investors.

The federal Truth in Lending Act defines a dwelling as a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

Section 494.001(23), F.S., defines a “mortgage lender” to mean:

“Mortgage lender” means a person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor.

Based on the current definition of mortgage loan, the office has traditionally licensed persons making loans on owner occupied dwellings, but not loans made for a business purpose such as rental properties where the borrower does not reside at the property address.

**2. EFFECT OF THE BILL:**

The new law will amend the definition of “mortgage loan,” by deleting “primarily for personal, family, or household use” from residential loans covered under this definition. In effect, all residential loans regardless of their purpose would fall under the definition of “mortgage loan.”

The new law will update a cross-reference to the term “dwelling” as found in the federal Truth in Lending Act.

The impact of the legislation is to expand the regulatory umbrella to include persons making mortgage loans not primarily for personal, family, or household use and subject them to the regulatory jurisdiction of chapter 494. Consequently, this will require persons impacted by this legislation to become licensed as mortgage lenders and be subject to examinations by the Office. The total number of entities operating in the State of Florida in this manner is unknown; however, the Office has in the past received information pertaining to approximately two dozen entities making mortgage loans for business purposes.

The current definition of a “mortgage loan” is consistent with the definitions used in the Federal Truth In Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). As a result, the inconsistent definitions will result in confusing the licensee and difficulty in enforcing the statute for the Office. Additionally, these changes do not compel these persons to comply with the disclosure provisions of TILA or RESPA, which are the primary federal protections for consumers relative to real estate transactions involving a person's primary residence.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?    Y  N**

If yes, explain:		
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Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	
Rule(s) impacted (provide references to F.A.C., etc.):	N/A	

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**

Y  N

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?**

Y  N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. FISCAL IMPACT TO LOCAL GOVERNMENT**

Y  N

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote	N/A

prior to implementation of the tax or fee increase?	
---	--

**2. FISCAL IMPACT TO STATE GOVERNMENT**

Y  N

Revenues:	The proposed legislation would require persons making mortgage loans not previously included in the definition to become licensed as mortgage lenders and be subject to examinations. The cost to apply for a mortgage lender license is approximately \$750.00 and the annual cost to renew the license is \$575. The revenues to the state would depend on the number of persons required to become licensed. At this time the office does not know how many persons would be impacted by this legislation and consequently cannot project the amount of revenues to the state.
Expenditures:	Indeterminate: The proposed legislation would require persons making mortgage loans not previously included in the definition of mortgage loan to become licensed as mortgage lenders, mortgage brokers, or loan originators and be subjected to examinations by the Office. Depending on the number of persons needing to apply for a license as a result of this proposed change the Office may need additional staff to process the increased license applications and ultimately need additional staff to exam the increased number of licensees. At this time the Office does not know how many persons would be impacted by this legislation and consequently cannot project the amount of staff needed to process the increase in license applications or conduct examinations. The Office can initially absorb the added expenditures of additional licensing staff through the hiring of OPS licensing staff. However, the Office may need to revisit its compliment of examiners and request additional staff at a later date to handle the increased number of licensed persons.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

**3. FISCAL IMPACT TO THE PRIVATE SECTOR**

Y  N

Revenues:	Unknown
Expenditures:	The private sector impacted by this legislation would be required to become licensed as a mortgage lender at a minimum cost of approximately \$750 in addition to an annual renewal fee of \$575.
Other:	N/A

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Y  N

If yes, explain impact.	No
Bill Section Number:	N/A

**TECHNOLOGY IMPACT**

**1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	
--	--

**FEDERAL IMPACT**

**1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y  N

If yes, describe the anticipated impact including any fiscal impact.	Changing the definition of mortgage loan may confound the provisions found in chapter 494, F.S, and Public Law 110-289 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) as codified in section 12 USC s. 5100, et. seq). Public Law 110-289, which addresses the provisions of the SAFE Act, mandated that all states must have a system of licensing in place for residential mortgage loan originators by August 1, 2009 that meets national definitions and sets minimum standards. The SAFE Act specifically defines a "loan originator" as any individual who both takes residential mortgage loan applications and offers or negotiates terms of a residential mortgage loan for compensation or gain. The SAFE Act defines a "residential mortgage loan" as any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in Section 103(w) of Title 15) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined). The current definition of "mortgage loan" found in chapter 494, F.S., aligns with the mandate of Public Law 110-289 and the definition of "residential mortgage loan" found in the Safe Act.
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**ADDITIONAL COMMENTS**

Section 1, ch. 2018-61, Laws of Florida, effective July 1, 2019, will add the following definition to section 494.001, F.S.:

"Business purpose loan" means a mortgage loan, the proceeds of which the borrower intends to use primarily for a business purpose and not primarily for a personal, family, or household purpose. In determining if the loan is for a business purpose, a person must refer to the official interpretation by the Consumer Financial Protection Bureau of 12 C.F.R. s. 1026.3(a).

Upon taking effect on July 1, 2019, the term "mortgage loan" will also encompass the term "business purpose loan."

Section 1, ch. 2018-61, Laws of Florida, effective July 1, 2019, will add the following prohibition to section 494.0025(4)(d), F.S.:

It is unlawful for any person to misrepresent a residential mortgage loan as a business purpose loan.

SB 1632 amends the definition of mortgage loan to remove the requirement that a residential loan must be "primarily for personal, family, or household use." Eliminating this requirement removes an important distinction between the terms "residential loan" and "business purpose loan," and invites statutory ambiguity. Without this distinction, a licensee/person may interpret the definitions erroneously and find themselves in violation of the prohibition found in section 494.0025(4)(d), F.S.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	The analysis sufficiently details the bill's effect and areas of impact. OGC has no issues, concerns or further comments regarding the bill.
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	<b>LO Application</b>	<b>MBR Application</b>	<b>MLD Application</b>	<b>LO Renewal 11/01-12/31</b>	<b>MBR Renewal 11/01-12/31</b>	<b>MLD Renewal 11/01- 12/31</b>
Application Fee	\$195.00	\$425.00	\$500.00	n/a	n/a	n/a
Renewal Fee	n/a	n/a	n/a	\$150.00	\$375.00	\$500.00
Reinstatement Fee for Renewal (late renewal 01/01-02/28)		n/a	n/a		n/a	n/a
NMLS Processing Fee	\$30.00	\$100.00	\$100.00	\$30.00	\$100.00	\$100.00
Credit Report fee for Loan Originator	\$15.00	n/a	n/a	\$15.00	n/a	n/a
FBI criminal bacground check for Loan Originator	\$36.25	n/a	n/a	\$36.25	n/a	n/a
State criminal background check for Loan Originator (fee does not include live scan vendor costs)	\$24.00	n/a	n/a	n/a	n/a	n/a
FBI & State criminal background for each control person (fee does not include live scan vendor costs)	n/a	\$38.50	\$38.75	n/a	n/a	n/a
Credit Report fee for each control person	n/a	\$15.00	\$15.00	n/a	\$15.00	\$15.00
State retained print fee for Loan Originator	n/a	n/a	n/a	\$6.00	n/a	n/a
<b>Total Fees</b>	<b>\$300.25</b>	<b>\$578.50</b>	<b>\$653.75</b>	<b>\$237.25</b>	<b>\$490.00</b>	<b>\$615.00</b>

LO = Loan Originator

MBR = Mortgage Broker (Company)

MLD = Mortgage Lender (Company)

Note = Mortgage lender applicants must submit an audited financial statement demonstrating a minimum net worth of \$63,000 (if requesting a servicing endorsement minimum net worth is \$250,000). In addition, audited financial statements must be submitted to the Office annually within 120 days following the licensee's fiscal year end demonstrating compliance with the minimum net worth requirements.



**RICK SCOTT**  
GOVERNOR

June 26, 2017

Secretary Ken Detzner  
Secretary of State  
Florida Department of State  
R.A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399

FILED  
2017 JUN 26 PM 7:10  
FLORIDA DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

Dear Secretary Detzner:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby veto and transmit my objections to Committee Substitute for Committee Substitute for House Bill 747, enacted during the 119<sup>th</sup> Session of the Legislature of Florida, during the Regular Session of 2017 and entitled:

An act relating to Mortgage Regulation...

While this legislation makes positive changes to reduce regulations for securities dealers and investment advisors, it also expands the regulatory environment on residential mortgages and adds overly prescriptive regulations pertaining to mortgage lending. These requirements would make Florida one of the most restrictive states in the nation in the residential mortgage lending arena. In certain circumstances, this could mean a parent or other relative who decides to make a residential mortgage loan to a child or another loved one would be required to be licensed with the Florida Office of Financial Regulation. This concerns me and seems overly burdensome on Florida families.

For the reasons stated above, I withhold my approval of Committee Substitute for Committee Substitute House Bill 747, and do hereby veto the same.

Sincerely,

A handwritten signature in black ink, appearing to be "Rick Scott", written over a large, stylized circular mark.

Rick Scott  
Governor

**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.)

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

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BILL: SB 1636

INTRODUCER: Senator Perry

SUBJECT: Workers' Compensation

DATE: March 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1636 amends several provisions in ch. 440, F.S., Florida's workers' compensation law. The bill:

- Codifies *Westphal v. City of St. Petersburg*,<sup>1</sup> by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks to address a potential benefit gap, if the injured worker has not reached maximum medical improvement.
- Removes the criminal penalty for claimant attorneys receiving fees that the Judges of Compensation Claims (JCCs) has not approved, thereby allowing a claimant to enter into retainer agreements with an attorney and directly pay the attorney, which codifies *Miles v. City of Edgewater Police Department*.<sup>2</sup>
- Eliminates the unrelated works exception to employer immunity provided by the workers' compensation law.
- Requires the filing of attorney retainer agreements and associated attorney fees with the Office of Judges of Compensation Claims.
- Retains the statutory fee schedule for attorney fee awards paid by an employer or carrier to a claimant's attorney.
- Revises current law to allow an alternative minimum attorney fee cap on medical-only claims of \$150 per hour, not to exceed \$1,500, in all medical only claims rather than only once per accident.
- Limits appellate fees at \$150 per hour if certain conditions are met.
- Extends the attachment of attorney fees following the filing of the petition of benefits from 30 days to 45 business days.
- Requires evidence of a good faith effort by the claimant and the claimant's attorney to resolve disputes prior to filing a petition for benefits.

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<sup>1</sup> *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

<sup>2</sup> *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016).

- Requires greater specificity in the information provided in the petitions for benefits filed with the Office of Judges of Compensation Claims (OJCC).

The Division of Risk Management of the Department of Financial Services, the state's self-insurance pool, which includes workers' compensation claims, may experience indeterminate cost savings like other workers' compensation carriers. *See* Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2019.

## II. Present Situation:

### Workers' Compensation Benefits in Florida

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.<sup>3</sup> Employees generally cannot sue a covered employer for workplace injuries.<sup>4</sup> Employers must pay compensation or furnish benefits required by the Workers' Compensation Law when an employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.<sup>5</sup>

#### *Medical Benefits*

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.<sup>6</sup> Non-emergency medical services must be provided by a health care provider that is authorized by the carrier prior to the medical services.<sup>7</sup> When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached "maximum medical improvement."<sup>8</sup> Injured employees are entitled to one change of physician during the course of treatment for any one accident.<sup>9</sup> After the initial examination and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.<sup>10</sup>

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<sup>3</sup> "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

<sup>4</sup> Section 440.11(1), F.S. If an employer fails to secure required workers' compensation coverage, an injured worker may sue the employer in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

<sup>5</sup> Section 440.09(1), F.S.

<sup>6</sup> Section 440.13(2)(a), F.S.

<sup>7</sup> Section 440.13(3)(a), F.S.

<sup>8</sup> The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

<sup>9</sup> Section 440.13(2)(f), F.S.

<sup>10</sup> Section 440.13(2)(e), F.S.

### ***Indemnity Benefits***

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.<sup>11</sup> The first 7 days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.<sup>12</sup> These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),<sup>13</sup> up to the maximum weekly benefit established by law.<sup>14</sup> For 2019, this amount is \$939.41, which is the statewide average weekly wage (SAWW).<sup>15</sup> Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.<sup>16</sup>
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.<sup>17</sup>

Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70<sup>th</sup> birthday, then the benefit is paid for 5 years.<sup>18</sup>

### **Workers' Compensation Insurance Coverage**

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.<sup>19</sup> Employers that are not self-insured and are unable to secure coverage from a carrier may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).<sup>20</sup> The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

<sup>11</sup> Section 440.12(1), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

<sup>14</sup> Section 440.15(1)-(4), F.S.

<sup>15</sup> "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at <http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk> (last viewed Mar. 4, 2019).

<sup>16</sup> Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

<sup>17</sup> Section 440.15(3), F.S.

<sup>18</sup> Section 440.15(1), F.S.

<sup>19</sup> Section 440.38, F.S.

<sup>20</sup> Section 627.311(5)(a), F.S.

### ***Florida Workers Compensation Rating System***

The Office of Insurance Regulation (OIR) regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.<sup>21</sup> In determining whether to approve or disapprove a workers' compensation rate filing, the OIR considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.<sup>22</sup> The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.<sup>23</sup> However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.<sup>24</sup> All workers' compensation insurers in Florida have chosen to become members of the NCCI.

### **Florida's Workers' Compensation Trends**

In 2017, 242 commercial insurers actively wrote workers' compensation insurance in Florida. In total, these private sector insurers wrote approximately \$3.2 billion in premium.<sup>25</sup> In 2016, Florida workers' compensation rates were ranked 33<sup>rd</sup> highest in the United States, in other words, 32 states had higher rates.<sup>26</sup> Subsequently, in 2018, Florida rates were ranked 21<sup>st</sup> highest.<sup>27</sup> During the period reviewed in the prior ranking report (January 1, 2016 rates) and the period in the current 2018 report, Florida has approved:

- A 14.5 percent increase in rates due to the combined effect of the Florida Supreme Court's decision on April 28, 2016, in *Marvin Castellanos v. Next Door Company, et al.* and Senate Bill 1402 (Chapter 2016-203, Laws of Florida) that ratified the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition.
- A 1.80 percent decrease attributable to the effects of the Federal Tax Cuts and Jobs Act, effective June 1, 2018.
- A 9.8 percent rate level decrease, effective January 1, 2018.
- A 13.8 percent rate level decrease, effective January 1, 2019.<sup>28</sup>

<sup>21</sup> Section 627.101, F.S.

<sup>22</sup> Section 627.151, F.S.

<sup>23</sup> Section 627.211, F.S.

<sup>24</sup> Section 627.091, F.S.

<sup>25</sup> OIR, *2018 Workers' Compensation Annual Report*, pg. 6 (Jan.15, 2019).

<http://floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf> (last viewed Mar. 4, 2019).

<sup>26</sup> Oregon Department of Consumer and Business Services, *2016 Oregon Workers' Compensation Premium Rate Ranking*, (Dec. 2016), available at <https://www.oregon.gov/dcbs/reports/Documents/general/prem-rpt/16-2083.pdf> (last viewed Mar. 17, 2019).

<sup>27</sup> Oregon Department of Consumer and Business Services, *2018 Oregon Workers' Compensation Premium Rate Ranking Summary* (Oct. 2018) available at <https://www.oregon.gov/dcbs/reports/Documents/general/prem-sum/18-2082.pdf> (last viewed Mar. 5, 2019).

<sup>28</sup> See OIR fn. 3 at pg. 14-16.

Even after considering the impact of *Castellanos* and *Westphal* decisions, the NCCI noted that other factors at work in the marketplace combined to contribute to the indicated decrease, which included reduced assessments, increases in investment income, and declines in claim frequency.<sup>29</sup>

### *Cost Drivers*

According to the National Council on Compensation Insurance, there are several cost drivers in the Florida workers' compensation system that the Legislature could address to induce cost savings.<sup>30</sup> The OIR noted that NCCI compared the medical cost distributions for Florida versus 37 states combined to show that based on recent experience Florida has a higher portion of cost paid for drugs, hospital inpatient, and ambulatory surgical centers.<sup>31</sup>

### *Litigation Costs*

Section 440.34, F.S., requires the reporting of all fees paid to attorneys for services rendered to the OJCC. The OJCC reported<sup>32</sup> that during 2017-2018, a total of \$453,179,191 was incurred on combined claimant attorneys' fees and defense attorneys' fees in the Florida system. The following OJCC table provides a snapshot of fees for the fiscal years 2002-2017.

<b>Fiscal Year*</b>	<b>Aggregate Fees</b>	<b>Percentage Claimant Fees</b>	<b>Percentage Defense Fees</b>
2002-03	\$427,359,212	49.29%	50.71%
2003-04	441,907,794	48.73%	51.27%
2004-05	470,178,488	44.91%	55.09%
2005-06	498,541,260	41.80%	58.20%
2006-07	468,584,023	40.80%	59.20%
2007-08	448,862,202	42.04%	57.96%
2008-09	450,941,100	40.28%	59.72%
2009-10	446,653,869	39.63%	60.37%
2010-11	416,404,259	37.72%	62.28%
2011-12	395,294,706	38.67%	61.33%
2012-13	392,784,121	38.67%	61.33%
2013-14	379,222,338	37.41%	62.59%
2014-15	370,772,783	36.73%	63.27%
2015-16	378,573,902	36.05%	63.95%
2016-17	439,609,031	42.24%	57.76%
2017-18	453,179,191	43.84%	56.16%
*2017-18 Office of Judges of Compensation Claims Annual Report			

<sup>29</sup> Office of Insurance Regulation, Order on Rate Filing, (Nov. 2, 2018), available at <https://www.floir.com/siteDocuments/NCCI232557-18-OORF.pdf> (last viewed Mar. 13, 2019).

<sup>30</sup> See OIR fn. 3 at pg. 16.

<sup>31</sup> See *Id.*

<sup>32</sup> OJCC, *2017-2018 Annual Report*, (available at <https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#>) (last viewed Mar. 12, 2019).



## Recent Florida Supreme Cases

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,<sup>33</sup> involving attorney fees; *Westphal v. City of St. Petersburg*,<sup>34</sup> relating to temporary wage replacement benefits (i.e., indemnity); and *Miles v. City of Edgewater Police Department*,<sup>35</sup> which addresses the right of an injured worker to pay for their own attorney.

### *Castellanos v. Next Door Company*

In April 2016, the Florida Supreme Court (Court) rendered its decision in *Castellanos v. Next Door Company*. The Court concluded that:

The right of an injured worker to recover a reasonable prevail party attorney's fee has been a key feature of the state's workers' compensation law since 1941. Through the enactment of a mandatory fee schedule, however, the Legislature has created an irrebuttable presumption that every fee calculated in accordance with the fee schedule will be reasonable to compensate the attorney for his or her services. The \$1.53 hourly rate in this case clearly demonstrates that not to be true. We conclude that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions. As a result of this ruling, judges may deviate from the statutory fee schedule if it results in an unreasonable fee.

### *Westphal v. City of St. Petersburg*

Subsequently, in June 2016, the Court, in the case of *Westphal v. City of St. Petersburg*, found the 104-week statutory limitation on temporary total disability benefits unconstitutional because it causes a statutory gap in benefits in violation of an injured worker's constitutional right of access to courts. The Court reinstated the 260-week limitation in effect prior to the 1994 law change.

### *Miles v. City of Edgewater Police Department*

The First District Court of Appeals (1st DCA) held that statutes governing payment of attorney's fees in workers' compensation proceedings "are unconstitutional violations of a claimant's rights to free speech, free association and petition" and "also represent unconstitutional violations of a claimant's right to form contracts."<sup>36</sup> In *Miles*, the 1st DCA invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.<sup>37</sup> The attorney was only paid by the employer/carrier,<sup>38</sup>

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<sup>33</sup> *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. 2016).

<sup>34</sup> *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

<sup>35</sup> *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016). No. SC04-2349

<sup>36</sup> *Miles*, 190 So.3d at 184.

<sup>37</sup> Sections 440.105(2)(c) and 440.34(1), F.S.

<sup>38</sup> Workers' compensation insurers are referred to as carriers. Section 440.02(4), F.S., provides that the term "carrier" means any person or fund authorized under s. 440.38, F.S., to insure under this chapter and includes a self-insurer and a commercial self-insurance fund authorized under s. 624.462, F.S.

and only if they prevailed. The Court found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney.

### ***Aravena v. Miami-Dade County***

The Court held that county employees who work for different departments and at different locations, answer to different supervisors, and have primary assignments involving different duties and functions are engaged in unrelated works triggering the exception to workers' compensation immunity in s. 440.11(1), F.S.<sup>39</sup> A county employee engaged as a crossing guard was killed as a result of the traffic lights not operating properly. The Court concluded that a school crossing guard and the traffic signal repair personnel charged with maintaining the traffic signals at the intersection where the school crossing guard was working were engaged in unrelated works and that the wrongful death claim of the school crossing guard's husband is not barred by worker's compensation immunity.<sup>40</sup>

### **2003 Workers' Compensation Reforms**

In 2002, Florida had the second highest premiums in the country.<sup>41</sup> In response to a downturn in the Florida economy and uncertainties in the marketplace, some insurers were not issuing new policies or renewing policies, or significantly tightening their underwriting requirements. Many small employers were forced to secure significantly more expensive coverage in the Florida Workers' Compensation Joint Underwriting Association ("insurer of last resort") due to availability issues.

Prior to the 2003 reforms, the JCCs used a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees would equal 20 percent of the first \$5,000 of the amount of benefits secured; 15 percent of the next \$5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured and to be provided during the first 10 years, and 5 percent of the benefits secured after 10 years. However, the JCCs had the discretion to increase or decrease the attorney's fee without any dollar limitation, based on the following factors:

- Time and labor involved;
- Fee customarily charged in the locality for similar services;
- Amount involved in controversy and the benefits resulting;
- Time limitation imposed by claimant or circumstances;
- Experience, reputation, and the ability of the attorney; and
- Contingency or certainty of a fee.

In 2003, the Florida Legislature enacted significant reforms intended to address the availability and affordability of coverage for employers. These reforms were designed to reduce the overall costs to the system by expediting the dispute resolution process, reducing attorney fees, providing greater enforcement tools to combat fraud, revising standards for compensability and benefits, and changing medical services and reimbursements. The 2003 reforms continued the

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<sup>39</sup> *Aravena v. Miami Dade County*, 928 So.2d 1163 (2006).

<sup>40</sup> *Id.*

<sup>41</sup> See Oregon Department of Consumer and Business Services fn 2.

use of the contingency fee schedule in awarding attorney's fee. However, any additional hourly fees were eliminated, and the JCCs were prohibited from approving any agreement related to benefits, which provided for an attorney's fee in excess of the amount permitted under the fee schedule.<sup>42</sup> As an alternative to the contingency fee schedule, the JCC were authorized to approve an attorney's fee not to exceed \$1,500 once per accident if the JCC determined that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

In late 2003, in response to the passage of the reforms, the OIR approved a rate filing submitted by the NCCI that resulted in a 14 percent rate decrease for employers.<sup>43</sup> After the implementation of the rate decrease, effective January 1, 2019, Florida's rates are 65 percent below what the rates were prior to the 2003 reforms.<sup>44</sup>

## **Administration of the Workers Compensation System in Florida**

### ***The Division of Workers' Compensation***

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., except for the provisions under the jurisdiction of the Office of the Judges of Compensation Claims. These functions include the enforcement of coverage requirements,<sup>45</sup> administration of workers' compensation health care delivery system,<sup>46</sup> data collection,<sup>47</sup> and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.<sup>48</sup>

### ***Office of the Judges of Compensation Claims***

The OJCC is responsible for resolving workers' compensation benefit disputes.<sup>49</sup> Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.<sup>50</sup> Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.<sup>51</sup> Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.<sup>52</sup> If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a petition for benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.<sup>53</sup>

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<sup>42</sup> Sections 440.34 and 440.105, F.S.

<sup>43</sup> OIR, Final Order on Rate Filing (Aug. 12, 2003) available at <http://www.floir.com/siteDocuments/NCCI.pdf> (last viewed Mar. 3, 2019).

<sup>44</sup> See OIR fn. 3, p. 15.

<sup>45</sup> Section 440.107(3), F.S.

<sup>46</sup> Section 440.13, F.S.

<sup>47</sup> Sections 440.185 and 440.593, F.S.

<sup>48</sup> Section 440.191, F.S.

<sup>49</sup> Section 440.192, F.S.

<sup>50</sup> Section 440.192(1), F.S.

<sup>51</sup> Section 440.192(8), F.S.

<sup>52</sup> Section 440.25, F.S.

<sup>53</sup> Section 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. Apr. 28, 2016).

### III. Effect of Proposed Changes:

#### Petitions for Benefits

**Section 1** amends s. 440.02, F.S., to revise the definition of the term “specificity,” thereby requiring additional information to be provided in the petition for benefits filed with the Office of Judges of Compensation Claims (OJCC). This includes specific information for each requested benefit, the specific amount of each requested benefit, and the calculation used for computing the requested benefits. If a petition is filed for medical benefits, the bill requires that the petition must include details demonstrating that such benefits have specifically been denied by the adjuster responsible for determining whether benefits are payable to the claimant. If a petition requests alternate or other medical care, current law requires a copy of the report from the physician making the recommendation for alternate or medical care be attached to the petition for benefits. The bill requires that the physician’s report include specific allegations and statements of fact supporting the specific denial by the adjuster handling payment of benefits to the injured employee.

**Section 7** amends s. 440.192, F.S., relating to the OJCC, to require the Judge of Compensation Claims (JCC) to review each petition for benefits and dismiss any petition or portion of a petition that does not meet on its face the requirements of s. 440.192, F.S., and the definition of “specificity” under s. 440.02, F.S.

Under current law in s. 440.192(2), F.S., a petition for benefits must specifically itemize or identify facts related to the compensation claim. The bill amends this requirement by providing that a petition for benefits specifically identify or itemize the following:

- The Florida county, or if the accident occurred outside Florida, the state where the injury occurred; current law requires the location of the occurrence.
- In a claim for permanent benefits, the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.
- The specific amount of compensation claimed and the methodology used to calculate the average weekly wage. The bill establishes a rebuttable presumption that the average weekly wage and corresponding compensation calculated by the employer or carrier is accurate.
- The signed attestation regarding attorney fees created by Section 6 of the bill.
- Evidence demonstrating a good faith attempt to resolve the dispute.

The bill provides that if a petition for benefits is not dismissed for lack of specificity, a JCC may exercise independent discretion to determine whether the claimant or the claimant’s attorney made a good faith effort to resolve the dispute. If the JCC determines the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition for benefits, the JCC must dismiss the petition and may impose sanctions which may include assessment of attorney fees payable by the claimant’s attorney.

The bill specifies that the dismissal of any petition or portion of a petition under subsection (5) is without prejudice. Upon a motion that a petition or portion of a petition be dismissed for lack of specificity, the JCC is required to enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed, or if good cause for a hearing is shown, within 20 days after hearing on the motion.

### **Fellow-Employee Immunity**

**Section 4** amends s. 440.11(1), F.S., to repeal current law that provides that fellow-employee immunity does not apply to employees of the same employer when each is operating in furtherance of the employer's business but are assigned primarily to unrelated works within private or public employment.

Currently, s. 440.11, F.S., limits an employer's liabilities to the benefits provided under the Workers' Compensation Law. This limitation of employer liabilities makes workers' compensation benefits the exclusive remedy for most employee work-related deaths and injuries. The same immunities from liability also apply to each employee of the employer when the employee is acting in furtherance of the employer's business and the injured employee is entitled to receive workers' compensation benefits. The current law provides exceptions when such immunities do not apply, and it is the exception to fellow-employee immunity for employees assigned to unrelated works that the bill repeals. Thus, under the bill, workers' compensation benefits will be the exclusive remedy for work-related death or injuries caused by fellow employees assigned to unrelated works.

### **Temporary Benefits**

**Section 5** amends s. 440.15, F.S., to codify the *Westphal* decision by increasing temporary total disability benefits and temporary partial disability benefits to 260 weeks instead of 104 weeks.

The bill also requires that an employee must receive permanent impairment benefits if the employee has not reached maximum medical improvement before receiving the maximum number of weeks of temporary disability benefits. The permanent impairment benefits will be based on an estimated impairment rating. The bill does not specify who will calculate the estimated impairment rating. Under current law, permanent impairment benefits are available after a doctor certifies that the employee has reached maximum medical improvement and applied an impairment rating based upon uniform permanent impairment rating schedule an employee must be certified by a doctor as having reached maximum medical improvement.

**Section 2** amends s. 440.93(3), F.S., regarding benefits for mental and nervous injuries, to provide conforming changes necessitated by the revisions the bill makes to increase the number of weeks of temporary benefits available under s. 440.15, F.S.

**Section 11** amends s. 440.491(6)(b), F.S., regarding training and education of injured workers, to reference the now required 260 weeks of temporary benefits.

### **Attorney Fees**

**Section 9** amends s. 440.25(4), F.S., to provide that attorney fees do not attach until 45 business days after a petition for benefits is filed with the JCC. Under current law, attorney fees do not attach until 30 calendar days after the date the carrier or employer receives the petition.

**Section 10** amends s. 440.34, F.S., regarding the award of attorney fees for a claimant paid by the employer or carrier. The bill retains the statutory fee schedule for attorney fee awards, which

states that the attorney fee paid by an employer or carrier to a claimant's attorney may not exceed:

- Twenty percent of the first \$5,000 of benefits secured.
- Fifteen percent of the next \$5,000 of benefits secured.
- Ten percent of the remaining amount of benefits secured to be provided during the first 10 years after the date the claim is filed.
- Five percent of the benefits secured after 10 years.

The bill does not allow the award to the claimant of a fee that deviates from the statutory attorney fee schedule, as currently may occur in accordance with the decision of the Florida Supreme Court in *Castellanos v. Next Door Company*.

If a JCC finds that the attorney fee schedule results in an effective hourly rate of less than \$150 per hour for a disputed medical-only claim, the bill authorizes the JCC to award to the claimant an alternative attorney fee payable by the employee or carrier not to exceed \$1,500, based on a maximum hourly rate of \$150 per hour.

The bill provides a claimant's attorney may not be awarded an attorney fee in excess of \$150 per hour related to an appellate proceeding.

The bill states that attorney fees may not be awarded based on claimant attorney hours reasonably related to a benefit upon which the claimant did not prevail or if the JCC determines the claimant did not make a good faith effort to resolve the dispute before filing the petition for benefits, regardless of whether the petition is dismissed.

### **Elimination of Requirements Related to JCC Approval of Attorney Fees**

**Section 3** amends s. 440.105(3)(c), F.S., to exempt attorneys retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the employee from the criminal prohibition against receiving any fee, consideration, or gratuity in connection with a proceeding under the Workers' Compensation Law that is not approved by a JCC.

**Section 8** amends s. 440.20(11)(c), F.S., to eliminate the requirement that settlement agreements be approved by a JCC as to attorney fees paid to the claimant's attorney. The bill requires the parties to submit the amount of the settlement and the attorney fees and costs paid by the claimant to the claimant's attorney. The bill also requires payment of lump sum settlements be made within 14 days of the date the JCC mails the order approving the settlement allocation's recovery of child support arrearages required by s. 440.20(11)(d), F.S.; current law requires payment within 14 days after the JCC mails the order approving attorney fees. The First District Court of Appeals held in *Miles v. City of Edgewater Police Department/Preferred Governmental Claims Solutions*, that the restrictions on a claimant's ability to retain counsel in s. 440.34, F.S., are unconstitutional.

**Section 10** amends s. 440.34(1), F.S., to provide that retainer agreements between a claimant and claimant's attorney are not subject to JCC approval. Such agreements must, however, be filed with the JCC. Attorneys retained by injured employees must report to the JCC the amounts of

attorney fees they receive. The bill does not provide any enforcement mechanism to ensure compliance with these reporting requirements. The bill deletes current law prohibiting a JCC from approving a compensation order, joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or other agreement related to workers' compensation benefits which provides for an attorney fee in excess of the statutory schedule.

### **Attestations Related to Claimant's Attorney Fees**

**Section 6** creates s. 440.1915, F.S., to require an injured employee or other party making a claim to execute a signed attestation regarding the worker's obligation to pay his or her own attorney fees. The bill provides that the injured worker may not engage an attorney or other representative or proceeding with a petition for benefits while represented by an attorney unless the injured employee or other party making a claim for benefits, prior to engaging an attorney or other representative, attests by signature that he or she reviewed, understands, and acknowledges the following disclosure:

“The workers' compensation law requires you to pay your own attorney fees. Your employer and/or its insurance carrier are not required to pay your attorney fees except in certain circumstances. Even then, you may be responsible for paying attorney fees in addition to any amount your employer or its carrier may be required to pay or agree to pay, depending on the details of your agreement with your attorney. Carefully read and make sure you understand any agreement or retainer for representation before you sign it.”

**Section 9** amends current law in s. 440.25(4)(h), F.S., which requires the parties to exchange and file with the JCC, at least 15 days before an expedited resolution hearing under s. 440.25(4)(h), F.S., a pretrial outline of all issues, defenses, and witnesses. The bill requires the claimant's attorney to include with the pretrial outline a personal attestation detailing his or her hours to date. The personal attestation must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit.

### **Effective Date**

**Section 12** provides an effective date of July 1, 2019.

## **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Florida Supreme Court in *Castellanos v. Next Door Company* ruled that the mandatory attorney fee schedule in s. 440.34, F.S., “is unconstitutional as a violation of due process under both the Florida and United States Constitutions.”<sup>54</sup> As a remedy, the Court revived the statute’s predecessor, which allowed for the award of an alternative attorney fee if application of the statutory fee schedule did not result in a reasonable attorney fee award.<sup>55</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will provide greater guidance and specificity in the administration of various provisions of ch. 440, F.S., which may reduce administrative and litigation costs, thereby reducing the costs of workers’ compensation costs of employers.

According to the National Council on Compensation Insurance (NCCI) implementation of the bill could result in a decrease of rates in the range of 3 percent or more.<sup>56</sup>

C. Government Sector Impact:

**Department of Financial Services**

The Division of Risk Management of the Department of Financial Services is a provider of workers’ compensation benefits to participating state agencies and public universities. Provisions of the bill relating to specificity, rebuttable presumption regarding the calculation of average weekly wage by the employee/carrier, and evidence of a good faith effort to resolve disputes prior to filing a petition for benefits, have the potential to improve efficiency in claims processing. The fiscal impact of the bill is indeterminate at

<sup>54</sup> *Castellanos v. Next Door Co.*, 192 So.3d 431 at 449 (Fla. 2016).

<sup>55</sup> *Castellanos*, 192 So.3d 431 at 448.

<sup>56</sup> NCCI, *Preliminary Cost Impact Analysis of SB 1636*, (Mar. 20, 2019) (on file with Senate Banking and Insurance Committee).



this time. The bill may reduce workers' compensation costs paid by the Division of Risk Management.<sup>57</sup>

***Office of the Judges of Compensation Claims***

The OJCC indicates that they will need to modify the current reporting system to incorporate filing of attorney fees associated with retainer agreements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.093, 440.105, 440.11, 440.15, 440.1915, 440.192, 440.20, 440.25, 440.34, and 440.491.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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<sup>57</sup> Department of Financial Services, Analysis of SB 1636 (Mar. 17, 2019) (on file with Senate Committee on Banking and Insurance).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
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The Committee on Banking and Insurance (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (40) of section 440.02, Florida  
Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the  
context clearly requires otherwise, the following terms shall  
have the following meanings:

(40) "Specificity," "specific," or "specifically"



11 "Specificity" means, for purposes of determining the adequacy of  
12 a petition for benefits under s. 440.192, information on the  
13 petition for benefits sufficient to put the employer or carrier  
14 on notice of the exact statutory classification and outstanding  
15 time period for each requested benefit, the specific amount of  
16 each requested benefit, the calculation used for computing the  
17 specific amount of each requested benefit, and ~~of benefits being~~  
18 ~~requested and includes~~ a detailed explanation of any such  
19 ~~benefit~~ benefits received that should be increased, decreased,  
20 changed, or otherwise modified. If the petition is for medical  
21 benefits, the information must ~~shall~~ include specific details as  
22 to why such benefits are being requested, including details  
23 demonstrating that such benefits have specifically been denied  
24 by the adjuster responsible for determining whether benefits are  
25 payable to the claimant; why such benefits are medically  
26 necessary;; and why current treatment, if any, is not  
27 sufficient. Any petition requesting alternate or other medical  
28 care, including, but not limited to, petitions requesting  
29 psychiatric or psychological treatment, must specifically  
30 identify the physician, as defined in s. 440.13(1), who is  
31 recommending such treatment. A copy of a report from such  
32 physician making the recommendation for alternate or other  
33 medical care must ~~shall~~ also be attached to the petition, and  
34 the petition must include specific allegations and statements of  
35 fact supporting that the adjuster handling payment of benefits  
36 to the injured employee specifically denied the requested  
37 treatment. A judge of compensation claims may ~~shall~~ not order  
38 such treatment if a physician is not recommending such  
39 treatment.



40 Section 2. Subsection (3) of section 440.093, Florida  
41 Statutes, is amended to read:

42 440.093 Mental and nervous injuries.—

43 (3) Subject to the payment of permanent benefits under s.  
44 440.15, in no event shall temporary benefits for a compensable  
45 mental or nervous injury be paid for more than 6 months after  
46 the date of maximum medical improvement for the injured  
47 employee's physical injury or injuries, which shall be included  
48 in the maximum number of ~~period of 104~~ weeks as provided in s.  
49 440.15(2), and (4), and (13). Mental or nervous injuries are  
50 compensable only in accordance with the terms of this section.

51 Section 3. Paragraph (c) of subsection (3) of section  
52 440.105, Florida Statutes, is amended to read:

53 440.105 Prohibited activities; reports; penalties;  
54 limitations.—

55 (3) Whoever violates any provision of this subsection  
56 commits a misdemeanor of the first degree, punishable as  
57 provided in s. 775.082 or s. 775.083.

58 (c) Except for an attorney retained by an injured employee  
59 and receiving a fee or other consideration from the injured  
60 employee under contract with the injured employee, it is  
61 unlawful for any ~~attorney or other~~ person, in his or her  
62 individual capacity or in his or her capacity as a public or  
63 private employee, or for any firm, corporation, partnership, or  
64 association to receive any fee or other consideration or any  
65 gratuity from a person on account of services rendered for a  
66 claimant ~~person~~ in connection with any proceedings arising under  
67 this chapter, unless such fee, consideration, or gratuity is  
68 approved by a judge of compensation claims or by the Deputy



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69 Chief Judge of Compensation Claims.

70 Section 4. Subsection (1) of section 440.11, Florida  
71 Statutes, is amended to read:

72 440.11 Exclusiveness of liability.—

73 (1) The liability of an employer prescribed in s. 440.10  
74 shall be exclusive and in place of all other liability,  
75 including vicarious liability, of such employer to any third-  
76 party tortfeasor and to the employee, the legal representative  
77 thereof, husband or wife, parents, dependents, next of kin, and  
78 anyone otherwise entitled to recover damages from such employer  
79 at law or in admiralty on account of such injury or death,  
80 except as follows:

81 (a) If an employer fails to secure payment of compensation  
82 as required by this chapter, an injured employee, or the legal  
83 representative thereof in case death results from the injury,  
84 may elect to claim compensation under this chapter or to  
85 maintain an action at law or in admiralty for damages on account  
86 of such injury or death. In such action the defendant may not  
87 plead as a defense that the injury was caused by negligence of a  
88 fellow employee, that the employee assumed the risk of the  
89 employment, or that the injury was due to the comparative  
90 negligence of the employee.

91 (b) When an employer commits an intentional tort that  
92 causes the injury or death of the employee. For purposes of this  
93 paragraph, an employer's actions are ~~shall be~~ deemed to  
94 constitute an intentional tort and not an accident only when the  
95 employee proves, by clear and convincing evidence, that:

96 1. The employer deliberately intended to injure the  
97 employee; or



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98           2. The employer engaged in conduct that the employer knew,  
99 based on prior similar accidents or on explicit warnings  
100 specifically identifying a known danger, was virtually certain  
101 to result in injury or death to the employee, and the employee  
102 was not aware of the risk because the danger was not apparent  
103 and the employer deliberately concealed or misrepresented the  
104 danger so as to prevent the employee from exercising informed  
105 judgment about whether to perform the work.  
106  
107 The same immunities from liability enjoyed by an employer shall  
108 extend as well to each employee of the employer when such  
109 employee is acting in furtherance of the employer's business and  
110 the injured employee is entitled to receive benefits under this  
111 chapter. Such fellow-employee immunities do not apply ~~shall not~~  
112 ~~be applicable~~ to an employee who acts, with respect to a fellow  
113 employee, with willful and wanton disregard or unprovoked  
114 physical aggression or with gross negligence when such acts  
115 result in injury or death or such acts proximately cause such  
116 injury or death, ~~nor shall such immunities be applicable to~~  
117 ~~employees of the same employer when each is operating in the~~  
118 ~~furtherance of the employer's business but they are assigned~~  
119 ~~primarily to unrelated works within private or public~~  
120 ~~employment~~. The same immunity provisions enjoyed by an employer  
121 shall also apply to any sole proprietor, partner, corporate  
122 officer or director, supervisor, or other person who in the  
123 course and scope of his or her duties acts in a managerial or  
124 policymaking capacity and the conduct which caused the alleged  
125 injury arose within the course and scope of said managerial or  
126 policymaking duties and was not a violation of a law, whether or



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127 not a violation was charged, for which the maximum penalty which  
128 may be imposed does not exceed 60 days' imprisonment as set  
129 forth in s. 775.082. The immunity from liability provided in  
130 this subsection extends to county governments with respect to  
131 employees of county constitutional officers whose offices are  
132 funded by the board of county commissioners.

133 Section 5. Paragraph (a) of subsection (2), paragraph (d)  
134 of subsection (3), paragraphs (a) and (e) of subsection (4), and  
135 subsection (6) of section 440.15, Florida Statutes, are amended,  
136 and subsection (13) is added to that section, to read:

137 440.15 Compensation for disability.—Compensation for  
138 disability shall be paid to the employee, subject to the limits  
139 provided in s. 440.12(2), as follows:

140 (2) TEMPORARY TOTAL DISABILITY.—

141 (a) Subject to subsections ~~subsection~~ (7) and (13), in case  
142 of disability total in character but temporary in quality,  $66\frac{2}{3}$  or 66.67 percent of the average weekly wages must ~~shall~~ be  
143 paid to the employee during the continuance thereof, ~~not to~~  
144 ~~exceed 104 weeks~~ except as provided in this subsection, s.  
145 440.12 ~~s. 440.12(1)~~, and s. 440.14 ~~s. 440.14(3)~~. Once the  
146 employee reaches the maximum number of weeks allowed, or the  
147 employee reaches overall ~~the date of~~ maximum medical  
148 improvement, whichever occurs earlier, temporary disability  
149 benefits must ~~shall~~ cease and the injured worker's permanent  
150 impairment must ~~shall~~ be determined.

151 (3) PERMANENT IMPAIRMENT BENEFITS.—

152 (d) After the employee has been certified by a doctor as  
153 having reached maximum medical improvement or 6 weeks before the  
154 expiration of temporary benefits, whichever occurs earlier, the  
155



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156 certifying doctor shall evaluate the condition of the employee  
157 and assign an impairment rating, using the impairment schedule  
158 referred to in paragraph (b). If the certification and  
159 evaluation are performed by a doctor other than the employee's  
160 treating doctor, the certification and evaluation must be  
161 submitted to the treating doctor, the employee, and the carrier  
162 within 10 days after the evaluation. The treating doctor must  
163 indicate to the carrier agreement or disagreement with the other  
164 doctor's certification and evaluation.

165 1. The certifying doctor shall issue a written report to  
166 the employee and the carrier certifying that maximum medical  
167 improvement has been reached, stating the impairment rating to  
168 the body as a whole, and providing any other information  
169 required by the department by rule. The carrier shall establish  
170 an overall maximum medical improvement date and permanent  
171 impairment rating, based upon all such reports.

172 2. Within 14 days after the carrier's knowledge of each  
173 maximum medical improvement date and impairment rating to the  
174 body as a whole upon which the carrier is paying benefits, the  
175 carrier shall report such maximum medical improvement date and,  
176 when determined, the overall maximum medical improvement date  
177 and associated impairment rating to the department in a format  
178 as set forth in department rule. If the employee has not been  
179 certified as having reached overall maximum medical improvement  
180 before the expiration of 254 ~~98~~ weeks after the date temporary  
181 disability benefits begin to accrue, the carrier shall notify  
182 the treating doctor of the requirements of this section.

183 3. If an employee receiving benefits under subsection (2),  
184 subsection (4), or both subsections (2) and (4) has not reached





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185 overall maximum medical improvement before receiving the maximum  
186 number of weeks of temporary disability benefits described in  
187 subsection (13), the employee must receive benefits under this  
188 subsection for an injury resulting from the accident in  
189 accordance with the estimated impairment rating for the body as  
190 a whole; or, if multiple injuries are sustained, in accordance  
191 with the estimated combined impairment ratings for the body as a  
192 whole in the 1996 Florida Uniform Permanent Impairment Rating  
193 Schedule. Impairment benefits received under this subparagraph  
194 must be credited against indemnity benefits subsequently due to  
195 the employee.

196 (4) TEMPORARY PARTIAL DISABILITY.—

197 (a) Subject to subsections (6), ~~subsection (7), and (13),~~  
198 in case of temporary partial disability, compensation must ~~shall~~  
199 be equal to 80 percent of the difference between 80 percent of  
200 the employee's average weekly wage and the salary, wages, and  
201 other remuneration the employee is able to earn postinjury, as  
202 compared weekly; however, weekly temporary partial disability  
203 benefits may not exceed an amount equal to 66 2/3 or 66.67  
204 percent of the employee's average weekly wage at the time of  
205 accident. In order to simplify the comparison of the preinjury  
206 average weekly wage with the salary, wages, and other  
207 remuneration the employee is able to earn postinjury, the  
208 department may by rule provide for payment of the initial  
209 installment of temporary partial disability benefits to be paid  
210 as a partial week so that payment for remaining weeks of  
211 temporary partial disability can coincide as closely as possible  
212 with the postinjury employer's work week. The amount determined  
213 to be the salary, wages, and other remuneration the employee is



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214 able to earn shall in no case be less than the sum actually  
215 being earned by the employee, including earnings from sheltered  
216 employment. Benefits are ~~shall be~~ payable under this subsection  
217 only if overall maximum medical improvement has not been reached  
218 and the medical conditions resulting from the accident create  
219 restrictions on the injured employee's ability to return to  
220 work.

221 (e) Subject to subsections (6), (7), and (13), such  
222 benefits must ~~shall~~ be paid during the continuance of such  
223 disability, ~~not to exceed a period of 104 weeks,~~ as provided by  
224 this subsection and ~~subsection (2).~~ ~~Once the injured employee~~  
225 ~~reaches the maximum number of weeks, temporary disability~~  
226 ~~benefits cease and the injured worker's permanent impairment~~  
227 ~~must be determined.~~ If the employee is terminated from  
228 postinjury employment based on the employee's misconduct,  
229 temporary partial disability benefits are not payable as  
230 provided for in this section. The department shall by rule  
231 specify forms and procedures governing the method and time for  
232 payment of temporary disability benefits for dates of accidents  
233 before January 1, 1994, and for dates of accidents on or after  
234 January 1, 1994.

235 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee  
236 refuses employment suitable to the capacity thereof, offered to  
237 or procured therefor, such employee is ~~shall~~ not ~~be~~ entitled to  
238 any compensation at any time during the continuance of such  
239 refusal unless at any time in the opinion of the judge of  
240 compensation claims such refusal is justifiable. Time periods  
241 for the payment of benefits in accordance with this section must  
242 ~~shall~~ be counted in determining the limitation of benefits as



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243 provided for in subsection (13) paragraphs (2)(a), (3)(e), and  
244 (4)(b).

245 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of  
246 benefits received by an employee for temporary total disability  
247 payable pursuant to subsection (2), temporary partial disability  
248 payable pursuant to subsection (4), and temporary total  
249 disability payable pursuant to s. 440.491 may not exceed 260  
250 weeks.

251 Section 6. Section 440.1915, Florida Statutes, is created  
252 to read:

253 440.1915 Notice regarding payment of attorney fees.—Before  
254 engaging an attorney or other representative for services  
255 related to a petition for benefits under s. 440.192 or s.  
256 440.25, an injured employee or any other party making a claim  
257 for benefits under this chapter through an attorney shall attest  
258 with his or her personal signature that he or she has reviewed,  
259 understands, and acknowledges the following statement, which  
260 must be in at least 14-point bold type: "THE WORKERS'  
261 COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES.  
262 YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO  
263 PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN  
264 THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN  
265 ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE  
266 REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF  
267 YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE  
268 YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION  
269 BEFORE YOU SIGN IT." If the injured employee or other party does  
270 not sign or refuses to sign the document attesting that he or  
271 she has reviewed, understands, and acknowledges the statement,



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272 the injured employee or other party making a claim under this  
273 chapter may not proceed with a petition for benefits under s.  
274 440.192 or s. 440.25, except pro se, until such signature is  
275 obtained.

276 Section 7. Subsections (2), (4), (5), and (7) of section  
277 440.192, Florida Statutes, are amended, and subsection (1) of  
278 that section is republished, to read:

279 440.192 Procedure for resolving benefit disputes.—

280 (1) Any employee may, for any benefit that is ripe, due,  
281 and owing, file with the Office of the Judges of Compensation  
282 Claims a petition for benefits which meets the requirements of  
283 this section and the definition of specificity in s. 440.02. An  
284 employee represented by an attorney shall file by electronic  
285 means approved by the Deputy Chief Judge. An employee not  
286 represented by an attorney may file by certified mail or by  
287 electronic means approved by the Deputy Chief Judge. The  
288 department shall inform employees of the location of the Office  
289 of the Judges of Compensation Claims and the office's website  
290 address for purposes of filing a petition for benefits. The  
291 employee shall also serve copies of the petition for benefits by  
292 certified mail, or by electronic means approved by the Deputy  
293 Chief Judge, upon the employer and the employer's carrier. The  
294 Deputy Chief Judge shall refer the petitions to the judges of  
295 compensation claims.

296 (2) Upon receipt of a petition, the Office of the Judges of  
297 Compensation Claims, or upon motion, the assigned judge of  
298 compensation claims, shall review the each petition and shall  
299 dismiss the each petition or any portion of the such-a petition  
300 which that does not comply with the requirements of this



301 section, does not meet the definition of specificity under s.  
302 440.02(40), and does not ~~on its face~~ specifically identify or  
303 itemize the following:

304 (a) The name, address, and telephone number, ~~and social~~  
305 ~~security number~~ of the employee.

306 (b) The name, address, and telephone number of the  
307 employer.

308 (c) A detailed description of the injury and cause of the  
309 injury, including ~~the location of the occurrence and the date or~~  
310 dates of the accident and the county in this state or, if the  
311 accident occurred outside of this state, the state where the  
312 accident occurred.

313 (d) A detailed description of the employee's job, work  
314 responsibilities, and work the employee was performing when the  
315 injury occurred.

316 (e) The specific time period for which compensation and the  
317 specific classification of compensation were not timely  
318 provided.

319 (f) The specific date of maximum medical improvement,  
320 character of disability, and specific statement of all benefits  
321 or compensation that the employee is seeking. A claim for  
322 permanent benefits must include the specific date of maximum  
323 medical improvement and the specific date on which such  
324 permanent benefits are claimed to begin.

325 (g) All specific travel costs to which the employee  
326 believes she or he is entitled, including dates of travel and  
327 purpose of travel, means of transportation, and mileage and  
328 including the date the request for mileage was filed with the  
329 carrier and a copy of the request filed with the carrier.



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330 (h) Specific listing of all medical charges alleged unpaid,  
331 including the name and address of the medical provider, the  
332 amounts due, and the specific dates of treatment.

333 (i) The type or nature of treatment care or attendance  
334 sought and the justification for such treatment. If the employee  
335 is under the care of a physician for an injury identified under  
336 paragraph (c), a copy of the physician's request, authorization,  
337 or recommendation for treatment, care, or attendance must  
338 accompany the petition.

339 (j) The specific amount of compensation claimed and the  
340 methodology used to calculate the average weekly wage, if the  
341 average weekly wage calculated by the employer or carrier is  
342 disputed. There is a rebuttable presumption that the average  
343 weekly wage and corresponding compensation calculated by the  
344 employer or carrier is accurate.

345 (k) Specific explanation of any other disputed issue that a  
346 judge of compensation claims will be called to rule upon.

347 (l) The signed attestation required pursuant to s.  
348 440.1915.

349 (m) Certification and evidence of a good faith attempt to  
350 resolve the dispute pursuant to subsection (4).

351  
352 The dismissal of any petition or portion of such a petition  
353 under this subsection ~~section~~ is without prejudice and does not  
354 require a hearing.

355 (4) (a) Before filing a petition, the claimant, or if the  
356 claimant is represented by counsel, the claimant's attorney,  
357 shall make a good faith effort to resolve the dispute. The  
358 petition must include:



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359           1. A certification by the claimant or, if the claimant is  
360 represented by counsel, the claimant's attorney, stating that  
361 the claimant, or attorney if the claimant is represented by  
362 counsel, has made a good faith effort to resolve the dispute and  
363 that the claimant or attorney was unable to resolve the dispute  
364 with the carrier, or the employer if self-insured; and

365           2. Evidence demonstrating such good faith attempt to  
366 resolve the dispute as described in the certification.

367           (b) If the petition is not dismissed under subsection (2),  
368 the judge of compensation claims has jurisdiction to determine,  
369 in his or her independent discretion, whether a good faith  
370 effort to resolve the dispute was made by the claimant or the  
371 claimant's attorney. If the judge of compensation claims  
372 determines that the claimant or the claimant's attorney did not  
373 make a good faith effort to resolve the dispute before filing  
374 the petition for benefits, the judge of compensation claims must  
375 dismiss the petition and may impose sanctions to ensure  
376 compliance with this subsection, which may include, but are not  
377 limited to, assessment of attorney fees payable by the  
378 claimant's attorney.

379           (5)(a) All motions to dismiss must state with particularity  
380 the basis for the motion. The judge of compensation claims shall  
381 enter an order upon such motions without hearing, unless good  
382 cause for hearing is shown. Dismissal of any petition or portion  
383 of a petition under this subsection is without prejudice.

384           (b) Upon motion that a petition or a portion of a petition  
385 be dismissed for lack of specificity, a judge of compensation  
386 claims shall enter an order on the motion, unless stipulated in  
387 writing by the parties, within 10 days after the motion is



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388 filed, or, if good cause for a hearing is shown, within 20 days  
389 after a hearing on the motion. When any petition or portion of a  
390 petition is dismissed for lack of specificity under this  
391 subsection, the claimant must be allowed 20 days after the date  
392 of the order of dismissal in which to file an amended petition.  
393 Any grounds for dismissal for lack of specificity under this  
394 section which are not asserted within 30 days after receipt of  
395 the petition for benefits are thereby waived.

396 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of  
397 compensation claims may not award attorney ~~attorney's~~ fees  
398 payable by the employer or carrier for services expended or  
399 costs incurred before: ~~prior to~~

400 (a) The filing of a petition that meets the definition of  
401 specificity under s. 440.02(40) and that includes all items  
402 required under subsection (2); and

403 (b) The claimant or the claimant's attorney, if the  
404 claimant is represented by counsel, has made a good faith effort  
405 to resolve the dispute ~~does not meet the requirements of this~~  
406 ~~section.~~

407 Section 8. Paragraph (c) of subsection (11) of section  
408 440.20, Florida Statutes, is amended to read:

409 440.20 Time for payment of compensation and medical bills;  
410 penalties for late payment.-

411 (11)

412 (c) Notwithstanding s. 440.21(2), when a claimant is  
413 represented by counsel, the claimant may waive all rights to any  
414 and all benefits under this chapter by entering into a  
415 settlement agreement releasing the employer and the carrier from  
416 liability for workers' compensation benefits in exchange for a





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417 lump-sum payment to the claimant. The settlement agreement need  
418 not be approved ~~requires approval~~ by the judge of compensation  
419 claims, and only as to the attorney's fees paid to the  
420 ~~claimant's attorney by the claimant.~~ the parties need not submit  
421 any information or documentation in support of the settlement,  
422 except for as needed to justify the amount of the settlement and  
423 the attorney attorney's fees and costs paid by the claimant to  
424 the claimant's attorney. Neither the employer nor the carrier is  
425 responsible for any attorney attorney's fees relating to the  
426 settlement and release of claims under this section. Payment of  
427 the lump-sum settlement amount must be made within 14 days after  
428 the date the judge of compensation claims mails the order  
429 approving the settlement allocation's recovery of child support  
430 arrearages under paragraph (d) attorney's fees. Any order  
431 entered by a judge of compensation claims ~~approving the~~  
432 ~~attorney's fees as set out in the settlement~~ under this  
433 subsection is not considered to be an award and is not subject  
434 to modification or review. The judge of compensation claims  
435 shall report these settlements to the Deputy Chief Judge in  
436 accordance with ~~the requirements set forth in~~ paragraphs (a) and  
437 (b). Settlements entered into under this subsection are valid  
438 and apply to all dates of accident.

439 Section 9. Paragraphs (d), (h), and (j) of subsection (4)  
440 of section 440.25, Florida Statutes, are amended to read:

441 440.25 Procedures for mediation and hearings.—

442 (4)

443 (d) The final hearing shall be held within 210 days after  
444 receipt of the petition for benefits in the county where the  
445 injury occurred, if the injury occurred in this state, unless



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446 otherwise agreed to between the parties and authorized by the  
447 judge of compensation claims in the county where the injury  
448 occurred. However, the claimant may waive the timeframes within  
449 this section for good cause shown. If the injury occurred  
450 outside the state and is one for which compensation is payable  
451 under this chapter, then the final hearing may be held in the  
452 county of the employer's residence or place of business, or in  
453 any other county of the state that will, in the discretion of  
454 the Deputy Chief Judge, be the most convenient for a hearing. At  
455 least 15 days before hearing, the claimant's attorney shall file  
456 a personal attestation detailing his or her hours to date  
457 related to the issues set for hearing. The personal attestation  
458 by the claimant's attorney must specifically allocate the hours  
459 by each benefit claimed and account for hours relating to  
460 multiple benefits in a manner that apportions such hours by  
461 percentage, in whole numbers, to each benefit. The final hearing  
462 shall be conducted by a judge of compensation claims, who shall,  
463 within 30 days after final hearing or closure of the hearing  
464 record, unless otherwise agreed by the parties, enter a final  
465 order on the merits of the disputed issues. The judge of  
466 compensation claims may enter an abbreviated final order in  
467 cases in which compensability is not disputed. Either party may  
468 request separate findings of fact and conclusions of law. At the  
469 final hearing, the claimant and employer may each present  
470 evidence with respect to the claims presented by the petition  
471 for benefits and may be represented by any attorney authorized  
472 in writing for such purpose. When there is a conflict in the  
473 medical evidence submitted at the hearing, the provisions of s.  
474 440.13 shall apply. The report or testimony of the expert



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475 medical advisor shall be admitted into evidence in a proceeding  
476 and all costs incurred in connection with such examination and  
477 testimony may be assessed as costs in the proceeding, subject to  
478 the provisions of s. 440.13. No judge of compensation claims may  
479 make a finding of a degree of permanent impairment that is  
480 greater than the greatest permanent impairment rating given the  
481 claimant by any examining or treating physician, except upon  
482 stipulation of the parties. Any benefit due but not raised at  
483 the final hearing which was ripe, due, or owing at the time of  
484 the final hearing is waived.

485 (h) To further expedite dispute resolution and to enhance  
486 the self-executing features of the system, those petitions filed  
487 in accordance with s. 440.192 that involve a claim for benefits  
488 of \$5,000 or less ~~shall~~, in the absence of compelling evidence  
489 to the contrary, are ~~be~~ presumed to be appropriate for expedited  
490 resolution under this paragraph; and any other claim filed in  
491 accordance with s. 440.192, upon the written agreement of both  
492 parties and application by either party, may similarly be  
493 resolved under this paragraph. A claim in a petition of \$5,000  
494 or less for medical benefits only or a petition for  
495 reimbursement for mileage for medical purposes must ~~shall~~, in  
496 the absence of compelling evidence to the contrary, be resolved  
497 through the expedited dispute resolution process provided in  
498 this paragraph. For purposes of expedited resolution pursuant to  
499 this paragraph, the Deputy Chief Judge shall make provision by  
500 rule or order for expedited and limited discovery and expedited  
501 docketing in such cases. At least 15 days before ~~prior to~~  
502 hearing, the parties shall exchange and file with the judge of  
503 compensation claims a pretrial outline of all issues, defenses,



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504 and witnesses, including a personal attestation by the  
505 claimant's attorney detailing his or her hours to date, on a  
506 form adopted by the Deputy Chief Judge, ~~provided that, in no~~  
507 ~~event shall~~ such hearing may not be held without 15 days'  
508 written notice to all parties. The personal attestation by the  
509 claimant's attorney must specifically allocate the hours by each  
510 benefit claimed and account for hours relating to multiple  
511 benefits in a manner that apportions such hours by percentage,  
512 in whole numbers, to each benefit. No pretrial hearing shall be  
513 held and no mediation scheduled unless requested by a party. The  
514 judge of compensation claims shall limit all argument and  
515 presentation of evidence at the hearing to a maximum of 30  
516 minutes, and such hearings shall not exceed 30 minutes in  
517 length. Neither party shall be required to be represented by  
518 counsel. The employer or carrier may be represented by an  
519 adjuster or other qualified representative. The employer or  
520 carrier and any witness may appear at such hearing by telephone.  
521 The rules of evidence shall be liberally construed in favor of  
522 allowing introduction of evidence.

523 (j) A judge of compensation claims may not award interest  
524 on unpaid medical bills and the amount of such bills may not be  
525 used to calculate the amount of interest awarded. Regardless of  
526 the date benefits are ~~were~~ initially requested, attorney  
527 ~~attorney's~~ fees do not attach under this subsection until 45  
528 business ~~30~~ days after the date on which a ~~the carrier or self-~~  
529 ~~insured employer receives the~~ petition is filed with the Office  
530 of the Judges of Compensation Claims and unless the following  
531 conditions are met:

1. Before the petition is filed, the claimant or the



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533 claimant's attorney, if the claimant is represented by counsel,  
534 makes a good faith effort to resolve the dispute as provided in  
535 s. 440.192(4); and

536 2. The petition meets the definition of specificity under  
537 s. 440.02(40) and includes all items required under s.  
538 440.192(2).

539 Section 10. Section 440.34, Florida Statutes, is amended to  
540 read:

541 440.34 Attorney ~~Attorney's~~ fees; costs.—

542 (1) (a) A judge of compensation claims may award attorney  
543 fees payable to the claimant pursuant to this section to be paid  
544 by the employer or carrier. An employer or carrier is not  
545 responsible for payment of a fee, gratuity, costs, or other  
546 consideration ~~may not be paid~~ for a claimant in connection with  
547 any proceedings arising under this chapter, unless approved by  
548 the judge of compensation claims or court having jurisdiction  
549 over such proceedings. Attorney fees payable by the employer or  
550 carrier and ~~Any attorney's fee~~ approved by a judge of  
551 compensation claims for benefits secured on behalf of a claimant  
552 must equal ~~to~~ 20 percent of the first \$5,000 of the amount of  
553 the benefits secured, 15 percent of the next \$5,000 of the  
554 amount of the benefits secured, 10 percent of the remaining  
555 amount of the benefits secured to be provided during the first  
556 10 years after the date the claim is filed, and 5 percent of the  
557 benefits secured after 10 years.

558 (b) ~~A The judge of compensation claims shall not approve a~~  
559 ~~compensation order, a joint stipulation for lump-sum settlement,~~  
560 ~~a stipulation or agreement between a claimant and his or her~~  
561 ~~attorney, or any other agreement related to benefits under this~~



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562 ~~chapter which provides for an attorney's fee in excess of the~~  
563 ~~amount permitted by this section. The judge of compensation~~  
564 ~~claims is not required to approve any retainer agreement between~~  
565 ~~the claimant and his or her attorney~~ is not subject to approval  
566 by a judge of compensation claims, but must be filed with the  
567 Office of the Judges of Compensation Claims. An attorney  
568 retained by an injured employee shall, before receiving a fee or  
569 other consideration from the injured employee, report the  
570 amounts of such attorney fees to the judge of compensation  
571 claims having jurisdiction over the claim for benefits based on  
572 the county in which the accident occurred; or, if the accident  
573 occurred outside of this state, to the Deputy Chief Judge.  
574 Notwithstanding s. 440.22, attorney fees are a lien upon  
575 compensation payable to the claimant ~~The retainer agreement as~~  
576 ~~to fees and costs may not be for compensation in excess of the~~  
577 ~~amount allowed under this subsection or subsection (7).~~

578 (2)(a) In awarding a claimant's attorney fees payable by  
579 the employer or carrier ~~attorney's fee, a~~ the judge of  
580 compensation claims shall consider only those benefits secured  
581 by the attorney. ~~An Attorney is not entitled to attorney's fees~~  
582 are not payable by the employer or carrier for:

583 1. Representation in any issue that was ripe, due, and  
584 owing and that reasonably could have been addressed, but was not  
585 addressed, during the pendency of other issues for the same  
586 injury;

587 2. Claimant attorney hours reasonably related to a benefit  
588 upon which the claimant did not prevail; or

589 3. Claimant attorney hours reasonably related to a petition  
590 for benefits, if the judge of compensation claims determines



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591 that the claimant or the claimant's attorney did not make a good  
592 faith effort to resolve the dispute before filing the petition,  
593 regardless of whether the petition is dismissed by the judge of  
594 compensation claims, the claimant, or the claimant's attorney.

595       (b) The amount, statutory basis, and type of benefits  
596 obtained through legal representation ~~must shall~~ be listed on  
597 all ~~attorney~~ ~~attorney's~~ fees awarded by a ~~the~~ judge of  
598 compensation claims ~~which are payable by the employer or~~  
599 ~~carrier~~. For purposes of this section, the term "benefits  
600 secured" does not include future medical benefits to be provided  
601 on any date more than 5 years after the date the petition claim  
602 is filed. ~~If In the event~~ an offer to settle an issue pending  
603 before a judge of compensation claims, including ~~attorney~~  
604 ~~attorney's~~ fees ~~as provided for in this section~~, is communicated  
605 in writing to the claimant or the claimant's attorney at least  
606 30 days ~~before~~ ~~prior to~~ the trial date on such issue, for  
607 purposes of calculating the amount of ~~attorney~~ ~~attorney's~~ fees  
608 to be taxed against the employer or carrier, the term "benefits  
609 secured" ~~includes shall be deemed to include~~ only that amount  
610 awarded ~~to the claimant~~ above the amount specified in the offer  
611 to settle. If multiple issues are pending before a ~~the~~ judge of  
612 compensation claims, ~~such said~~ offer of settlement ~~must shall~~  
613 address each issue pending and ~~shall~~ state explicitly whether or  
614 not the offer on each issue is severable. The written offer ~~must~~  
615 ~~shall~~ also unequivocally state whether or not it includes  
616 medical witness fees and expenses and all other costs associated  
617 with the claim.

618       (3) If a ~~any~~ party ~~prevails~~ ~~should prevail~~ in any  
619 proceedings before a judge of compensation claims or court,



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620 there shall be taxed against the nonprevailing party the  
621 reasonable costs of such proceedings, not to include attorney  
622 ~~attorney's~~ fees. A claimant is responsible for the payment of  
623 her or his own attorney ~~attorney's~~ fees, except that a claimant  
624 is entitled to recover attorney fees ~~an attorney's fee~~ in an  
625 amount equal to the amount provided for in subsection (1) or  
626 subsection (5) ~~(7)~~ from a carrier or employer:

627 (a) Against whom she or he successfully asserts a petition  
628 for medical benefits only, if the claimant has not filed or is  
629 not entitled to file at such time a claim for temporary or  
630 permanent disability, permanent impairment, ~~wage-loss,~~ or death  
631 benefits, arising out of the same accident;

632 (b) In a any case in which the employer or carrier files a  
633 response to petition denying benefits with the Office of the  
634 Judges of Compensation Claims and the injured person has  
635 employed an attorney in the successful prosecution of the  
636 petition;

637 (c) In a proceeding in which a carrier or employer denies  
638 that an accident occurred for which compensation benefits are  
639 payable, and the claimant prevails on the issue of  
640 compensability; or

641 (d) In cases in which ~~where~~ the claimant successfully  
642 prevails in proceedings filed under s. 440.24 or s. 440.28.

643  
644 Regardless of the date benefits are ~~were~~ initially requested,  
645 attorney ~~attorney's~~ fees do ~~shall~~ not attach under this  
646 subsection until 45 business ~~30~~ days after the date on which a  
647 ~~the carrier or employer, if self-insured, receives the petition~~  
648 that meets the definition of specificity under s. 440.02(40) and





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649 includes all items required under s. 440.192(2) is filed with  
650 the Office of the Judges of Compensation Claims. Such attorney  
651 fees do not attach unless before the petition was filed, the  
652 claimant or the claimant's attorney, if the claimant is  
653 represented by counsel, made a good faith effort to resolve the  
654 dispute as provided in s. 440.192(4).

655 ~~(4) In such cases in which the claimant is responsible for~~  
656 ~~the payment of her or his own attorney's fees, such fees are a~~  
657 ~~lien upon compensation payable to the claimant, notwithstanding~~  
658 ~~s. 440.22.~~

659 ~~(4)-(5) If any proceedings are had for review of a any~~  
660 ~~claim, award, or compensation order before any court, the court~~  
661 ~~may, at its discretion, award the injured employee or dependent~~  
662 ~~attorney fees payable an attorney's fee to be paid by the~~  
663 ~~employer or carrier if the injured employee or dependent~~  
664 ~~prevails in the proceeding. The award of attorney fees may not~~  
665 ~~exceed an hourly rate of \$150 per hour if the proceeding~~  
666 ~~occurred because the employer or carrier disputed the claim,~~  
667 ~~award, or compensation order, in its discretion, which shall be~~  
668 ~~paid as the court may direct.~~

669 ~~(6) A judge of compensation claims may not enter an order~~  
670 ~~approving the contents of a retainer agreement that permits~~  
671 ~~placing any portion of the employee's compensation into an~~  
672 ~~escrow account until benefits have been secured.~~

673 ~~(5)-(7) If attorney fees are an attorney's fee is owed under~~  
674 ~~paragraph (3) (a), the judge of compensation claims may award~~  
675 ~~approve an alternative attorney fees payable by the employer or~~  
676 ~~carrier, attorney's fee not to exceed \$1,500 and only once per~~  
677 ~~accident, based on a maximum hourly rate of \$150 per hour, if~~



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678 the judge of compensation claims expressly finds that the  
679 attorney ~~attorney's~~ fee schedule amount provided for in  
680 subsection (1), based on benefits secured, results in an  
681 effective hourly rate of less than \$150 per hour ~~fails to fairly~~  
682 ~~compensate the attorney~~ for disputed medical-only claims as  
683 provided in paragraph (3) (a) ~~and the circumstances of the~~  
684 ~~particular case warrant such action.~~ Attorney fees payable by  
685 the employer or carrier under this subsection are in lieu of,  
686 rather than in addition to, any other attorney fees available  
687 under this section.

688 Section 11. Paragraph (b) of subsection (6) of section  
689 440.491, Florida Statutes, is amended to read:

690 440.491 Reemployment of injured workers; rehabilitation.-

691 (6) TRAINING AND EDUCATION.-

692 (b) When an employee who has attained maximum medical  
693 improvement is unable to earn at least 80 percent of the  
694 compensation rate and requires training and education to obtain  
695 suitable gainful employment, the employer or carrier shall pay  
696 the employee additional training and education temporary total  
697 compensation benefits while the employee receives such training  
698 and education for a period not to exceed 26 weeks, which period  
699 may be extended for an additional 26 weeks or less, if such  
700 extended period is determined to be necessary and proper by a  
701 judge of compensation claims. The benefits provided under this  
702 paragraph are ~~shall~~ not ~~be~~ in addition to the maximum number of  
703 104 weeks as specified in s. 440.15(2) or s. 440.15(13).

704 However, a carrier or employer is not precluded from voluntarily  
705 paying additional temporary total disability compensation beyond  
706 that period. If an employee requires temporary residence at or



707 near a facility or an institution providing training and  
708 education which is located more than 50 miles away from the  
709 employee's customary residence, the reasonable cost of board,  
710 lodging, or travel must be borne by the department from the  
711 Workers' Compensation Administration Trust Fund established by  
712 s. 440.50. An employee who refuses to accept training and  
713 education that is recommended by the vocational evaluator and  
714 considered necessary by the department will forfeit any  
715 additional training and education benefits and any additional  
716 compensation ~~payment for lost wages~~ under this chapter. The  
717 carrier shall notify the injured employee of the availability of  
718 training and education benefits as specified in this chapter.  
719 The Department of Financial Services shall include information  
720 regarding the eligibility for training and education benefits in  
721 informational materials specified in ss. 440.207 and 440.40.

722 Section 12. This act shall take effect July 1, 2019.

723

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

725 And the title is amended as follows:

726 Delete everything before the enacting clause

727 and insert:

728

A bill to be entitled

729

An act relating to workers' compensation; amending s.

730

440.02, F.S.; redefining the term "specificity";

731

amending s. 440.093, F.S.; conforming a provision to

732

changes made by the act; amending s. 440.105, F.S.;

733

revising a prohibition against persons receiving

734

certain fees, consideration, or gratuities under the

735

Workers' Compensation Law; amending s. 440.11, F.S.;



736 deleting an exception from fellow-employee immunities  
737 from liability; amending s. 440.15, F.S.; increasing  
738 the maximum number of weeks of benefits payable for  
739 temporary total disability, temporary partial  
740 disability, and permanent impairment benefits;  
741 revising the timeframe under which a carrier must  
742 provide certain notice to an employee's treating  
743 doctor; specifying permanent impairment benefits  
744 payable to certain employees who have not reached  
745 overall maximum medical improvement within a certain  
746 timeframe; requiring that such impairment benefits be  
747 credited against subsequently due indemnity benefits;  
748 deleting a requirement that temporary disability  
749 benefits cease and that the injured worker's permanent  
750 impairment be determined after a certain timeframe;  
751 creating s. 440.1915, F.S.; requiring injured  
752 employees and other claimants to sign and attest to a  
753 specified statement relating to the payment of  
754 attorney fees before engaging an attorney or other  
755 representative for certain purposes; prohibiting such  
756 injured employees or claimants from proceeding with a  
757 petition for benefits, except pro se, until the  
758 signature is obtained; amending s. 440.192, F.S.;  
759 revising conditions under which a petition for  
760 benefits or portion of the petition must be dismissed  
761 by the Office of the Judges of Compensation Claims or  
762 the assigned judge of compensation claims; revising  
763 the information required in the petition; providing  
764 construction; requiring claimants and their attorneys



800706

765 to make a good faith effort to resolve the dispute  
766 before filing a petition; requiring that petitions  
767 include evidence demonstrating such good faith effort;  
768 authorizing judges of compensation claims to determine  
769 if such effort was made; requiring the judge of  
770 compensation claims to dismiss the petition, and  
771 authorizing the imposition of sanctions, if he or she  
772 finds such effort was not made; providing that certain  
773 dismissals are without prejudice; specifying  
774 timeframes within which a judge of compensation claims  
775 must enter an order on certain motions to dismiss;  
776 revising conditions under which judges of compensation  
777 claims are prohibited from awarding attorney fees;  
778 amending s. 440.20, F.S.; providing that certain  
779 settlement agreements need not be approved by the  
780 judge of compensation claims; revising the information  
781 required to be submitted by the parties to such a  
782 settlement; revising the timeframe under which a lump-  
783 sum settlement amount must be paid; amending s.  
784 440.25, F.S.; requiring a claimant's attorney, under  
785 certain circumstances and within certain timeframes,  
786 to file a specified personal attestation detailing his  
787 or her hours to date; revising the timeframe and  
788 conditions under which attorney fees attach to certain  
789 proceedings; amending s. 440.34, F.S.; authorizing  
790 judges of compensation claims to award attorney fees  
791 to claimants to be paid by the employer or carrier;  
792 specifying applicability of attorney fee provisions to  
793 attorney fees payable by employers or carriers;



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794 providing that employers and carriers are not  
795 responsible for costs unless approved by the judge of  
796 compensation claims or a court having jurisdiction;  
797 deleting a prohibition against a judge of compensation  
798 claims' approval of agreements providing for attorney  
799 fees in excess of certain amounts; requiring that  
800 retainer agreements be filed with the office;  
801 specifying requirements for attorneys of injured  
802 employees in reporting attorney fees; revising  
803 attorney fees that are a lien upon payable  
804 compensation; deleting a certain limitation on  
805 retainer agreements; specifying claimant attorney  
806 hours for which attorney fees are not payable by  
807 employers or carriers; revising circumstances under  
808 which claimants are entitled to recover attorney fees  
809 from carriers or employers; revising the timeframe and  
810 conditions under which attorney fees attach;  
811 specifying a limit on the hourly rates of certain  
812 attorney fees awarded to injured employees or  
813 dependents; specifying a condition before such  
814 attorney fees may be awarded; deleting a prohibition  
815 against a judge of compensation claims entering an  
816 order approving certain retainer agreements; revising  
817 circumstances under which a judge of compensation  
818 claims may award alternative attorney fees payable by  
819 the carrier or employer; providing construction;  
820 amending s. 440.491, F.S.; providing that an employee  
821 who refuses certain training and education forfeits  
822 any additional compensation, rather than payment for



823           lost wages; conforming a provision to changes made by  
824           the act; providing an effective date.



730644

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/01/2019	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

1           **Senate Amendment to Amendment (800706) (with title**  
2 **amendment)**

3  
4           Between lines 721 and 722  
5 insert:

6           Section 12. Paragraph (d) of subsection (1) of section  
7 440.10, Florida Statutes, is amended to read:

8           440.10 Liability for compensation.—

9           (1)

10          (d)1. If a contractor becomes liable for the payment of





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11 compensation to the employees of a subcontractor who has failed  
12 to secure such payment in violation of s. 440.38, the contractor  
13 or other third-party payor shall be entitled to recover from the  
14 subcontractor all benefits paid or payable plus interest unless  
15 the contractor and subcontractor have agreed in writing that the  
16 contractor will provide coverage.

17 2. If a contractor or third-party payor becomes liable for  
18 the payment of compensation to the corporate officer of a  
19 subcontractor who is engaged in the construction industry and  
20 has elected to be exempt from ~~the provisions of~~ this chapter,  
21 but whose election is invalid, the contractor or third-party  
22 payor may recover from the claimant or corporation all benefits  
23 paid or payable plus interest, unless the contractor and the  
24 subcontractor have agreed in writing that the contractor will  
25 provide coverage.

26 3. If a contractor and an employee leasing company are  
27 operating pursuant to an arrangement for employee leasing as  
28 defined in s. 468.520(4) and workers' compensation insurance is  
29 provided by the employee leasing company to the leased  
30 employees, a person is deemed an employee of the employee  
31 leasing company for purposes of workers' compensation insurance,  
32 unless the contractor has secured additional workers'  
33 compensation coverage applicable to the employee, upon the  
34 earliest of the following:

35 a. The hiring of the person by the contractor.

36 b. The commencement of work by the person for the  
37 contractor.

38 c. The hiring of the person directly by the employee  
39 leasing company.



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40 Section 13. Subsection (5) is added to section 468.525,  
41 Florida Statutes, to read:

42 468.525 License requirements.—

43 (5) If the client company is a contractor, the requirements  
44 of s. 440.10(1)(a) are not satisfied by the employee leasing  
45 arrangement unless the contractor has secured additional  
46 workers' compensation insurance for nonleased employees or  
47 unless the contractual arrangement provides that a person is  
48 deemed an employee of the employee leasing company for purposes  
49 of workers' compensation coverage, upon the earliest of the  
50 following:

51 (a) The hiring of the person by the client company.

52 (b) The commencement of work by the person for the client  
53 company.

54 (c) The hiring of the person directly by the employee  
55 leasing company.

56 Section 14. Present subsections (4) and (5) of section  
57 468.529, Florida Statutes, are redesignated as subsections (5)  
58 and (6), respectively, a new subsection (4) is added to that  
59 section, and subsection (1) of that section is amended, to read:

60 468.529 Licensee's insurance; employment tax; benefit  
61 plans.—

62 (1) A licensed employee leasing company is the employer of  
63 the leased employees, except that this provision is not intended  
64 to affect the determination of any issue arising under Pub. L.  
65 No. 93-406, the Employee Retirement Income Security Act, as  
66 amended from time to time. An employee leasing company shall be  
67 responsible for timely payment of reemployment assistance taxes  
68 pursuant to chapter 443, and shall be responsible for providing



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69 workers' compensation coverage pursuant to chapter 440.

70 (a) However, a ~~ne~~ licensed employee leasing company may not  
71 shall sponsor a plan of self-insurance for health benefits,  
72 except as may be permitted by the provisions of the Florida  
73 Insurance Code or, if applicable, by Pub. L. No. 93-406, the  
74 Employee Retirement Income Security Act, as amended from time to  
75 time. For purposes of this section, the term a "plan of self-  
76 insurance" excludes shall exclude any arrangement where an  
77 admitted insurance carrier has issued a policy of insurance  
78 primarily responsible for the obligations of the health plan.

79 (b) This section does not modify the statutory obligation  
80 of a client company to secure workers' compensation coverage as  
81 required under s. 440.10 for employees whom the client company  
82 does not lease pursuant to an employee leasing arrangement. A  
83 client company that is engaged in the construction industry and  
84 that is in an employee leasing arrangement shall secure and  
85 maintain separate workers' compensation insurance coverage as  
86 required under this section and s. 440.10 unless the employee  
87 leasing company and its carrier agree to provide such coverage  
88 directly to the client company, covering all persons performing  
89 work for the client company at all times, in full compliance  
90 with s. 440.10.

91 (4) During the term of an employee leasing arrangement with  
92 a contractor, if a contractor does not secure workers'  
93 compensation insurance for nonleased employees, a person is  
94 deemed an employee of the employee leasing company for purposes  
95 of workers' compensation insurance upon the earliest of the  
96 following:

97 (a) The hiring of such person by the client company.



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98           (b) The commencement of work by such person for the client  
99 company.

100           (c) The hiring of the person directly by the employee  
101 leasing company.

102           Section 15. For the purpose of incorporating the amendment  
103 made by this act to section 468.529, Florida Statutes, in a  
104 reference thereto, paragraph (g) of subsection (1) of section  
105 468.532, Florida Statutes, is reenacted to read:

106           468.532 Discipline.—

107           (1) The following constitute grounds for which disciplinary  
108 action against a licensee may be taken by the board:

109           (g) Failing to maintain workers' compensation insurance as  
110 required in s. 468.529.

111  
112 ===== T I T L E   A M E N D M E N T =====

113 And the title is amended as follows:

114           Delete line 824

115 and insert:

116           the act; amending s. 440.10, F.S.; specifying when a  
117 person is deemed an employee of an employee leasing  
118 company for workers' compensation insurance purposes  
119 under circumstances relating to the company's employee  
120 leasing arrangement with a contractor; amending s.  
121 468.525, F.S.; providing that if an employee leasing  
122 company's client company is a contractor, workers'  
123 compensation insurance requirements are not satisfied  
124 by the employee leasing arrangement unless certain  
125 conditions are met; amending s. 468.529, F.S.;

126           requiring certain client companies to maintain



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127 separate workers' compensation insurance coverage  
128 unless certain conditions are met; specifying when a  
129 person is deemed an employee of an employee leasing  
130 company for workers' compensation insurance proposes  
131 under certain circumstances; providing construction;  
132 reenacting s. 468.532(1)(g), F.S., relating to  
133 discipline, to incorporate the amendment made to s.  
134 468.529, F.S., in a reference thereto; providing an  
135 effective date.



576406

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2019	.	
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The Committee on Banking and Insurance (Broxson) recommended the following:

1           **Senate Substitute for Amendment (730644) (with title**  
2 **amendment)**

3  
4           Delete line 722  
5 and insert:

6           Section 12. Effective July 1, 2020, paragraph (d) of  
7 subsection (1) of section 440.10, Florida Statutes, is amended  
8 to read:

9           440.10 Liability for compensation.—  
10           (1)



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11 (d)1. If a contractor becomes liable for the payment of  
12 compensation to the employees of a subcontractor who has failed  
13 to secure such payment in violation of s. 440.38, the contractor  
14 or other third-party payor shall be entitled to recover from the  
15 subcontractor all benefits paid or payable plus interest unless  
16 the contractor and subcontractor have agreed in writing that the  
17 contractor will provide coverage.

18 2. If a contractor or third-party payor becomes liable for  
19 the payment of compensation to the corporate officer of a  
20 subcontractor who is engaged in the construction industry and  
21 has elected to be exempt from ~~the provisions of~~ this chapter,  
22 but whose election is invalid, the contractor or third-party  
23 payor may recover from the claimant or corporation all benefits  
24 paid or payable plus interest, unless the contractor and the  
25 subcontractor have agreed in writing that the contractor will  
26 provide coverage.

27 3. If a contractor and an employee leasing company are  
28 operating pursuant to an arrangement for employee leasing as  
29 defined in s. 468.520(4) and workers' compensation insurance is  
30 provided by the employee leasing company to the leased  
31 employees, a person is deemed an employee of the employee  
32 leasing company for purposes of workers' compensation insurance,  
33 unless the contractor has secured additional workers'  
34 compensation coverage applicable to the employee, upon the  
35 earliest of the following:

36 a. The hiring of the person by the contractor.

37 b. The commencement of work by the person for the  
38 contractor.

39 c. The hiring of the person directly by the employee



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40 leasing company.

41 Section 13. Effective July 1, 2020, subsection (5) is added  
42 to section 468.525, Florida Statutes, to read:

43 468.525 License requirements.—

44 (5) If the client company is a contractor, the requirements  
45 of s. 440.10(1)(a) are not satisfied by the employee leasing  
46 arrangement unless the contractor has secured additional  
47 workers' compensation insurance for nonleased employees or  
48 unless the contractual arrangement provides that a person is  
49 deemed an employee of the employee leasing company for purposes  
50 of workers' compensation coverage, upon the earliest of the  
51 following:

52 (a) The hiring of the person by the client company.

53 (b) The commencement of work by the person for the client  
54 company.

55 (c) The hiring of the person directly by the employee  
56 leasing company.

57 Section 14. Effective July 1, 2020, present subsections (4)  
58 and (5) of section 468.529, Florida Statutes, are redesignated  
59 as subsections (5) and (6), respectively, a new subsection (4)  
60 is added to that section, and subsection (1) of that section is  
61 amended, to read:

62 468.529 Licensee's insurance; employment tax; benefit  
63 plans.—

64 (1) A licensed employee leasing company is the employer of  
65 the leased employees, except that this provision is not intended  
66 to affect the determination of any issue arising under Pub. L.  
67 No. 93-406, the Employee Retirement Income Security Act, as  
68 amended from time to time. An employee leasing company shall be





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69 responsible for timely payment of reemployment assistance taxes  
70 pursuant to chapter 443, and shall be responsible for providing  
71 workers' compensation coverage pursuant to chapter 440.

72 (a) However, a ~~ne~~ licensed employee leasing company may not  
73 ~~shall~~ sponsor a plan of self-insurance for health benefits,  
74 except as may be permitted by ~~the provisions of~~ the Florida  
75 Insurance Code or, if applicable, by Pub. L. No. 93-406, the  
76 Employee Retirement Income Security Act, as amended from time to  
77 time. For purposes of this section, the term a "plan of self-  
78 insurance" excludes ~~shall exclude~~ any arrangement where an  
79 admitted insurance carrier has issued a policy of insurance  
80 primarily responsible for the obligations of the health plan.

81 (b) This section does not modify the statutory obligation  
82 of a client company to secure workers' compensation coverage as  
83 required under s. 440.10 for employees whom the client company  
84 does not lease pursuant to an employee leasing arrangement. A  
85 client company that is engaged in the construction industry and  
86 that is in an employee leasing arrangement shall secure and  
87 maintain separate workers' compensation insurance coverage as  
88 required under this section and s. 440.10 unless the employee  
89 leasing company and its carrier agree to provide such coverage  
90 directly to the client company, covering all persons performing  
91 work for the client company at all times, in full compliance  
92 with s. 440.10.

93 (4) During the term of an employee leasing arrangement with  
94 a contractor, if a contractor does not secure workers'  
95 compensation insurance for nonleased employees, a person is  
96 deemed an employee of the employee leasing company for purposes  
97 of workers' compensation insurance upon the earliest of the



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98 following:

99 (a) The hiring of such person by the client company.

100 (b) The commencement of work by such person for the client  
101 company.

102 (c) The hiring of the person directly by the employee  
103 leasing company.

104 Section 15. For the purpose of incorporating the amendment  
105 made by this act to section 468.529, Florida Statutes, in a  
106 reference thereto, paragraph (g) of subsection (1) of section  
107 468.532, Florida Statutes, is reenacted to read:

108 468.532 Discipline.—

109 (1) The following constitute grounds for which disciplinary  
110 action against a licensee may be taken by the board:

111 (g) Failing to maintain workers' compensation insurance as  
112 required in s. 468.529.

113 Section 16. Except as otherwise expressly provided in this  
114 act, this act shall take effect July 1, 2019.

115  
116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete line 824

119 and insert:

120 the act; amending s. 440.10, F.S.; specifying when a  
121 person is deemed an employee of an employee leasing  
122 company for workers' compensation insurance purposes  
123 under circumstances relating to the company's employee  
124 leasing arrangement with a contractor; amending s.  
125 468.525, F.S.; providing that if an employee leasing  
126 company's client company is a contractor, workers'



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127 compensation insurance requirements are not satisfied  
128 by the employee leasing arrangement unless certain  
129 conditions are met; amending s. 468.529, F.S.;  
130 requiring certain client companies to maintain  
131 separate workers' compensation insurance coverage  
132 unless certain conditions are met; specifying when a  
133 person is deemed an employee of an employee leasing  
134 company for workers' compensation insurance proposes  
135 under certain circumstances; providing construction;  
136 reenacting s. 468.532(1)(g), F.S., relating to  
137 discipline, to incorporate the amendment made to s.  
138 468.529, F.S., in a reference thereto; providing  
139 effective dates.

By Senator Perry

8-01654-19

20191636\_\_

1 A bill to be entitled  
 2 An act relating to workers' compensation; amending s.  
 3 440.02, F.S.; redefining the term "specificity";  
 4 amending s. 440.093, F.S.; conforming a provision to  
 5 changes made by the act; amending s. 440.105, F.S.;  
 6 revising a prohibition against persons receiving  
 7 certain fees, consideration, or gratuities under the  
 8 Workers' Compensation Law; amending s. 440.11, F.S.;  
 9 deleting an exception from fellow-employee immunities  
 10 from liability; amending s. 440.15, F.S.; increasing  
 11 the maximum number of weeks of benefits payable for  
 12 temporary total disability, temporary partial  
 13 disability, and temporary total disability; revising  
 14 the timeframe under which a carrier must provide  
 15 certain notice to an employee's treating doctor;  
 16 specifying permanent impairment benefits payable to  
 17 certain employees who have not reached overall maximum  
 18 medical improvement within a certain timeframe;  
 19 requiring that such impairment benefits be credited  
 20 against subsequently due indemnity benefits; deleting  
 21 a requirement that temporary disability benefits cease  
 22 and that the injured worker's permanent impairment be  
 23 determined after a certain timeframe; creating s.  
 24 440.1915, F.S.; requiring injured employees and other  
 25 claimants to sign and attest to a specified statement  
 26 relating to the payment of attorney fees before  
 27 engaging an attorney or other representative for  
 28 certain purposes; prohibiting such injured employees  
 29 or claimants from proceeding with a petition for

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

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30 benefits, except pro se, until the signature is  
 31 obtained; amending s. 440.192, F.S.; revising  
 32 conditions under which a petition for benefits or  
 33 portion of the petition must be dismissed by the  
 34 Office of the Judges of Compensation Claims or the  
 35 assigned judge of compensation claims; revising the  
 36 information required in the petition; providing  
 37 construction; requiring claimants and their attorneys  
 38 to make a good faith effort to resolve the dispute  
 39 before filing a petition; requiring that petitions  
 40 include evidence demonstrating such good faith effort;  
 41 authorizing judges of compensation claims to determine  
 42 if such effort was made; requiring the judge of  
 43 compensation claims to dismiss the petition, and  
 44 authorizing the imposition of sanctions, if he or she  
 45 finds such effort was not made; providing that certain  
 46 dismissals are without prejudice; specifying  
 47 timeframes within which a judge of compensation claims  
 48 must enter an order on certain motions to dismiss;  
 49 revising conditions under which judges of compensation  
 50 claims are prohibited from awarding attorney fees;  
 51 amending s. 440.20, F.S.; providing that certain  
 52 settlement agreements need not be approved by the  
 53 judge of compensation claims; revising the information  
 54 required to be submitted by the parties to such a  
 55 settlement; revising the timeframe under which a lump-  
 56 sum settlement amount must be paid; amending s.  
 57 440.25, F.S.; requiring that the pretrial outline  
 58 under a certain expedited dispute resolution process

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59 contain a specified personal attestation by the  
 60 claimant's attorney relating to hours to date;  
 61 revising the timeframe and conditions under which  
 62 attorney fees attach to certain proceedings; amending  
 63 s. 440.34, F.S.; authorizing judges of compensation  
 64 claims to award attorney fees to claimants to be paid  
 65 by the employer or carrier; specifying applicability  
 66 of attorney fee provisions to attorney fees payable by  
 67 employers or carriers; providing that employers and  
 68 carriers are not responsible for costs unless approved  
 69 by the judge of compensation claims or a court having  
 70 jurisdiction; deleting a prohibition against a judge  
 71 of compensation claims' approval of agreements  
 72 providing for attorney fees in excess of certain  
 73 amounts; requiring that retainer agreements be filed  
 74 with the office; specifying requirements for attorneys  
 75 of injured employees in reporting attorney fees;  
 76 revising attorney fees that are a lien upon payable  
 77 compensation; deleting a certain limitation on  
 78 retainer agreements; specifying claimant attorney  
 79 hours for which attorney fees are not payable by  
 80 employers or carriers; revising circumstances under  
 81 which claimants are entitled to recover attorney fees  
 82 from carriers or employers; revising the timeframe and  
 83 conditions under which attorney fees attach;  
 84 specifying a limit on the hourly rates of attorney  
 85 fees awarded to injured employees or dependents;  
 86 specifying a condition before such attorney fees may  
 87 be awarded; deleting a prohibition against a judge of

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88 compensation claims entering an order approving  
 89 certain retainer agreements; revising circumstances  
 90 under which a judge of compensation claims may award  
 91 alternative attorney fees payable by the carrier or  
 92 employer; providing construction; amending s. 440.491,  
 93 F.S.; providing that an employee who refuses certain  
 94 training and education forfeits any additional  
 95 compensation, rather than payment for lost wages;  
 96 conforming a provision to changes made by the act;  
 97 providing an effective date.

99 Be It Enacted by the Legislature of the State of Florida:  
 100

101 Section 1. Subsection (40) of section 440.02, Florida  
 102 Statutes, is amended to read:

103 440.02 Definitions.—When used in this chapter, unless the  
 104 context clearly requires otherwise, the following terms shall  
 105 have the following meanings:

106 (40) "Specificity," "specific," or "specifically"  
 107 "Specificity" means, for purposes of determining the adequacy of  
 108 a petition for benefits under s. 440.192, information on the  
 109 petition ~~for benefits~~ sufficient to put the employer or carrier  
 110 on notice of the exact statutory classification and outstanding  
 111 time period ~~for each requested benefit, the specific amount of~~  
 112 each requested benefit, the calculation used for computing the  
 113 specific amount of each requested benefit, and ~~of benefits being~~  
 114 requested and includes a detailed explanation of any ~~such~~  
 115 benefit ~~benefits~~ received that should be increased, decreased,  
 116 changed, or otherwise modified. If the petition is for medical

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117 benefits, the information ~~must shall~~ include specific details as  
 118 to why such benefits are being requested, including details  
 119 demonstrating that such benefits have specifically been denied  
 120 by the adjuster responsible for determining whether benefits are  
 121 payable to the claimant; why such benefits are medically  
 122 necessary; and why current treatment, if any, is not  
 123 sufficient. Any petition requesting alternate or other medical  
 124 care, including, but not limited to, petitions requesting  
 125 psychiatric or psychological treatment, must specifically  
 126 identify the physician, as defined in s. 440.13(1), who is  
 127 recommending such treatment. A copy of a report from such  
 128 physician making the recommendation for alternate or other  
 129 medical care ~~must shall~~ also be attached to the petition and  
 130 must include specific allegations and statements of fact  
 131 supporting the specific denial by the adjuster handling payment  
 132 of benefits to the injured employee. A judge of compensation  
 133 claims ~~may shall~~ not order such treatment if a physician is not  
 134 recommending such treatment.

135 Section 2. Subsection (3) of section 440.093, Florida  
 136 Statutes, is amended to read:

137 440.093 Mental and nervous injuries.—

138 (3) Subject to the payment of permanent benefits under s.  
 139 440.15, in no event shall temporary benefits for a compensable  
 140 mental or nervous injury be paid for more than 6 months after  
 141 the date of maximum medical improvement for the injured  
 142 employee's physical injury or injuries, which shall be included  
 143 in the maximum number of period of 104 weeks as provided in s.  
 144 440.15(2), and (4), and (13). Mental or nervous injuries are  
 145 compensable only in accordance with the terms of this section.

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

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20191636\_\_

146 Section 3. Paragraph (c) of subsection (3) of section  
 147 440.105, Florida Statutes, is amended to read:

148 440.105 Prohibited activities; reports; penalties;  
 149 limitations.—

150 (3) Whoever violates any provision of this subsection  
 151 commits a misdemeanor of the first degree, punishable as  
 152 provided in s. 775.082 or s. 775.083.

153 (c) Except for an attorney retained by an injured employee  
 154 and receiving a fee or other consideration from the injured  
 155 employee under contract with the injured employee, it is  
 156 unlawful for any ~~attorney or other~~ person, in his or her  
 157 individual capacity or in his or her capacity as a public or  
 158 private employee, or for any firm, corporation, partnership, or  
 159 association to receive any fee or other consideration or any  
 160 gratuity from a person on account of services rendered for a  
 161 person in connection with any proceedings arising under this  
 162 chapter, unless such fee, consideration, or gratuity is approved  
 163 by a judge of compensation claims or by the Deputy Chief Judge  
 164 of Compensation Claims.

165 Section 4. Subsection (1) of section 440.11, Florida  
 166 Statutes, is amended to read:

167 440.11 Exclusiveness of liability.—

168 (1) The liability of an employer prescribed in s. 440.10  
 169 shall be exclusive and in place of all other liability,  
 170 including vicarious liability, of such employer to any third-  
 171 party tortfeasor and to the employee, the legal representative  
 172 thereof, husband or wife, parents, dependents, next of kin, and  
 173 anyone otherwise entitled to recover damages from such employer  
 174 at law or in admiralty on account of such injury or death,

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

8-01654-19

20191636\_\_

175 except as follows:

176 (a) If an employer fails to secure payment of compensation  
 177 as required by this chapter, an injured employee, or the legal  
 178 representative thereof in case death results from the injury,  
 179 may elect to claim compensation under this chapter or to  
 180 maintain an action at law or in admiralty for damages on account  
 181 of such injury or death. In such action the defendant may not  
 182 plead as a defense that the injury was caused by negligence of a  
 183 fellow employee, that the employee assumed the risk of the  
 184 employment, or that the injury was due to the comparative  
 185 negligence of the employee.

186 (b) When an employer commits an intentional tort that  
 187 causes the injury or death of the employee. For purposes of this  
 188 paragraph, an employer's actions are ~~shall be~~ deemed to  
 189 constitute an intentional tort and not an accident only when the  
 190 employee proves, by clear and convincing evidence, that:

191 1. The employer deliberately intended to injure the  
 192 employee; or

193 2. The employer engaged in conduct that the employer knew,  
 194 based on prior similar accidents or on explicit warnings  
 195 specifically identifying a known danger, was virtually certain  
 196 to result in injury or death to the employee, and the employee  
 197 was not aware of the risk because the danger was not apparent  
 198 and the employer deliberately concealed or misrepresented the  
 199 danger so as to prevent the employee from exercising informed  
 200 judgment about whether to perform the work.

201  
 202 The same immunities from liability enjoyed by an employer shall  
 203 extend as well to each employee of the employer when such

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204 employee is acting in furtherance of the employer's business and  
 205 the injured employee is entitled to receive benefits under this  
 206 chapter. Such fellow-employee immunities ~~do not apply shall not~~  
 207 ~~be applicable~~ to an employee who acts, with respect to a fellow  
 208 employee, with willful and wanton disregard or unprovoked  
 209 physical aggression or with gross negligence when such acts  
 210 result in injury or death or such acts proximately cause such  
 211 injury or death, ~~nor shall such immunities be applicable to~~  
 212 ~~employees of the same employer when each is operating in the~~  
 213 ~~furtherance of the employer's business but they are assigned~~  
 214 ~~primarily to unrelated works within private or public~~  
 215 ~~employment.~~ The same immunity provisions enjoyed by an employer  
 216 shall also apply to any sole proprietor, partner, corporate  
 217 officer or director, supervisor, or other person who in the  
 218 course and scope of his or her duties acts in a managerial or  
 219 policymaking capacity and the conduct which caused the alleged  
 220 injury arose within the course and scope of said managerial or  
 221 policymaking duties and was not a violation of a law, whether or  
 222 not a violation was charged, for which the maximum penalty which  
 223 may be imposed does not exceed 60 days' imprisonment as set  
 224 forth in s. 775.082. The immunity from liability provided in  
 225 this subsection extends to county governments with respect to  
 226 employees of county constitutional officers whose offices are  
 227 funded by the board of county commissioners.

228 Section 5. Paragraph (a) of subsection (2), paragraph (d)  
 229 of subsection (3), paragraphs (a) and (e) of subsection (4), and  
 230 subsection (6) of section 440.15, Florida Statutes, are amended,  
 231 and subsection (13) is added to that section, to read:

232 440.15 Compensation for disability.—Compensation for

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233 disability shall be paid to the employee, subject to the limits  
 234 provided in s. 440.12(2), as follows:

235 (2) TEMPORARY TOTAL DISABILITY.—

236 (a) Subject to ~~subsections subsection~~ (7) and (13), in case  
 237 of disability total in character but temporary in quality, 66  
 238 2/3 or 66.67 percent of the average weekly wages ~~must shall~~ be  
 239 paid to the employee during the continuance thereof, ~~not to~~  
 240 ~~exceed 104 weeks~~ except as provided in this subsection, s.  
 241 440.12 s. 440.12(1), and s. 440.14 s. 440.14(3). Once the  
 242 employee reaches the maximum number of weeks allowed, or the  
 243 employee reaches overall ~~the date of~~ maximum medical  
 244 improvement, whichever occurs earlier, temporary disability  
 245 benefits ~~must shall~~ cease and the injured worker's permanent  
 246 impairment ~~must shall~~ be determined.

247 (3) PERMANENT IMPAIRMENT BENEFITS.—

248 (d) After the employee has been certified by a doctor as  
 249 having reached maximum medical improvement or 6 weeks before the  
 250 expiration of temporary benefits, whichever occurs earlier, the  
 251 certifying doctor shall evaluate the condition of the employee  
 252 and assign an impairment rating, using the impairment schedule  
 253 referred to in paragraph (b). If the certification and  
 254 evaluation are performed by a doctor other than the employee's  
 255 treating doctor, the certification and evaluation must be  
 256 submitted to the treating doctor, the employee, and the carrier  
 257 within 10 days after the evaluation. The treating doctor must  
 258 indicate to the carrier agreement or disagreement with the other  
 259 doctor's certification and evaluation.

260 1. The certifying doctor shall issue a written report to  
 261 the employee and the carrier certifying that maximum medical

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262 improvement has been reached, stating the impairment rating to  
 263 the body as a whole, and providing any other information  
 264 required by the department by rule. The carrier shall establish  
 265 an overall maximum medical improvement date and permanent  
 266 impairment rating, based upon all such reports.

267 2. Within 14 days after the carrier's knowledge of each  
 268 maximum medical improvement date and impairment rating to the  
 269 body as a whole upon which the carrier is paying benefits, the  
 270 carrier shall report such maximum medical improvement date and,  
 271 when determined, the overall maximum medical improvement date  
 272 and associated impairment rating to the department in a format  
 273 as set forth in department rule. If the employee has not been  
 274 certified as having reached overall maximum medical improvement  
 275 before the expiration of 254 98 weeks after the date temporary  
 276 disability benefits begin to accrue, the carrier shall notify  
 277 the treating doctor of the requirements of this section.

278 3. If an employee receiving benefits under subsection (2),  
 279 subsection (4), or both subsections (2) and (4) has not reached  
 280 overall maximum medical improvement before receiving the maximum  
 281 number of weeks of temporary disability benefits described in  
 282 subsection (13), the employee must receive benefits under this  
 283 subsection for an injury resulting from the accident in  
 284 accordance with the estimated impairment rating for the body as  
 285 a whole; or, if multiple injuries are sustained, in accordance  
 286 with the estimated combined impairment ratings for the body as a  
 287 whole in the 1996 Florida Uniform Permanent Impairment Rating  
 288 Schedule. Impairment benefits received under this subparagraph  
 289 must be credited against indemnity benefits subsequently due to  
 290 the employee.



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291 (4) TEMPORARY PARTIAL DISABILITY.—  
 292 (a) Subject to subsections (6), subsection (7), and (13),  
 293 in case of temporary partial disability, compensation ~~must shall~~  
 294 be equal to 80 percent of the difference between 80 percent of  
 295 the employee's average weekly wage and the salary, wages, and  
 296 other remuneration the employee is able to earn postinjury, as  
 297 compared weekly; however, weekly temporary partial disability  
 298 benefits may not exceed an amount equal to  $66 \frac{2}{3}$  or 66.67  
 299 percent of the employee's average weekly wage at the time of  
 300 accident. In order to simplify the comparison of the preinjury  
 301 average weekly wage with the salary, wages, and other  
 302 remuneration the employee is able to earn postinjury, the  
 303 department may by rule provide for payment of the initial  
 304 installment of temporary partial disability benefits to be paid  
 305 as a partial week so that payment for remaining weeks of  
 306 temporary partial disability can coincide as closely as possible  
 307 with the postinjury employer's work week. The amount determined  
 308 to be the salary, wages, and other remuneration the employee is  
 309 able to earn shall in no case be less than the sum actually  
 310 being earned by the employee, including earnings from sheltered  
 311 employment. Benefits are shall be payable under this subsection  
 312 only if overall maximum medical improvement has not been reached  
 313 and the medical conditions resulting from the accident create  
 314 restrictions on the injured employee's ability to return to  
 315 work.  
 316 (e) Subject to subsections (6), (7), and (13), such  
 317 benefits ~~must shall~~ be paid during the continuance of such  
 318 disability, ~~not to exceed a period of 104 weeks,~~ as provided by  
 319 this subsection ~~and subsection (2). Once the injured employee~~

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320 ~~reaches the maximum number of weeks, temporary disability~~  
 321 ~~benefits cease and the injured worker's permanent impairment~~  
 322 ~~must be determined.~~ If the employee is terminated from  
 323 postinjury employment based on the employee's misconduct,  
 324 temporary partial disability benefits are not payable as  
 325 provided for in this section. The department shall by rule  
 326 specify forms and procedures governing the method and time for  
 327 payment of temporary disability benefits for dates of accidents  
 328 before January 1, 1994, and for dates of accidents on or after  
 329 January 1, 1994.  
 330 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee  
 331 refuses employment suitable to the capacity thereof, offered to  
 332 or procured therefor, such employee is shall not be entitled to  
 333 any compensation at any time during the continuance of such  
 334 refusal unless at any time in the opinion of the judge of  
 335 compensation claims such refusal is justifiable. Time periods  
 336 for the payment of benefits in accordance with this section must  
 337 ~~shall~~ be counted in determining the limitation of benefits as  
 338 provided for in subsection (13) paragraphs (2)(a), (3)(c), and  
 339 ~~(4)(b).~~  
 340 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of  
 341 benefits received by an employee for temporary total disability  
 342 payable pursuant to subsection (2), temporary partial disability  
 343 payable pursuant to subsection (4), and temporary total  
 344 disability payable pursuant to s. 440.491 may not exceed 260  
 345 weeks.  
 346 Section 6. Section 440.1915, Florida Statutes, is created  
 347 to read:  
 348 440.1915 Notice regarding payment of attorney fees.—Before

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349 engaging an attorney or other representative for services  
 350 related to a petition for benefits under s. 440.192 or s.  
 351 440.25, an injured employee or any other party making a claim  
 352 for benefits under this chapter through an attorney shall attest  
 353 with his or her personal signature that he or she has reviewed,  
 354 understands, and acknowledges the following statement, which  
 355 must be in at least 14-point bold type: "THE WORKERS'  
 356 COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES.  
 357 YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO  
 358 PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN  
 359 THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN  
 360 ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE  
 361 REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF  
 362 YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE  
 363 YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION  
 364 BEFORE YOU SIGN IT." If the injured employee or other party does  
 365 not sign or refuses to sign the document attesting that he or  
 366 she has reviewed, understands, and acknowledges the statement,  
 367 the injured employee or other party making a claim under this  
 368 chapter may not proceed with a petition for benefits under s.  
 369 440.192 or s. 440.25, except pro se, until such signature is  
 370 obtained.

371 Section 7. Subsections (2), (4), (5), and (7) of section  
 372 440.192, Florida Statutes, are amended, and subsection (1) of  
 373 that section is republished, to read:

374 440.192 Procedure for resolving benefit disputes.—

375 (1) Any employee may, for any benefit that is ripe, due,  
 376 and owing, file with the Office of the Judges of Compensation  
 377 Claims a petition for benefits which meets the requirements of

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378 this section and the definition of specificity in s. 440.02. An  
 379 employee represented by an attorney shall file by electronic  
 380 means approved by the Deputy Chief Judge. An employee not  
 381 represented by an attorney may file by certified mail or by  
 382 electronic means approved by the Deputy Chief Judge. The  
 383 department shall inform employees of the location of the Office  
 384 of the Judges of Compensation Claims and the office's website  
 385 address for purposes of filing a petition for benefits. The  
 386 employee shall also serve copies of the petition for benefits by  
 387 certified mail, or by electronic means approved by the Deputy  
 388 Chief Judge, upon the employer and the employer's carrier. The  
 389 Deputy Chief Judge shall refer the petitions to the judges of  
 390 compensation claims.

391 (2) Upon receipt of a petition, the Office of the Judges of  
 392 Compensation Claims, or upon motion, the assigned judge of  
 393 compensation claims, shall review the ~~each~~ petition and shall  
 394 dismiss the ~~each~~ petition or any portion of the ~~such a~~ petition  
 395 which ~~that~~ does not comply with the requirements of this  
 396 section, does not meet the definition of specificity under s.  
 397 440.02(40), and does not ~~on its face~~ specifically identify or  
 398 itemize the following:

399 (a) The name, address, and telephone number, ~~and social~~  
 400 ~~security number~~ of the employee.

401 (b) The name, address, and telephone number of the  
 402 employer.

403 (c) A detailed description of the injury and cause of the  
 404 injury, including ~~the location of the occurrence and~~ the date or  
 405 dates of the accident and the county in this state or, if the  
 406 accident occurred outside of this state, the state where the

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407 accident occurred.

408 (d) A detailed description of the employee's job, work  
409 responsibilities, and work the employee was performing when the  
410 injury occurred.

411 (e) The specific time period for which compensation and the  
412 specific classification of compensation were not timely  
413 provided.

414 (f) The specific date of maximum medical improvement,  
415 character of disability, and specific statement of all benefits  
416 or compensation that the employee is seeking. A claim for  
417 permanent benefits must include the specific date of maximum  
418 medical improvement and the specific date on which such  
419 permanent benefits are claimed to begin.

420 (g) All specific travel costs to which the employee  
421 believes she or he is entitled, including dates of travel and  
422 purpose of travel, means of transportation, and mileage and  
423 including the date the request for mileage was filed with the  
424 carrier and a copy of the request filed with the carrier.

425 (h) Specific listing of all medical charges alleged unpaid,  
426 including the name and address of the medical provider, the  
427 amounts due, and the specific dates of treatment.

428 (i) The type or nature of treatment care or attendance  
429 sought and the justification for such treatment. If the employee  
430 is under the care of a physician for an injury identified under  
431 paragraph (c), a copy of the physician's request, authorization,  
432 or recommendation for treatment, care, or attendance must  
433 accompany the petition.

434 (j) The specific amount of compensation claimed and the  
435 methodology used the calculate the average weekly wage, if the

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436 average weekly wage calculated by the employer or carrier is  
437 disputed. There is a rebuttable presumption that the average  
438 weekly wage and corresponding compensation calculated by the  
439 employer or carrier is accurate.

440 (k) Specific explanation of any other disputed issue that a  
441 judge of compensation claims will be called to rule upon.

442 (l) The signed attestation required pursuant to s.  
443 440.1915.

444 (m) Certification and evidence of a good faith attempt to  
445 resolve the dispute pursuant to subsection (4).

446  
447 The dismissal of any petition or portion of such a petition  
448 under this subsection ~~section~~ is without prejudice and does not  
449 require a hearing.

450 (4) (a) Before filing a petition, the claimant, or if the  
451 claimant is represented by counsel, the claimant's attorney,  
452 shall make a good faith effort to resolve the dispute. The  
453 petition must include:

454 1. A certification by the claimant or, if the claimant is  
455 represented by counsel, the claimant's attorney, stating that  
456 the claimant, or attorney if the claimant is represented by  
457 counsel, has made a good faith effort to resolve the dispute and  
458 that the claimant or attorney was unable to resolve the dispute  
459 with the carrier, or the employer if self-insured; and

460 2. Evidence demonstrating such good faith attempt to  
461 resolve the dispute as described in the certification.

462 (b) If the petition is not dismissed under subsection (2),  
463 the judge of compensation claims has jurisdiction to determine,  
464 in his or her independent discretion, whether a good faith

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465 effort to resolve the dispute was made by the claimant or the  
 466 claimant's attorney. If the judge of compensation claims  
 467 determines that the claimant or the claimant's attorney did not  
 468 make a good faith effort to resolve the dispute before filing  
 469 the petition for benefits, the judge of compensation claims must  
 470 dismiss the petition and may impose sanctions to ensure  
 471 compliance with this subsection, which may include, but are not  
 472 limited to, assessment of attorney fees payable by the  
 473 claimant's attorney.

474 (5) (a) All motions to dismiss must state with particularity  
 475 the basis for the motion. The judge of compensation claims shall  
 476 enter an order upon such motions without hearing, unless good  
 477 cause for hearing is shown. Dismissal of any petition or portion  
 478 of a petition under this subsection is without prejudice.

479 (b) Upon motion that a petition or a portion of a petition  
 480 be dismissed for lack of specificity, a judge of compensation  
 481 claims shall enter an order on the motion, unless stipulated in  
 482 writing by the parties, within 10 days after the motion is  
 483 filed, or, if good cause for a hearing is shown, within 20 days  
 484 after a hearing on the motion. When any petition or portion of a  
 485 petition is dismissed for lack of specificity under this  
 486 subsection, the claimant must be allowed 20 days after the date  
 487 of the order of dismissal in which to file an amended petition.  
 488 Any grounds for dismissal for lack of specificity under this  
 489 section which are not asserted within 30 days after receipt of  
 490 the petition for benefits are thereby waived.

491 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of  
 492 compensation claims may not award attorney attorney's fees  
 493 payable by the employer or carrier for services expended or

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494 costs incurred before: prior to

495 (a) The filing of a petition that meets the definition of  
 496 specificity under s. 440.02(40) and that includes all items  
 497 required under subsection (2); or

498 (b) The claimant or the claimant's attorney, if the  
 499 claimant is represented by counsel, has made a good faith effort  
 500 to resolve the dispute does not meet the requirements of this  
 501 section.

502 Section 8. Paragraph (c) of subsection (11) of section  
 503 440.20, Florida Statutes, is amended to read:

504 440.20 Time for payment of compensation and medical bills;  
 505 penalties for late payment.—

506 (11)

507 (c) Notwithstanding s. 440.21(2), when a claimant is  
 508 represented by counsel, the claimant may waive all rights to any  
 509 and all benefits under this chapter by entering into a  
 510 settlement agreement releasing the employer and the carrier from  
 511 liability for workers' compensation benefits in exchange for a  
 512 lump-sum payment to the claimant. The settlement agreement need  
 513 not be approved ~~requires approval~~ by the judge of compensation  
 514 claims, and only as to the attorney's fees paid to the  
 515 claimant's attorney by the claimant. the parties need not submit  
 516 any information or documentation in support of the settlement,  
 517 except ~~for as needed to justify~~ the amount of the settlement and  
 518 the attorney attorney's fees and costs paid by the claimant to  
 519 the claimant's attorney. Neither the employer nor the carrier is  
 520 responsible for any attorney attorney's fees relating to the  
 521 settlement and release of claims under this section. Payment of  
 522 the lump-sum settlement amount must be made within 14 days after

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523 the date the judge of compensation claims mails the order  
 524 approving the settlement allocation's recovery of child support  
 525 arrearages under paragraph (d) attorney's fees. Any order  
 526 entered by a judge of compensation claims ~~approving the~~  
 527 ~~attorney's fees as set out in the settlement~~ under this  
 528 subsection is not considered to be an award and is not subject  
 529 to modification or review. The judge of compensation claims  
 530 shall report these settlements to the Deputy Chief Judge in  
 531 accordance with ~~the requirements set forth in~~ paragraphs (a) and  
 532 (b). Settlements entered into under this subsection are valid  
 533 and apply to all dates of accident.

534 Section 9. Paragraphs (h) and (j) of subsection (4) of  
 535 section 440.25, Florida Statutes, are amended to read:

536 440.25 Procedures for mediation and hearings.—

537 (4)

538 (h) To further expedite dispute resolution and to enhance  
 539 the self-executing features of the system, those petitions filed  
 540 in accordance with s. 440.192 that involve a claim for benefits  
 541 of \$5,000 or less ~~shall~~, in the absence of compelling evidence  
 542 to the contrary, are ~~be~~ presumed to be appropriate for expedited  
 543 resolution under this paragraph; and any other claim filed in  
 544 accordance with s. 440.192, upon the written agreement of both  
 545 parties and application by either party, may similarly be  
 546 resolved under this paragraph. A claim in a petition of \$5,000  
 547 or less for medical benefits only or a petition for  
 548 reimbursement for mileage for medical purposes must ~~shall~~, in  
 549 the absence of compelling evidence to the contrary, be resolved  
 550 through the expedited dispute resolution process provided in  
 551 this paragraph. For purposes of expedited resolution pursuant to

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552 this paragraph, the Deputy Chief Judge shall make provision by  
 553 rule or order for expedited and limited discovery and expedited  
 554 docketing in such cases. At least 15 days ~~before~~ prior to  
 555 hearing, the parties shall exchange and file with the judge of  
 556 compensation claims a pretrial outline of all issues, defenses,  
 557 and witnesses, including a personal attestation by the  
 558 claimant's attorney detailing his or her hours to date, on a  
 559 form adopted by the Deputy Chief Judge, ~~+~~ provided that, in no  
 560 ~~event shall~~ such hearing may not be held without 15 days'  
 561 written notice to all parties. The personal attestation by the  
 562 claimant's attorney must specifically allocate the hours by each  
 563 benefit claimed and account for hours relating to multiple  
 564 benefits in a manner that apportions such hours by percentage,  
 565 in whole numbers, to each benefit. No pretrial hearing shall be  
 566 held and no mediation scheduled unless requested by a party. The  
 567 judge of compensation claims shall limit all argument and  
 568 presentation of evidence at the hearing to a maximum of 30  
 569 minutes, and such hearings shall not exceed 30 minutes in  
 570 length. Neither party shall be required to be represented by  
 571 counsel. The employer or carrier may be represented by an  
 572 adjuster or other qualified representative. The employer or  
 573 carrier and any witness may appear at such hearing by telephone.  
 574 The rules of evidence shall be liberally construed in favor of  
 575 allowing introduction of evidence.

576 (j) A judge of compensation claims may not award interest  
 577 on unpaid medical bills and the amount of such bills may not be  
 578 used to calculate the amount of interest awarded. Regardless of  
 579 the date benefits are ~~were~~ initially requested, attorney  
 580 attorney's fees do not attach under this subsection until 45

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581 ~~business 30~~ days after the date on which a the carrier or self-  
 582 ~~insured employer receives the petition is filed with the Office~~  
 583 ~~of the Judges of Compensation Claims and unless the following~~  
 584 ~~conditions are met:~~

585 1. Before the petition is filed, the claimant or the  
 586 claimant's attorney, if the claimant is represented by counsel,  
 587 makes a good faith effort to resolve the dispute as provided in  
 588 s. 440.192(4); and

589 2. The petition meets the definition of specificity under  
 590 s. 440.02(40) and includes all items required under s.  
 591 440.192(2).

592 Section 10. Section 440.34, Florida Statutes, is amended to  
 593 read:

594 440.34 ~~Attorney~~ Attorney's fees; costs.-

595 (1) (a) A judge of compensation claims may award attorney  
 596 fees payable to the claimant pursuant to this section to be paid  
 597 by the employer or carrier. An employer or carrier is not  
 598 responsible for payment of a fee, gratuity, costs, or other  
 599 consideration may not be paid for a claimant in connection with  
 600 any proceedings arising under this chapter, unless approved by  
 601 the judge of compensation claims or court having jurisdiction  
 602 over such proceedings. Attorney fees payable by the employer or  
 603 carrier and ~~Any attorney's fee~~ approved by a judge of  
 604 compensation claims for benefits secured on behalf of a claimant  
 605 must equal ~~to~~ 20 percent of the first \$5,000 of the amount of  
 606 the benefits secured, 15 percent of the next \$5,000 of the  
 607 amount of the benefits secured, 10 percent of the remaining  
 608 amount of the benefits secured to be provided during the first  
 609 10 years after the date the claim is filed, and 5 percent of the

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610 benefits secured after 10 years.

611 ~~(b) A~~ The judge of compensation claims shall not approve a  
 612 compensation order, a joint stipulation for lump-sum settlement,  
 613 a stipulation or agreement between a claimant and his or her  
 614 attorney, or any other agreement related to benefits under this  
 615 chapter which provides for an attorney's fee in excess of the  
 616 amount permitted by this section. The judge of compensation  
 617 claims is not required to approve any retainer agreement between  
 618 the claimant and his or her attorney is not subject to approval  
 619 by a judge of compensation claims, but must be filed with the  
 620 Office of the Judges of Compensation Claims. An attorney  
 621 retained by an injured employee and receiving a fee or other  
 622 consideration from the injured employee under contract with the  
 623 injured employee shall report the amounts of such attorney fees  
 624 to the judge of compensation claims having jurisdiction over the  
 625 claim for benefits based on the county in which the accident  
 626 occurred; or, if the accident occurred outside of this state, to  
 627 the Deputy Chief Judge. Notwithstanding s. 440.22, attorney fees  
 628 are a lien upon compensation payable to the claimant ~~The~~  
 629 retainer agreement as to fees and costs may not be for  
 630 compensation in excess of the amount allowed under this  
 631 subsection or subsection (7).

632 (2) (a) In awarding a claimant's attorney fees payable by  
 633 the employer or carrier ~~attorney's fee,~~ a the judge of  
 634 compensation claims shall consider only those benefits secured  
 635 by the attorney. ~~An Attorney is not entitled to attorney's fees~~  
 636 are not payable by the employer or carrier for:

637 1. Representation in any issue that was ripe, due, and  
 638 owing and that reasonably could have been addressed, but was not

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639 addressed, during the pendency of other issues for the same  
 640 injury;

641 2. Claimant attorney hours reasonably related to a benefit  
 642 upon which the claimant did not prevail; or

643 3. Claimant attorney hours reasonably related to a petition  
 644 for benefits, if the judge of compensation claims determines  
 645 that the claimant or the claimant's attorney did not make a good  
 646 faith effort to resolve the dispute before filing the petition,  
 647 regardless of whether the petition is dismissed by the judge of  
 648 compensation claims, the claimant, or the claimant's attorney.

649 (b) The amount, statutory basis, and type of benefits  
 650 obtained through legal representation must ~~shall~~ be listed on  
 651 all attorney attorney's fees awarded by a the judge of  
 652 compensation claims which are payable by the employer or  
 653 carrier. For purposes of this section, the term "benefits  
 654 secured" does not include future medical benefits to be provided  
 655 on any date more than 5 years after the date the petition claim  
 656 is filed. If ~~In the event~~ an offer to settle an issue pending  
 657 before a judge of compensation claims, including attorney  
 658 attorney's fees as provided for in this section, is communicated  
 659 in writing to the claimant or the claimant's attorney at least  
 660 30 days before ~~prior to~~ the trial date on such issue, for  
 661 purposes of calculating the amount of attorney attorney's fees  
 662 to be taxed against the employer or carrier, the term "benefits  
 663 secured" includes ~~shall be deemed to include~~ only that amount  
 664 awarded ~~to the claimant~~ above the amount specified in the offer  
 665 to settle. If multiple issues are pending before a the judge of  
 666 compensation claims, such said offer of settlement must ~~shall~~  
 667 address each issue pending and ~~shall~~ state explicitly whether or

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668 not the offer on each issue is severable. The written offer must  
 669 ~~shall~~ also unequivocally state whether or not it includes  
 670 medical witness fees and expenses and all other costs associated  
 671 with the claim.

672 (3) If a any party prevails ~~should prevail~~ in any  
 673 proceedings before a judge of compensation claims or court,  
 674 there shall be taxed against the nonprevailing party the  
 675 reasonable costs of such proceedings, not to include attorney  
 676 attorney's fees. A claimant is responsible for the payment of  
 677 her or his own attorney attorney's fees, except that a claimant  
 678 is entitled to recover attorney fees ~~an attorney's fee~~ in an  
 679 amount equal to the amount provided for in subsection (1) or  
 680 subsection (5) ~~(7)~~ from a carrier or employer:

681 (a) Against whom she or he successfully asserts a petition  
 682 for medical benefits only, if the claimant has not filed or is  
 683 not entitled to file at such time a claim for temporary or  
 684 permanent disability, ~~permanent impairment, wage loss, or death~~  
 685 benefits, arising out of the same accident;

686 (b) In a any case in which the employer or carrier files a  
 687 response to petition denying benefits with the Office of the  
 688 Judges of Compensation Claims and the injured person has  
 689 employed an attorney in the successful prosecution of the  
 690 petition;

691 (c) In a proceeding in which a carrier or employer denies  
 692 that an accident occurred for which compensation benefits are  
 693 payable, and the claimant prevails on the issue of  
 694 compensability; or

695 (d) In cases in which ~~where~~ the claimant successfully  
 696 prevails in proceedings filed under s. 440.24 or s. 440.28.

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697  
698 Regardless of the date benefits are ~~were~~ initially requested,  
699 attorney attorney's fees do shall not attach under this  
700 subsection until 45 business 30 days after the date on which a  
701 the carrier or employer, if self insured, receives the petition  
702 that meets the definition of specificity under s. 440.02(40) and  
703 includes all items required under s. 440.192(2) is filed with  
704 the Office of the Judges of Compensation Claims. Such attorney  
705 fees do not attach unless before the petition was filed, the  
706 claimant or the claimant's attorney, if the claimant is  
707 represented by counsel, made a good faith effort to resolve the  
708 dispute as provided in s. 440.192(4).

709 ~~(4) In such cases in which the claimant is responsible for~~  
710 ~~the payment of her or his own attorney's fees, such fees are a~~  
711 ~~lien upon compensation payable to the claimant, notwithstanding~~  
712 ~~s. 440.22.~~

713 (4)(5) If any proceedings are had for review of a any  
714 claim, award, or compensation order before any court, the court  
715 may, at its discretion, award the injured employee or dependent  
716 attorney fees payable an attorney's fee to be paid by the  
717 employer or carrier, not to exceed an hourly rate of \$150 per  
718 hour, but only if the employer or carrier disputes the claim,  
719 award, or compensation order and the injured employee or  
720 dependent prevails in the dispute in its discretion, which shall  
721 be paid as the court may direct.

722 ~~(6) A judge of compensation claims may not enter an order~~  
723 ~~approving the contents of a retainer agreement that permits~~  
724 ~~placing any portion of the employee's compensation into an~~  
725 ~~eserow account until benefits have been secured.~~

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726 (5)(7) If attorney fees are an attorney's fee is owed under  
727 paragraph (3) (a), the judge of compensation claims may award  
728 ~~approve an alternative attorney fees payable by the employer or~~  
729 ~~carrier, attorney's fee~~ not to exceed \$1,500 and only once per  
730 ~~accident,~~ based on a maximum hourly rate of \$150 per hour, if  
731 the judge of compensation claims expressly finds that the  
732 attorney attorney's fee schedule amount provided for in  
733 subsection (1), based on benefits secured, results in an  
734 effective hourly rate of less than \$150 per hour fails to fairly  
735 ~~compensate the attorney for disputed medical-only claims as~~  
736 ~~provided in paragraph (3) (a) and the circumstances of the~~  
737 ~~particular case warrant such action. Attorney fees payable by~~  
738 ~~the employer or carrier under this subsection are in lieu of,~~  
739 ~~rather than in addition to, any other attorney fees available~~  
740 ~~under this section.~~

741 Section 11. Paragraph (b) of subsection (6) of section  
742 440.491, Florida Statutes, is amended to read:

743 440.491 Reemployment of injured workers; rehabilitation.—

744 (6) TRAINING AND EDUCATION.—

745 (b) When an employee who has attained maximum medical  
746 improvement is unable to earn at least 80 percent of the  
747 compensation rate and requires training and education to obtain  
748 suitable gainful employment, the employer or carrier shall pay  
749 the employee additional training and education temporary total  
750 compensation benefits while the employee receives such training  
751 and education for a period not to exceed 26 weeks, which period  
752 may be extended for an additional 26 weeks or less, if such  
753 extended period is determined to be necessary and proper by a  
754 judge of compensation claims. The benefits provided under this



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755 paragraph are ~~shall~~ not be in addition to the maximum number of  
756 ~~44~~ weeks as specified in s. 440.15(2) or s. 440.15(13).  
757 However, a carrier or employer is not precluded from voluntarily  
758 paying additional temporary total disability compensation beyond  
759 that period. If an employee requires temporary residence at or  
760 near a facility or an institution providing training and  
761 education which is located more than 50 miles away from the  
762 employee's customary residence, the reasonable cost of board,  
763 lodging, or travel must be borne by the department from the  
764 Workers' Compensation Administration Trust Fund established by  
765 s. 440.50. An employee who refuses to accept training and  
766 education that is recommended by the vocational evaluator and  
767 considered necessary by the department will forfeit any  
768 additional training and education benefits and any additional  
769 compensation ~~payment for lost wages~~ under this chapter. The  
770 carrier shall notify the injured employee of the availability of  
771 training and education benefits as specified in this chapter.  
772 The Department of Financial Services shall include information  
773 regarding the eligibility for training and education benefits in  
774 informational materials specified in ss. 440.207 and 440.40.  
775 Section 12. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Doug Broxson, Chair  
Committee on Banking and Insurance

**Subject:** Committee Agenda Request

**Date:** March 14, 2019

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I respectfully request that **Senate Bill #1636**, relating to Workers Compensation, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

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Senator Keith Perry  
Florida Senate, District 8

# CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Banking and Insurance Committee

Judge:

Started: 4/1/2019 4:06:21 PM

Ends: 4/1/2019 5:54:31 PM Length: 01:48:11

4:06:20 PM Meeting called to order  
4:06:21 PM  
4:06:25 PM Roll call  
4:06:29 PM Quorum is present  
4:06:51 PM Tab 7 SB 1636  
4:07:23 PM Senator Perry recognized  
4:07:31 PM Take up delete all amendment 800706 for SB 1636  
4:09:24 PM Amendment 800706 is explained  
4:12:58 PM Chair Broxson recognizes Senator Gruters who makes motion time certain to vote at 4:50  
4:13:26 PM Senator Taddeo with question  
4:13:35 PM Senator Perry with answer  
4:14:03 PM Senator Taddeo with follow up question  
4:14:16 PM Senator Perry responds  
4:15:08 PM Follow up by Senator Taddeo  
4:15:37 PM Senator Perry responds on question  
4:15:51 PM Senator Taddeo with 2 more questions  
4:16:18 PM Senator Perry answers on question concerning cap  
4:17:31 PM Senator Taddeo with question  
4:17:41 PM Senator Perry - explains problems in current situation  
4:19:36 PM Chair takes up amendment by Senator Brandes 730644  
4:20:04 PM Chair Broxson passes the gavel to Vice Chair Rousson  
4:20:38 PM Senator Broxson explains the late filed amendment 576406  
4:21:16 PM No questions  
4:21:26 PM Appearance forms- limit speakers to 2 minutes  
4:21:37 PM Logan McFaddin Regional Manager APCIA American Property Casualty Insurance Association in support  
4:21:44 PM Brewster Bevis Senior Vice President Associated Industries of FL in support for Associated Industries of Florida  
4:21:51 PM Slater Bayliss FL Carpenters Union Tallahassee in support  
4:21:59 PM Kari Hebrank Florida Home Builders NUCA of FL in support  
4:22:05 PM David Daniel Florida Association of Professional Employer Organizations against  
4:22:11 PM Slater Bayliss the Florida Carpenters Council in support  
4:22:16 PM Cam Fentriss Legislative Counsel FLA Roofing & Sheet Metal Contractors in support on A 800706  
4:22:23 PM Kyle Ulrich SVP FL Association of Insurance Agents in support  
4:22:34 PM Cam Fentriss SRA waive in support on A730644  
4:22:46 PM Carol Bowen in support  
4:22:57 PM Kim Fernandez in support  
4:24:55 PM Buddy Dewar Fire Sprinkler Association in support of A800706 and A730644  
4:25:56 PM Questions  
4:30:33 PM Discussion with Senator Lee  
4:30:54 PM Senator Broxson question  
4:31:13 PM Response  
4:31:35 PM Senator Lee with further questions  
4:33:45 PM FL Association PEOs - Turben Madsen against  
4:37:02 PM Kim Fernandes FI Justice Reform Institute on A730644  
4:37:43 PM Senator Broxson waives close  
4:37:57 PM A 576406 is adopted  
4:38:32 PM Any questions on bill as amended  
4:38:42 PM No appearance cards  
4:39:03 PM A800706 - is adopted  
4:39:28 PM A800706 - is adopted  
4:39:29 PM Amy Datz retired is against SB 1636  
4:39:38 PM Kim Simpson retiree from Umatuilla FL is against

**4:39:39 PM** Richard Haynes MEO, of Dunnellon FL is against  
**4:40:23 PM** Kim Syfrett Attorney Panama City FL of Florida Workers Advocates is against  
**4:41:34 PM** Richard Chait Attorney of Coral Gables for Florida Justice Association FTA is against  
**4:42:53 PM** Paul Anderson Attorney of Tallahassee for W/C Section of the Florida Bar is against  
**4:44:46 PM** Karen Phillips General Counsel of Tallahassee for Florida United Businesses Association in support  
**4:44:53 PM** Dr. Richard Templin of Tallahassee FL for Florida AFL\_CIO is against  
**4:46:19 PM** James Jones Sheet metal Worker of Jacksonville FL for self is against  
**4:47:26 PM** Rony Carballo Industrial Painter of Boca Raton for self is against  
**4:47:34 PM** Senator Rousson request motion to extend the time certain for 5 more minutes  
**4:47:35 PM** Discussion  
**4:47:35 PM** Discussion  
**4:47:37 PM** Robert Chandler Medium Equipment Operator MEO for self is against  
**4:47:42 PM** Jeremiah Tattersall Field Staff of Gainesville FL for self is against  
**4:47:57 PM** Nancy Stephens Florida Building Materials Association in support  
**4:48:04 PM** Amanda Bowen Executive Director for Manufacturers' Association of Florida is in support  
**4:48:06 PM** Samantha Padgett General Counsel of Tallahassee for FL Restaurant & Lodging Association in support  
**4:48:09 PM** Carolyn Johnson Policy Director of Tallahassee FL for FL Chamber of Commerce in support  
**4:48:12 PM** Bill Hesse Exec Director of Tallahassee FL for National Federation of Independent Business in support  
**4:48:14 PM** David Langham Deputy Chief Judge of Pensacola FL for State Office of Judges of Compensation Claims  
with information  
**4:48:21 PM** Nancy Stephens Florida Poultry Federation in support  
**4:48:37 PM** Donald Persson Algebra Teacher of West Palm Beach FL is against  
**4:48:41 PM** Anthony Marciano Sergeant of Sherriff's Offices Boca Raton FL is against  
**4:48:53 PM** Belinda Davis Bus Operator of Delray Beach FL is against  
**4:49:12 PM** Phil Ceculli Deputy Sheriff of Royal Palm Beach FL is against  
**4:49:16 PM** Jake Farmer Director of Gov Affairs of Tallahassee FL for Florida Retail Federation is in support  
**4:49:21 PM** Thomas Koval FCCI Insurance Group of Sarasota FL in support  
**4:50:12 PM** Question for David Langham  
**4:50:59 PM** response  
**4:51:41 PM** Sen Thurston with question  
**4:51:46 PM** Brewster Bevis Senior Vice President of Tallahassee for Associated Industries of Florida in support  
**4:52:20 PM** Tom Koval of Sarasota FL for FCCI Insurance Group in support  
**4:52:24 PM** Logan Mcfaddin Regional Manager of Tallahassee FL APCIA / Kim Fernandes Florida Justice Reform  
Institute both in support  
**4:52:27 PM** Megan Flocken teacher, of Tampa FL is against  
**4:52:39 PM** Nema Daghbandan America Association for Private Lenders./ Brittini Wegmann Teacher of Tampa is  
against  
**4:52:50 PM** JB Clark Lobbyist of Tallahassee FL for FL Electrical Workers Association is against  
**4:52:58 PM** Kari Hebrank Florida Home Builders NUCA of FL / Gary Guzzo Lobbyist of Tallahassee Florida Insurance  
Council both in support  
**4:52:59 PM** Emily McQuaig Teacher of Plant City FL /Johnny Rugana of Miami /Fran Aceveda Bus Operator WP  
Beach all are against/  
**4:53:22 PM** No debate  
**4:53:25 PM** One minute before time to vote  
**4:53:39 PM** Senator Perry closes on bill SB1636  
**4:54:48 PM** Senator Perry moves to TP SB 1636  
**4:54:55 PM** Tab 1 by Senator Lee SB 1052  
**4:55:38 PM** Senator Lee explains the bill  
**4:58:18 PM** Questions on SB 1052  
**4:59:21 PM** Senator Rousson motion for vote at time certain 5:30 pm  
**4:59:42 PM** Joe Kissane FL Justice Reform Institute in opposition  
**5:02:10 PM** Question by Senator Lee  
**5:02:21 PM** Mr. Kissane answers  
**5:03:15 PM** Senator Lee further comments  
**5:03:27 PM** Joe Kissane responds  
**5:03:37 PM** Michael Carlson the Personal Insurance Federation of FL Inc. information  
**5:06:15 PM** Kim Driggers of FL Chiropractic Association in opposition  
**5:08:09 PM** Question from Senator Lee  
**5:09:11 PM** Response from Kim Driggers  
**5:09:40 PM** Senator Lee further question  
**5:09:53 PM** Kim Driggers in response  
**5:10:09 PM** Senator Lee with question

5:10:13 PM Kim Driggers response  
5:10:51 PM Senator Lee concludes  
5:11:03 PM Paul Jess Florida Justice Association of Tallahassee FL  
5:11:21 PM Mr. Jess is in support  
5:17:30 PM Senator Rousson requests confirmation of time certain motion: was it adopted?  
5:18:29 PM Chair Broxson declares that without objection the time certain to vote is adopted at 5:30  
5:19:03 PM Senator Broxson with question  
5:19:23 PM Mr. Jess with response  
5:20:48 PM Cathy or Carly (?) Hermanson- Regional Council of Largo FL Allstate Insurance Company is against  
5:21:00 PM Allstate Insurance Company of Largo FL is against  
5:21:08 PM Evelyn Ray-Rogers Jacksonville FL in support Ray-Rogers Insurance  
5:23:17 PM Senator Thurston with comment  
5:24:01 PM Committee now In debate  
5:24:10 PM Senator Brandes in opposition  
5:25:29 PM Senator Lee in close of the bill  
5:25:51 PM Roll call on SB 1052  
5:26:59 PM SB 1052 is found favorable and passes  
5:27:24 PM Tab 3 Senator Gruters to present SB 1252  
5:27:40 PM Senator Gruters explains the bill  
5:27:51 PM Amendment 337902  
5:28:23 PM Justin Thames Director of Governmental Affairs of FL Institute of CPAs in support of A337902  
5:28:34 PM the amendment is adopted. Back on the bill  
5:28:40 PM Justin Thames in support of the bill Florida Institute of the CPA  
5:28:40 PM No questions. One appearance card  
5:28:46 PM No debate  
5:28:48 PM Senator Thurston waives his close  
5:28:53 PM Roll call on SB 1252  
5:28:59 PM SB1252 is found favorable and is passed  
5:29:43 PM Tab 6 Senator Taddeo on SB 1632  
5:29:57 PM Senator Taddeo explains the bill  
5:30:35 PM Questions?  
5:31:34 PM Senator Brandes with question  
5:32:05 PM Senator Taddeo responds  
5:32:10 PM Senator Brandes with further question  
5:32:27 PM Senator Taddeo in response  
5:33:06 PM Senator Brandes with question  
5:33:12 PM Senator Taddeo in answer  
5:33:21 PM Senator Lee in comment of the bill  
5:34:15 PM Senator Taddeo explains with example  
5:34:44 PM Public Testimony  
5:35:32 PM Nemo Dagbandan American Association of Private Lenders against the bill  
5:38:40 PM John Constantine Real Estate Investor against the bill/ Robert Parker Private Mortgage Lender from Sarasota FL is against  
5:39:42 PM Edwin D Epperson President of Vertical Fund Management from Tampa FL against  
5:42:04 PM Senator Taddeo makes motion to Temporarily Postponed the bill (TP) SB 1632/ Motion is adopted  
5:42:30 PM Motion by Chair to also TP SB 1560  
5:42:51 PM Take up Tab 2 -Senator Baxley on SB 1208  
5:43:08 PM No questions  
5:43:57 PM Appearance Forms  
5:44:11 PM Steven Popilek Board Member FABA Florida Aviator Business Association in support  
5:44:14 PM Senator Baxley waives close  
5:44:20 PM Roll Call on SB 1208  
5:44:26 PM SB 1208 is found favorable  
5:44:41 PM Tab 4 SB 1466 by Senator Gibson is unable to introduce the bill  
5:45:17 PM Chair Broxson request C0-sponsor Senator Rousson to explain the Bill SB 1466  
5:46:08 PM Take up Amendment Delete all A560182  
5:47:07 PM Amendment is explained by Senator Rousson  
5:47:18 PM Public Testimony  
5:47:22 PM Sean Stafford of Florida Security Dealers Association Financial Services Institute waives in support  
5:47:44 PM Sam Boone of Gainesville for Academy of Florida Elder Law Attorneys and Elder Law Section/ Florida Bar in opposition to the bill in current draft  
5:48:54 PM Melissa Acayan Compliance Counsel, Senior's At Risk Raymond James; for FSDA in support

**5:51:11 PM** Question from Senator Lee  
**5:52:00 PM** No debate  
**5:52:10 PM** Senator Rousson waives close  
**5:52:17 PM** Amendment 560182 is adopted  
**5:52:36 PM** Back on the Bill. Appearance: Jared Ross SVP of Government Affairs for Florida Credit Union Association  
in support  
**5:52:42 PM** Courtney Larkin Assistant of VP of GR, Florida Banker Association Tallahassee / Brian Sullivan Director  
of State Affairs Alzheimer's Association / Dorene Barker Associate State Director of AARP all in support  
**5:52:53 PM** Alan Williams NAIFA in opposition / Warren Husband Securities Industry and Financial Markets  
Association in support  
**5:53:02 PM** Charlie Fitzgerald Financial Planner of Financial Planner Association of FL, Orlando FL in support  
**5:53:58 PM** Roll call on SB 1466. The bill is found favorable  
**5:54:14 PM** No further business before the committee; Senator Rousson moves we adjourn the meeting. The meeting  
is adjourned