

Tab 1	SB 116 by Cruz (CO-INTRODUCERS) Stewart, Berman; (Identical to H 00107) Prescription Insulin Drugs					
257496	A	S		BI, Cruz	btw L.57 - 58:	12/09 11:16 AM

Tab 2	CS/SB 140 by CA, Hutson (CO-INTRODUCERS) Bradley; (Compare to CS/CS/H 00065) Fireworks					
726310	A	S	RCS	BI, Hutson	Delete L.20:	12/10 04:35 PM

Tab 3	SB 312 by Stewart (CO-INTRODUCERS) Thurston; (Similar to H 00169) Motor Vehicle Insurance Coverage for Windshield Glass					
199336	D	S	WD	BI, Stewart	Delete everything after	12/11 09:15 AM
880470	AA	S	WD	BI, Brandes	btw L.151 - 152:	12/11 09:15 AM
907190	D	S	UNFAV	BI, Stewart	Delete everything after	12/11 09:15 AM
423096	AA	S	L UNFAV	BI, Brandes	btw L.153 - 154:	12/11 09:15 AM
504718	A	S	FAV	BI, Brandes	btw L.75 - 76:	12/11 09:15 AM

Tab 4	SPB 7014 by BI; OGSR/Payment Instrument Transaction Information/Office of Financial Regulation					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, December 10, 2019
TIME: 2:00—4:00 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	SB 116 Cruz (Identical H 107, H 109)	Prescription Insulin Drugs; Defining the term "prescription insulin drug"; requiring individual and group health insurance policies, respectively, to cap an insured's monthly cost-sharing obligation for covered prescription insulin drugs at a specified amount; requiring health maintenance contracts to cap a subscriber's monthly cost-sharing obligation for covered prescription insulin drugs at a specified amount, etc. BI 12/10/2019 Temporarily Postponed AEG AP	Temporarily Postponed
2	CS/SB 140 Community Affairs / Hutson (Compare CS/H 65)	Fireworks; Defining the term "designated holiday"; providing an exemption for the use of fireworks solely and exclusively during a designated holiday, etc. CA 11/04/2019 Fav/CS BI 12/10/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
3	SB 312 Stewart (Similar H 169)	Motor Vehicle Insurance Coverage for Windshield Glass; Prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons, etc. BI 11/12/2019 Temporarily Postponed BI 12/10/2019 Unfavorable CM RC	Unfavorable Yeas 4 Nays 4
Consideration of proposed bill:			
4	SPB 7014	OGSR/Payment Instrument Transaction Information/Office of Financial Regulation; Amending a provision relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, December 10, 2019, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 116

INTRODUCER: Senator Cruz and others

SUBJECT: Prescription Insulin Drugs

DATE: December 9, 2019

REVISED: _____

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

I. Summary:

SB 116 requires individual and group health insurance policies and health maintenance organization (HMO) contracts that provide coverage for prescription insulin drugs to cap the cost sharing of a 30-day supply of such drugs for the treatment of diabetes at an amount not to exceed \$100.

Diabetes is a chronic disease caused by the body's inability to create enough insulin or properly use the insulin it produces to break down glucose (blood sugar) to use as energy for the body.¹ Most of the food that is eaten is turned into glucose, or sugar, for the body to use for energy. Typically, the body produces insulin, a hormone, which helps the body use glucose for energy. An individual with diabetes may not be able to use its own insulin or produce enough insulin. This may cause sugars to build up in the blood, which puts an individual at risk of dangerous complications. When the body cannot respond to insulin or does not make enough insulin, insulin is taken by injection or other means.²

The average list price of insulin nearly tripled between 2002 and 2013.³ Currently, cost sharing or out-of-pocket costs of prescription insulin for insureds or subscribers can vary due to different benefit designs and cost sharing requirements, which includes copayment, coinsurance, and deductible requirements. Due to significant increases in the cost of insulin, many patients with diabetes are going without insulin or rationing their doses, which may place an individual at risk for serious health complications. Diabetes is the seventh leading cause of death in the United States.⁴

¹ See Centers for Disease Control and Prevention, *Diabetes Glossary*, <https://www.cdc.gov/diabetes/library/glossary.html#> and <https://www.cdc.gov/diabetes/pdfs/library/socialmedia/diabetes-infographic.pdf> (last viewed Dec. 2, 2019).

² *Id.*

³ *Diabetes Care* 2018:41:1299.

⁴ Centers for Disease Control and Prevention, *What is diabetes?* <https://www.cdc.gov/media/presskits/aahd/diabetes.pdf> (last viewed Dec. 2, 2019).

The Department of Management Services estimates that implementation of the bill will result in a fiscal impact in the range of \$14,000 to \$17,500 per year on the State Group Insurance program.

II. Present Situation:

Diabetes is a condition resulting from the body's inability to use blood glucose for energy.⁵ In Florida, approximately 13.1 percent of the adult population, or 2.4 million people, have diabetes.⁶ Every year, an estimated 105,000 people in Florida are diagnosed with diabetes.⁷

Type 1 and Type 2 diabetes are the two main types of diabetes.⁸ Type 1 diabetes occurs when an individual does not produce enough insulin to enable blood sugar to enter cells for energy. Type 1 diabetes develops most often in young people but can appear in adults. About 5 percent of the people who have diabetes have Type 1. Type 2 diabetes is characterized by high blood glucose levels caused by either a lack of insulin or the body's inability to use insulin efficiently. Type 2 diabetes develops most often in middle-aged and older adults but can appear in children, teens, and young people. About 90 percent of people with diabetes have Type 2.

Access to adequate and affordable health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have diabetes or other chronic conditions with the potential to cause death, disability, or serious side effects unless treated with the most appropriate medical care in a timely manner. In recent years, the federal government has approved many innovative treatments for chronic conditions that affect large populations. Some of the benefits of these innovative drugs include fewer side effects, convenience, and greater efficacy.⁹ However, the financial burden resulting from out-of-pocket drug costs can lead patients with chronic illnesses to forgo or ration prescribed drugs, ultimately affecting their health. People who have diabetes are at higher risk of serious health complications, such as death, blindness, kidney failure, heart disease, stroke, or loss of toes, feet, or legs.¹⁰

⁵ Centers for Disease Control and Prevention, *Diabetes Glossary*, <https://www.cdc.gov/diabetes/library/glossary.html#> (last viewed Dec. 2, 2019).

⁶ American Diabetes Association, *The Burden of Diabetes in Florida*, <http://main.diabetes.org/dorg/PDFs/Advocacy/burden-of-diabetes/all-states.pdf> (last viewed Dec. 2, 2019).

⁷ *Id.*

⁸ *See About Diabetes, Types of Diabetes*, Centers for Disease Control, <https://www.cdc.gov/diabetes/basics/index.html>. (last viewed Dec. 2, 2019). In addition, to Type 1 and Type 2 Diabetes, gestational diabetes may develop in pregnant women who have never had diabetes. Gestational diabetes usually goes away after childbirth, but increases the mother's risk for Type 2 diabetes later in life.

⁹ *See* HEALTH AFFAIRS 35, No. 9 (2016):1595-1603.

¹⁰ *See supra* note 3 at 1299 and 1306. An example was provided of an individual with Type 1 diabetes who required four vials of insulin at a monthly out-of-pocket cost of \$1,948 until the family meets the health plan's deductible. The individual began skipping insulin doses due to the high monthly cost, and suffered health complications.

Trends in Projected National Health Expenditures 2018-2027¹¹

In 2019, private health insurance spending is expected to increase by 3.3 percent. This trend is the net effect of faster spending growth in many services such as physician and clinical services and prescription drugs. In 2019, prescription drug spending growth is projected to increase by 4.6 percent, due to faster utilization growth from both existing and new drugs, as well as a modest increase in drug price growth. For the remainder of the projection, 2020-27, prescription drug spending is expected to grow by 6.1 percent per year on average, influenced by higher use anticipated from new drugs and efforts by employers and insurers that encourage patients with chronic conditions to treat their disease.

Cost of Insulin

Recent reports note the significant increase in the cost of insulin. One study found that the average list price of insulin has nearly tripled between 2002 and 2013.¹² Another study, which looked at Type 1 diabetes, noted a rapid increase in total health care spending, driven primarily by gross spending on insulin that doubled over the period. During that time, insulin use rose only modestly. While the composition of insulins used shifted, the price of all types of insulin and insulin products increased, with point-of-sale prices roughly doubling on average between 2012 and 2016. The study concluded that increases in insulin spending were driven primarily by increases in insulin prices, and to a lesser extent, a shift towards use of more expensive products.¹³

According to a recent workgroup of the American Diabetes Association, reasons for this price increase "...are not entirely clear but are due to the complexity of drug pricing and of insulin pricing in particular." The workgroup noted that many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved in multiple payment and distribution transactions within the supply chain for insulin. Currently, Eli Lilly, Novo Nordisk, and Sanofi are the three insulin drug manufacturers serving the United States.¹⁴

¹¹ See National Health Expenditure Projections 2018-2027, Forecast Summary, The Office of the Actuary in the Centers for Medicare & Medicaid Services, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf> (last viewed Nov. 20, 2019).

¹² See *supra* note 3, at 1299.

¹³ Health Care Cost Institute, *Price of Insulin Prescription Doubled Between 2012 and 2016*. (2017), <https://healthcostinstitute.org/research/publications/entry/spending-on-individuals-with-type-1-diabetes-and-the-role-of-rapidly-increasing-insulin-prices> (last viewed Dec. 2, 2019). The report did not have information on manufacturer rebates or coupons for insulin, because this information is proprietary and not publicly available. The report measured gross spending using the point-of-sale prices that are reported on a claim for a prescription drug. Rebates and coupons result in lower net spending (for both payers and patients).

¹⁴ See *supra* note 3, at 1300.

Federal Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (PPACA)¹⁵ requires health insurers and HMOs to make specified coverage available to all individuals, without exclusions for preexisting conditions, and mandates coverage of ten essential health benefits,¹⁶ including prescription drugs, for qualified health plans.

The PPACA prescribes maximum out-of-pocket limits for cost sharing by insureds or subscribers who purchase qualified health plans.¹⁷ The minimum annual deductible is the amount that an individual must pay for medical expenses before the plan will pay any medical costs. The maximum out of pocket cost is the total amount (deductibles, copayments, and coinsurance) an individual must pay for covered services during a plan year. A high-deductible health plan (HDHP) has a higher annual deductible than typical health plans offered by insurers or HMOs, and a maximum limit on the sum of the annual deductible and out-of-pocket medical expenses that an insured or subscriber must pay for covered expenses.¹⁸

Status of Insulin Copayment Cap Legislation in Other States

On May 22, 2019, the governor of Colorado signed legislation that requires an insurer or HMO, which provides coverage for prescription insulin drugs, to cap the maximum amount that an insured or subscriber is required to pay at \$100 per 30-day supply of insulin.¹⁹ This cap applies regardless of the amount or type of insulin needed to fill the prescription. However, this law would not preclude an insurer or HMO from capping the cost sharing at less than \$100 per 30-day supply.

In November 2019, similar legislation passed both houses of the Illinois Legislature.²⁰ The act requires an insurer or HMO, which provides coverage for prescription insulin drugs, to limit the total amount an insured is required to pay for a covered prescription insulin drug to \$100 per 30-day supply of insulin regardless of the type and amount of insulin needed by the insured. The act also provides an annual cost adjustment increase to this cap based on the percentage change from

¹⁵ The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on Mar. 30, 2010.

¹⁶ 42 U.S.C. s. 18022.

¹⁷ For the 2020 plan year, the out-of-pocket limit for a Marketplace plan or qualified health plan is \$8,200 for an individual plan and \$16,400 for a family plan. See Health.gov, Glossary, <https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/> (last viewed Dec. 1, 2019).

¹⁸ For 2020, a high deductible health plan (HDHP) is defined as any plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family. An HDHP's total yearly out-of-pocket expenses (including deductibles, copayments, and coinsurance) may not exceed \$6,900 for an individual or \$13,800 for a family. See Health.gov, *High Deductible Plan*, <https://www.healthcare.gov/high-deductible-health-plan/> (last viewed Dec. 1, 2019).

¹⁹ House Bill 19-1216, Session Law Ch. 248, https://leg.colorado.gov/sites/default/files/2019a_1216_signed.pdf (last viewed Dec. 2, 2019).

²⁰ SB 667, 101st General Assembly of Illinois.

the preceding year in the medical care component of the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor.²¹

The Florida Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of life, health, property, and casualty insurers, health maintenance organizations (HMOs), and other risk-bearing entities.²²

State Group Health Insurance Program

The Department of Management Services (DMS) Division of State Group Insurance (DSGI) administers the state group health insurance program under a cafeteria plan consistent with s. 125 of the Internal Revenue Code.²³ To administer the state group health insurance program, the DMS contracts with third party administrators for self-insured health plans, fully insured HMOs, and a pharmacy benefits manager (PBM) for the state employees' Self-Insured Prescription Drug Program (Prescription Drug Program).²⁴

The Prescription Drug Program provides the following four dispensing options: participating 30-day retail pharmacies, participating 90-day retail pharmacies, the PBM's mail-order pharmacies, and the PBM's specialty pharmacies. Specialty drugs, as defined by the PBM, are dispensed by the PBM's specialty pharmacies pursuant to the state contract and plan benefit documents. The Prescription Drug Program covers all federal legend drugs (open formulary) for covered medical conditions and employs very limited utilization review and clinical review for traditional or specialty prescription drugs.²⁵ Copayments (and coinsurance for high deductible plans) for each drug tier are the same for all members.

III. Effect of Proposed Changes:

Sections 1 and 2 create s. 627.64085, F.S., and s. 637.65746, F.S., respectively, to require an individual or group health insurance policy, which provides coverage for prescription insulin drugs, to cap the total amount of cost sharing that an insured is required to pay for insulin drugs at an amount not to exceed \$100 per 30-day supply, regardless of the amount or type of insulin needed to fill the prescription.

The sections also define the term, "prescription insulin drug."

Section 3 amends s. 641.31, F.S., to require an HMO contract, which provides coverage for prescription insulin drugs, to cap the total amount of cost sharing that a subscriber is required to

²¹ The medical care index is one of eight major groups in the Consumer Price Index (CPI). See Bureau of Labor Statistics of the U.S. Department of Labor *Measuring Price Change in the CPI: Medical Care*, <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last viewed Dec. 2, 2019).

²² Section 20.121(3)(a), F.S.

²³ Section 110.123, F.S.

²⁴ Section 110.12315, F.S.

²⁵ Effective January 1, 2020, the program will implement a standard control formulary, which will include a list of drugs that are subject to review for medical necessity prior to coverage. [Ch. 2019-100, s. 3, Laws of Fla.]

pay for covered insulin drugs at an amount not to exceed \$100 per 30-day supply, regardless of the amount or type of insulin needed to fill the prescription.

The section also defines the term, “prescription insulin drug.”

Section 4 provides the bill takes effect January 1, 2021.

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:

The implementation of a capped cost sharing for prescription insulin will reduce the financial burden for some insureds and subscribers that have higher cost-sharing requirements for insulin. Access to more affordable insulin may prevent or mitigate future illnesses and complications associated with diabetes.

The impact on insurers and HMOs is indeterminate. Access to more affordable insulin may result in greater adherence and better outcomes for patients, thereby reducing overall medical and drug expenses associated with diabetes. In 2019, Cigna and Express Scripts introduced their Patient Assurance Program, which caps out-of-pocket costs of insulin at

\$25 for a 30-day supply for eligible individuals enrolled in participating non-government funded pharmacy plans managed by Express Scripts, including Cigna and other plans.²⁶

C. Government Sector Impact:

Division of State Group Insurance/DMS implementation of the bill will not affect members enrolled in the HMO and preferred provider organization (PPO) standard plans covered by the prescription drug program. A member's out-of-pocket cost for 30-day supplies are less than \$100 (\$7 for generic, \$30 for preferred brand, and \$50 for non-preferred brand).

However, the DMS notes that implementation of the bill may affect members enrolled in the HMO and PPO high-deductible health plans (HDHP) covered by the prescription drug program. In a HDHP, a member's out-of-pocket cost is 30 percent for generic drugs, 30 percent for preferred brand drugs, and 50 percent for non-preferred brand drugs. Based on current insulin claims volume and low enrollment in the HDHP, the third-party administrator for the prescription drug program projects a fiscal impact in the range of \$14,000 to \$17,500 per year.²⁷ This analysis is based on the assumption that each insulin dependent participant will fill only one prescription for insulin in a 30-day period. However, the DMS notes that it is not unusual for sugar levels to vary on a daily basis, which could result in the need for more insulin in a 30-day period. Additional prescription fills within a 30-day period would alter the analyses for both the standard and HDHP HMO and PPO plans.²⁸

VI. Technical Deficiencies:

The bill amends provisions relating to individual policies and group policies. However, it is unclear whether the bill would apply to small group policies under s. 627.6699, F.S., since the bill does not amend that provision. Section 627.6699(15), F.S., provides that a law restricting or limiting deductibles, coinsurance, copayments, or annual or lifetime maximum payments does not apply to any health plan policy offered or delivered to a small employer unless such law is made expressly applicable to such policy or contract.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 641.31 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 627.64085 and 627.65746.

²⁶ Cigna and Express Scripts. *News Release*, <https://www.cigna.com/newsroom/news-releases/2019/cigna-and-express-scripts-introduce-patient-assurance-program-to-cap-out-of-pocket-costs-at-25-per-30-day-insulin-prescription> (last viewed Dec. 4, 2019).

²⁷ Department of Management Services, SB 116 Legislative Analysis (Sep. 10, 2019).

²⁸ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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



257496

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 57 and 58

insert:

Section 3. Paragraph (g) is added to subsection (5) of section 627.6699, Florida Statutes, to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(g) A health benefit plan covering small employers which is issued or renewed on or after January 1, 2021, must comply with



257496

11 s. 627.65746.

12

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

14 And the title is amended as follows:

15 Between lines 9 and 10

16 insert:

17 amending s. 627.6699, F.S.; requiring health benefit
18 plans covering small employers to comply with such
19 requirement;

By Senator Cruz

18-00074-20

2020116__

1 A bill to be entitled
 2 An act relating to prescription insulin drugs;
 3 creating ss. 627.64085 and 627.65746, F.S.; defining
 4 the term "prescription insulin drug"; requiring
 5 individual and group health insurance policies,
 6 respectively, to cap an insured's monthly cost-sharing
 7 obligation for covered prescription insulin drugs at a
 8 specified amount; providing construction; authorizing
 9 the Financial Services Commission to adopt rules;
 10 amending s. 641.31, F.S.; defining the term
 11 "prescription insulin drug"; requiring health
 12 maintenance contracts to cap a subscriber's monthly
 13 cost-sharing obligation for covered prescription
 14 insulin drugs at a specified amount; providing
 15 construction; authorizing the commission to adopt
 16 rules; providing an effective date.

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

18 Section 1. Section 627.64085, Florida Statutes, is created
 19 to read:

20 627.64085 Cost sharing for prescription insulin drugs;
 21 limits.-

22 (1) As used in this section, the term "prescription insulin
 23 drug" means a prescription drug that contains insulin, is used
 24 to treat diabetes, and has been prescribed as medically
 25 necessary by the treating physician.

26 (2) A health insurance policy that provides coverage for
 27 prescription insulin drugs must cap the total amount of cost
 28
 29

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

18-00074-20

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30 sharing that an insured is required to pay for a covered
 31 prescription insulin drug at an amount not to exceed \$100 per
 32 30-day supply of the insulin drug, regardless of the amount or
 33 type of insulin needed to fill the insured's prescription.

34 (3) This section does not prevent an insurer from reducing
 35 an insured's cost-sharing obligation by an amount greater than
 36 the amount specified in subsection (2).

37 (4) The commission may adopt rules to administer this
 38 section.

39 Section 2. Section 627.65746, Florida Statutes, is created
 40 to read:

41 627.65746 Cost sharing for prescription insulin drugs;
 42 limits.-

43 (1) As used in this section, the term "prescription insulin
 44 drug" means a prescription drug that contains insulin, is used
 45 to treat diabetes, and has been prescribed as medically
 46 necessary by the treating physician.

47 (2) A group health insurance policy that provides coverage
 48 for prescription insulin drugs must cap the total amount of cost
 49 sharing that an insured is required to pay for a covered
 50 prescription insulin drug at an amount not to exceed \$100 per
 51 30-day supply of the insulin drug, regardless of the amount or
 52 type of insulin needed to fill the insured's prescription.

53 (3) This section does not prevent an insurer from reducing
 54 an insured's cost-sharing obligation by an amount greater than
 55 the amount specified in subsection (2).

56 (4) The commission may adopt rules to administer this
 57 section.

58 Section 3. Subsection (48) is added to section 641.31,

Page 2 of 3

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

18-00074-20

2020116__

59 Florida Statutes, to read:

60 641.31 Health maintenance contracts.—

61 (48) (a) As used in this subsection, the term “prescription
62 insulin drug” means a prescription drug that contains insulin,
63 is used to treat diabetes, and has been prescribed as medically
64 necessary by the treating physician.

65 (b) A health maintenance contract that provides coverage
66 for prescription insulin drugs must cap the total amount of cost
67 sharing that a subscriber is required to pay for a covered
68 prescription insulin drug at an amount not to exceed \$100 per
69 30-day supply of the insulin drug, regardless of the amount or
70 type of insulin needed to fill the subscriber’s prescription.

71 (c) This subsection does not prevent a health maintenance
72 organization from reducing a subscriber’s cost-sharing
73 obligation by an amount greater than the amount specified in
74 paragraph (b).

75 (d) The commission may adopt rules to administer this
76 subsection.

77 Section 4. This act shall take effect January 1, 2021.



Insulin Access and Affordability Working Group: Conclusions and Recommendations

<https://doi.org/10.2337/dci18-0019>

William T. Cefalu,¹ Daniel E. Dawes,²
Gina Gavlak,³ Dana Goldman,⁴
William H. Herman,⁵ Karen Van Nuys,⁴
Alvin C. Powers,⁶ Simeon I. Taylor,⁷ and
Alan L. Yatvin,⁸ on behalf of the Insulin
Access and Affordability Working Group*

There are more than 30 million Americans with diabetes, a disease that costs the U.S. more than \$327 billion per year (1,2). Achieving glycemic control and controlling cardiovascular risk factors have been conclusively shown to reduce diabetes complications, comorbidities, and mortality. To achieve these desired outcomes, the medical community now has available many classes of medications and many formulations of insulin to effectively manage the metabolic abnormalities for people with diabetes. However, the affordability of medications in general, and for insulin specifically, is currently of great concern to people with diabetes, their families, health care providers, insurers, and employers. For millions of people living with diabetes, including all individuals with type 1 diabetes, access to insulin is literally a matter of life and death. The average list price of insulin has skyrocketed in recent years, nearly tripling between 2002 and 2013 (3). The reasons for this increase are not entirely clear but are due in part to the complexity of drug pricing in general and of insulin pricing in particular.

As the price of insulin continues to rise, individuals with diabetes are often forced to choose between purchasing their medications or paying for other necessities, exposing them to serious short- and long-term health consequences (4–9). To find solutions to the issue of insulin affordability, there must be a better understanding of the transactions throughout the insulin supply chain, the impact each stakeholder has on what people with diabetes pay for insulin, and the relative efficacy of therapeutic options. Thus, as the nation's leading voluntary health organization whose mission is "to prevent and cure diabetes and to improve the lives of all people affected by diabetes," the American Diabetes Association (ADA) is committed to finding ways to provide relief for individuals and families who lack affordable access to insulin.

In the spring of 2017, the ADA Board of Directors convened an Insulin Access and Affordability Working Group (Working Group) to ascertain the full scope of the insulin affordability problem, to advise the ADA on the execution of strategies, and to provide high-level direction to the ADA related to this issue. The composition of the Working Group is provided in Supplementary Table 1. The Working Group identified increased transparency throughout the insulin supply chain and a number of other interventions as important steps toward developing viable, long-term solutions to improve insulin access and affordability.

Throughout 2017, the Working Group assembled existing public information about insulin prices and patient cost-sharing, and convened a series of meetings with stakeholders throughout the insulin supply chain to learn how each entity affects the cost of insulin for the consumer. The Working Group also had ongoing conversations with researchers focused on insulin pricing at both the global and national levels. The Working Group talked with more than 20 stakeholders who were representatives of pharmaceutical manufacturers, wholesalers, pharmacy benefit managers (PBMs), pharmacies, pharmacists, distributors, health plans, employers, and people with diabetes and caregivers (Supplementary Table 2). Despite the attempt to interview as many stakeholders as possible, it is important to note that due to time constraints and schedules, the Working Group may have inadvertently overlooked inviting some relevant stakeholders, and there were a small number of individual stakeholders who declined to meet with the Working Group. To guide the discussion with each stakeholder interviewed, the Working Group developed a set of standard questions focused on determining the role each entity plays in the supply chain, the issues the entity faces, and recommendations for change (Supplementary Table 3).

¹American Diabetes Association, Arlington, VA

²Morehouse School of Medicine, Atlanta, GA

³North Coast Health, Lakewood, OH

⁴USC Schaeffer Center for Health Policy & Economics, Los Angeles, CA

⁵University of Michigan, Ann Arbor, MI

⁶Vanderbilt University Medical Center, Nashville, TN

⁷University of Maryland School of Medicine, Baltimore, MD

⁸Popper & Yatvin, Philadelphia, PA

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This article contains Supplementary Data online at <http://care.diabetesjournals.org/lookup/suppl/doi:10.2337/dci18-0019/-/DC1>.

*A complete list of the members of the Insulin Access and Affordability Working Group can be found in the Supplementary Data online.

This ADA statement was reviewed and approved by the American Diabetes Association Board of Directors in March 2018.

This article is featured in a podcast available at <http://www.diabetesjournals.org/content/diabetes-core-update-podcasts>.

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See accompanying article, p. 1125.

BACKGROUND: SCOPE OF THE PROBLEM

Approximately 7.4 million Americans with diabetes use one or more formulations of insulin (10,11). People with diabetes using insulin come from varied economic, racial, and ethnic backgrounds. Almost 20% of African Americans with diabetes use insulin, either alone or with oral medications, as do 14% of Caucasians and 17% of Hispanics with diabetes (10). Of adults with diabetes earning below the poverty level, approximately 24% use insulin, either alone or with oral medications (11).

Currently, there are only three insulin manufacturers serving the U.S. market: Eli Lilly, Novo Nordisk, and Sanofi. Almost 100 years ago, the discovery of insulin, derived from animal sources, literally began to save human lives. The advent of genetic engineering brought human insulin formulations to patients with diabetes in the 1980s. Rapid-acting and long-acting human insulin analogs were introduced in the 1990s. The patents for many of the human insulin and human insulin analog formulations in current clinical use have expired.

Working Group members from the USC Schaeffer Center for Health Policy & Economics have significant experience in studying medication pricing (12,13). Using Centers for Medicare & Medicaid Services data on National Average Drug Acquisition Cost (NADAC), they identified 30 insulin products with NADAC data available between October 2012 and December 2016 and categorized them by product type: short-acting insulin vials, rapid-acting insulin vials, rapid-acting insulin pens, and long-acting insulin pens/vials (Table 1). For each product, they collected monthly Wholesale Acquisition Cost (WAC) from First Databank and calculated average monthly WAC and NADAC for each category by averaging across products in each category. They used Medicare Part D claims from 2006 to 2013 to calculate the average insulin expenditure and out-of-pocket spending per insulin user and the Medicare spending by utilization (i.e., the total spending divided by the number of insulin users times mean annual day supply).

The average U.S. list price (WAC) of the four insulin categories increased by 15% to 17% per year from 2012 to 2016 (Fig. 1). Over the same period, the price pharmacies paid to purchase insulins (NADAC) increased at similar rates. Spending on

insulins by Medicare Part D has also shown an increasing and accelerating trend. For example, Medicare spending by utilization on rapid-acting insulin in vials had a compound annual growth rate (CAGR) of 10% per year between 2006 and 2013 but a CAGR of 13% between 2011 and 2013. As spending on insulins has increased, so too have patient out-of-pocket costs. Between 2006 and 2013, average out-of-pocket costs per insulin user among Medicare Part D enrollees increased by 10% per year for all insulin types (Fig. 2). Comparatively, overall inflation during this time was 2.2%, medical care service costs increased by 3.8%, and spending for all prescription drugs increased by an average of 2.8%.

Insulin affordability and accessibility issues, however, are not restricted to the U.S. Data from the global ACCISS (Addressing the Challenges and Constraints of Insulin Sources and Supply) study found several overarching trends. First, even for the same insulin product, there is a wide range of prices across the world. Second, there is a large price differential between the lower prices of human insulin formulations and the higher prices of human insulin analog formulations on a global level. Third, there has been increasing use of human insulin analogs compared with normal human insulin over the recent past, which is greater in more developed parts of the world (14). This study also reported that the global insulin market is dominated by the same three large multinational corporations that manufacture and sell insulin in the U.S. Those companies represent 99% of the total insulin by value, 96% by total market volume, and 88% of global product registrations.

COMPLEXITY OF THE INSULIN SUPPLY CHAIN AND PRICING MECHANISMS

Pricing of drugs in general, and for insulin specifically, is very complex. Numerous stakeholders (i.e., manufacturers, wholesalers, PBMs, pharmacies, health plans, and employers) are involved in the insulin supply chain, and the distribution and payment systems involve multiple transactions among these stakeholders (Fig. 3). With this system, there is no one agreed-upon price for any insulin formulation. The price ultimately paid by the person with diabetes at the point of sale results from the prices, rebates, and fees negotiated among the stakeholders. Stakeholders in the insulin supply chain have varying

degrees of negotiating power, which adds to the complexity. The following narrative represents the Working Group's understanding of the U.S. insulin delivery system as obtained by research and in specific interviews with the stakeholders.

Overview of Insulin Supply Chain Dynamics

The complexity of the insulin supply chain is outlined schematically in Fig. 3. The insulin supply chain mirrors that of many other prescription drugs. As outlined, manufacturers set the list price for each insulin product. Manufacturers typically sell their medications to wholesalers, who handle distribution to individual pharmacies. But sometimes a pharmacy chain will deal directly with the manufacturer. Wholesalers typically purchase the medications for close to the list price, often receiving a handling fee from the manufacturer that is calculated as a fixed percentage of the list price. Wholesalers then sell the medications to pharmacies, with little to no markup. They may, however, charge the higher list price. Pharmacies dispense the medication to individual patients and collect cost-sharing required by the patient's health plan (if any). Pharmacies then submit a bill to the individual's health insurance plan (if any) to be reimbursed for the cost of the medication dispensed to the patient, less any cost-sharing collected, plus a dispensing fee. If a patient does not have or use health insurance for the medication, the pharmacy typically charges the patient a price relatively close to its purchase price, with a markup.

While the medication itself takes a rather direct path from manufacturer to wholesaler to pharmacy to patient, the flow of money is far less direct and transparent. Furthermore, PBMs often manage the pharmacy benefit portion of a health plan on behalf of their clients. Their clients are the payers for health care, such as large employers, health insurers providing pharmacy benefits to Medicare enrollees, health insurers covering state Medicaid program enrollees, or health insurance plans sold directly to individuals. It is important to note, therefore, that PBMs' primary customers are health plans and employers, not patients.

The Increasing List Prices of Insulin Formulations

Much of the public discussion regarding insulin affordability and accessibility has focused on the rapidly increasing average

Table 1—Categories of insulin

Category label on Figs. 1, 2, and 5	Description	Delivery	Products—brand names ^a	Products—generic names
Short-acting insulin (vials)	Short-acting, intermediate-acting, or mixed intermediate/short-acting vials	Vial	Humulin R, 10-mL vial Humulin R, 3-mL vial Novolin R Novolin R (Relion) Humulin N, 10-mL vial Humulin N, 3-mL vial Novolin N Novolin N (Relion) Humulin 70/30 Novolin 70/30 Novolin 70/30 (Relion)	Insulin regular, human Insulin regular, human Insulin regular, human Insulin regular, human Insulin NPH, human isophane Insulin NPH, human isophane Insulin NPH, human isophane Insulin NPH, human isophane Insulin NPH, human/regular insulin HM Insulin NPH, human/regular insulin HM Insulin NPH, human/regular insulin HM
Rapid-acting insulin (vials)	Rapid-acting or mixed intermediate/rapid-acting vials	Vial	Humalog, 10-mL vial Humalog, 3-mL vial Apidra NovoLog Humalog Mix 75/25 Humalog Mix 50/50 NovoLog Mix 70/30	Insulin lispro Insulin lispro Insulin glulisine Insulin aspart Insulin lispro protamine/lispro Insulin lispro protamine/lispro Insulin aspart protamine & aspart
Rapid-acting insulin (pens)	Rapid-acting or mixed intermediate/rapid-acting pens	Pen or cartridge	Humalog cartridge Humalog KwikPen U-100 Apidra SoloSTAR NovoLog cartridge NovoLog FlexPen Humalog Mix 75/25 KwikPen Humalog Mix 50/50 KwikPen NovoLog Mix 70/30 FlexPen	Insulin lispro Insulin lispro Insulin glulisine Insulin aspart Insulin aspart Insulin lispro protamine/lispro Insulin lispro protamine/lispro Insulin aspart protamine & aspart
Long-acting insulin (vials/pens)	Long-acting vials and pens	Vial or pen	Lantus Levemir Lantus SoloSTAR Levemir FlexPen	Insulin glargine Insulin detemir Insulin glargine Insulin detemir

Categories of insulin products evaluated by the USC Schaeffer Center for Health Policy & Economics investigators as part of the Insulin Access and Affordability Working Group. ^aIn the case of the Novo Nordisk products (Novolin R, Novolin N, Novolin 70/30), one is the Novo Nordisk-branded product, while the other corresponds to the same drug sold under the Relion brand. Each has a different national drug code and sells for a different price. In the case of the Eli Lilly products (Humulin R, Humulin N, Humalog), different vial sizes are referenced (3 mL vs. 10 mL).

list prices of insulin over the past two decades, which nearly tripled between 2002 and 2013 (3). The list price is defined as the price manufacturers set for their medication (Table 2). Along with yearly increases, the published data also suggest that when one insulin manufacturer increases the price for a given insulin formulation, the other insulin manufacturers often increase their prices by a similar amount shortly thereafter (15,16) (Fig. 4).

The Increasing Use of Higher-Priced Insulins

Another important trend affecting overall costs for insulin in the last decade is the shift in insulin utilization from the less expensive human insulins to more expensive human insulin analogs (14,17–19) (Fig. 5). While the prices of both types of insulin have increased, the difference in pricing between them has substantially added

to insulin costs—both to the health care system and to many patients (17,18) (human insulins are available at the pharmacy for \$25 to \$100 per vial compared with human insulin analogs at \$174 to \$300 per vial [19]). This is further discussed below in **FORMULARY DECISIONS AND PATIENT FINANCIAL BURDEN**.

The Growing Gap Between the List Price and Net Price

While the list price is defined as the price manufacturers set for their medication, the list price is not ultimately what is paid for the medication (with some exceptions), nor is it what manufacturers receive for their products. The net price manufacturers receive for their medications is the list price less any fees paid to wholesalers, and/or discounts paid to pharmacies, and any rebates paid to PBMs or health plans.

The Working Group found a number of examples from public sources showing that the net price to the insulin manufacturers has grown at a slower rate, or has gone down, compared to list prices. For example, the net price of the insulin formulation Lantus (glargine) increased more or less in parallel with the list price from 2007 to 2013 (20). However, the net price has decreased in recent years (2014–2016) (Fig. 6) (20). As a result, the net price increased by 57% between 2007 and 2016, increasing 23% as fast as the list price reported as a 252% increase over the same period (Fig. 6).

Reports on other insulin products also illustrate the difference between the rapid increase in list price as compared with the slower increase in net price to manufacturer, a trend that may have started earlier for some insulin formulations (17,21). Bloomberg News reported an estimate by

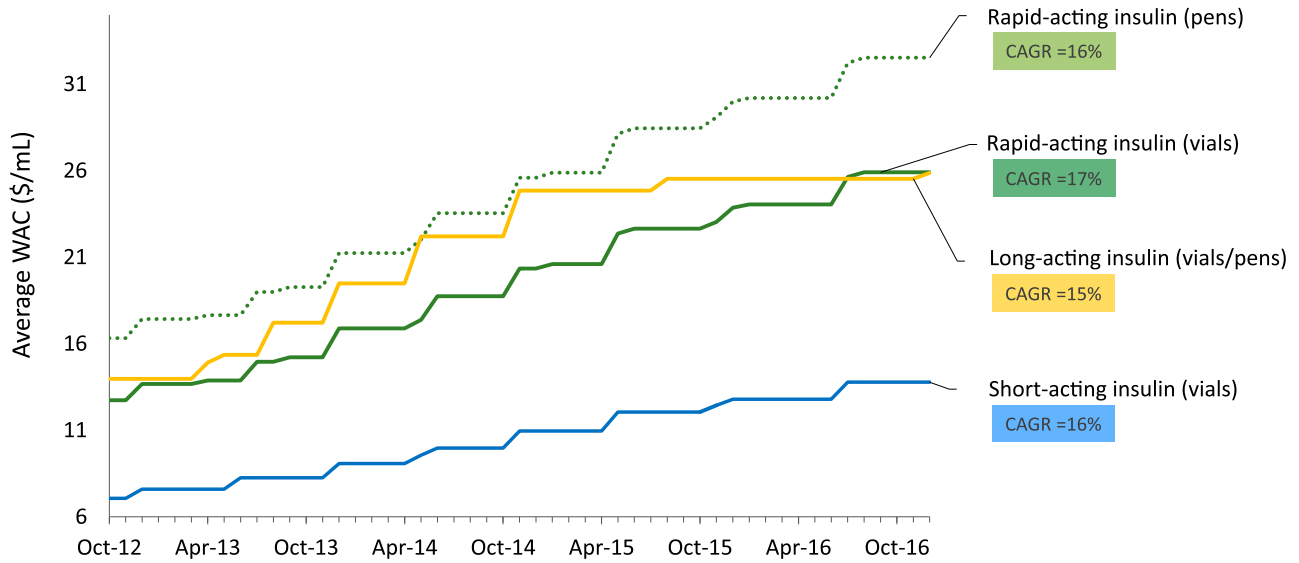


Figure 1—Average WAC for insulins, by product category, 2012–2016. Source: USC Schaeffer Center analysis of First Databank data.

an independent market research firm that the list price of Eli Lilly’s human insulin analog, Humalog, increased by 138% between 2009 and 2015, while the net price to the manufacturer increased by 6% (21).

Novo Nordisk also published data for two of their insulin products, NovoLog and NovoLog FlexPen. Since the early 2000s, the CAGRs for the list prices for NovoLog and NovoLog FlexPen (Fig. 7) have been in the range of 9.8–9.9% (22). This translated into large total increases in the list prices: 353% (2001–2016) for

a NovoLog vial and 270% (2003–2016) for a FlexPen. In contrast, net prices received by the manufacturer increased at a more modest rate with CAGRs of 3–36%—more in line with the rate of inflation for the overall economy. Novo Nordisk, Eli Lilly, and Sanofi have reported that rebates have grown rapidly in recent years—representing more than 40% of U.S. gross sales in some cases (21,23). The Working Group found the transparency in list versus net pricing for these two insulin formulations helpful, but similar data on all

the other insulin products will be necessary for clarity on this aspect of pricing in the insulin supply chain.

This finding of greater increases in list prices than net prices raises the following questions. Who else has benefited or lost from the substantial increase in insulin list prices over the last decade? And why has the financial burden for people with diabetes who use insulin continued to increase—especially for those without insurance who may have to pay the full list price?

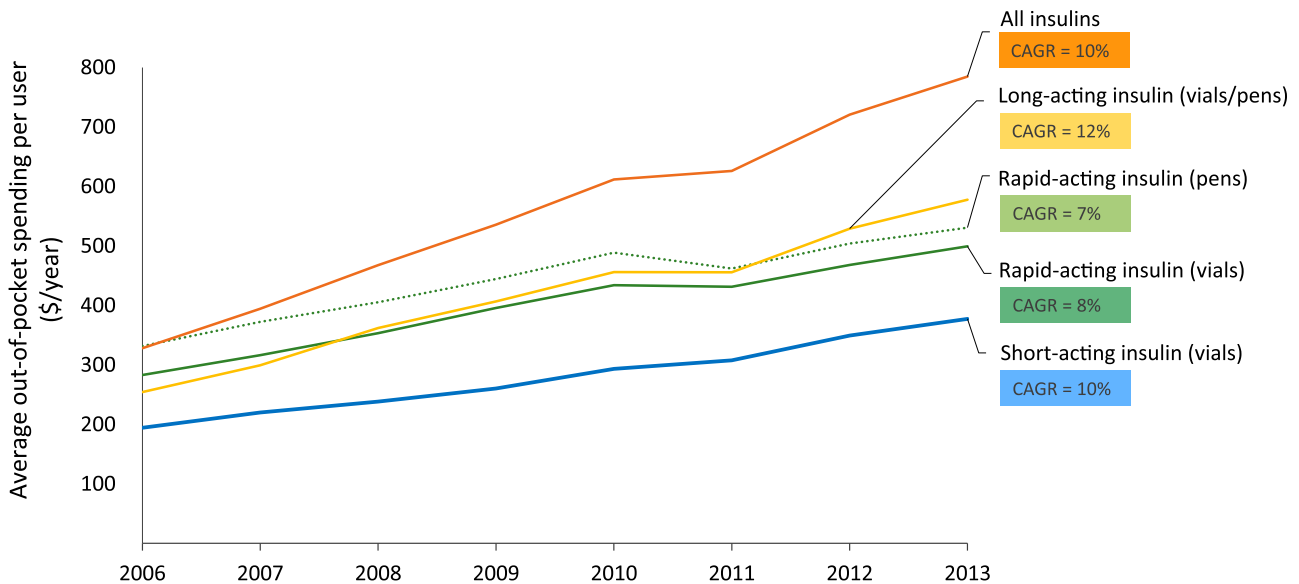


Figure 2—Average Medicare out-of-pocket spending for insulin, per user, by product category, 2006–2013. Source: USC Schaeffer Center analysis of Medicare Part D claims data.

Insulin Supply Chain: A Complex System

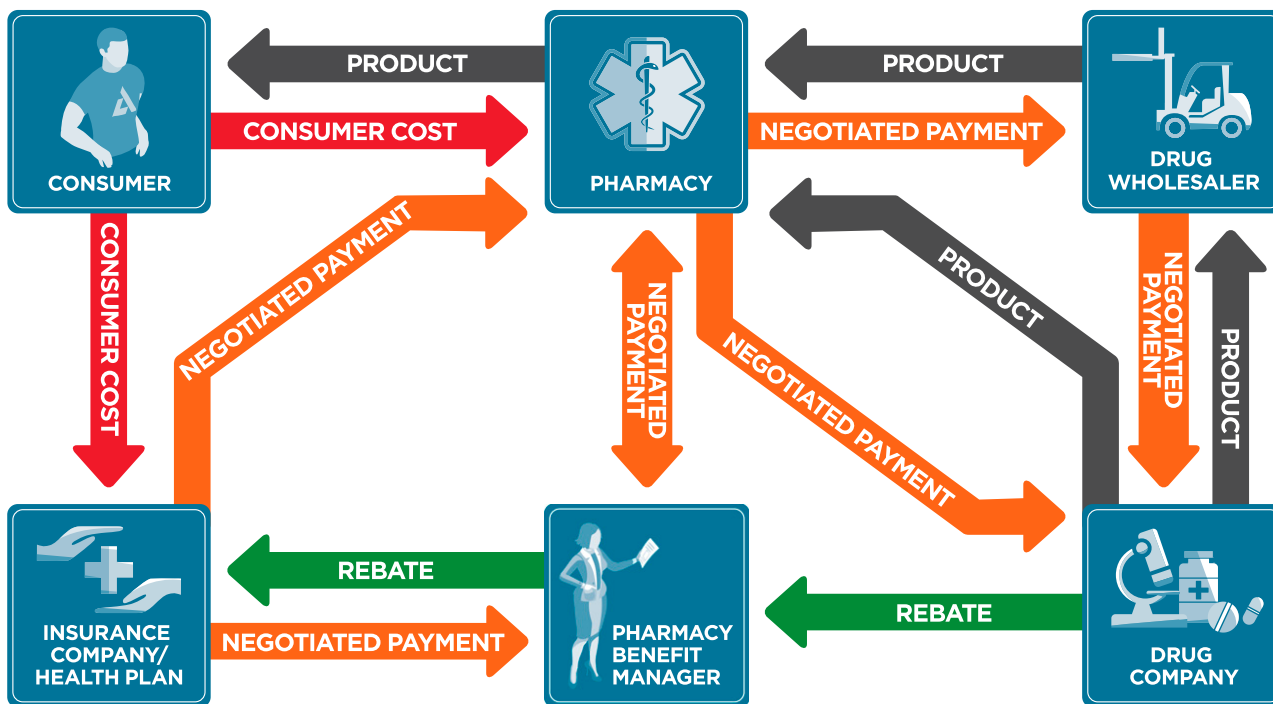


Figure 3—Schematic of insulin supply chain.

Role of Rebates and Discounts in the Pricing of Insulin

The widening gap between the net and list price of insulin in recent years appears to be the result of increasing rebates and discounts negotiated between stakeholders. Manufacturers negotiate with a PBM for discounts from the list price to have their medications placed on a lower cost-sharing tier and/or to avoid constraints on utilization on the PBM’s client formulary. In this process, manufacturers agree to fees and price concessions, typically paid to the PBM after health plan enrollees receive the manufacturer’s medication. These retroactive discounts or rebates are in addition to the fees paid to PBMs by the payers to provide the pharmacy benefit management services. The rate of increase in these rebates has accelerated to approach approximately half of the list price of insulin (21,23). PBMs also negotiate with pharmacies to determine how much participating pharmacies will be paid for medications dispensed to enrollees in the PBM client’s health plan.

Because PBMs design the formulary for their clients, some stakeholders believe PBMs have significant input into which

medications are on the formulary and at which tier, setting the parameters for patient access to and cost-sharing for insulins. Nationally, PBMs administer the prescription medication benefit for more than 266 million Americans, and the three major PBMs (CVS Caremark, Express Scripts, and OptumRx) manage about 70% of all prescription claims (13,24). Arguably, this gives PBMs considerable leverage in any rebate/discount negotiation with stakeholders.

Transparency and Flow of Dollars

A consistent observation made to the Working Group was the lack of transparency throughout the insulin supply chain. Many interviewed stakeholders recommended increased transparency from entities across the insulin supply chain. Manufacturers reported that without knowledge of the negotiations that take place between PBMs and health plans, they are at a disadvantage in determining pricing for their insulin products. Manufacturers state that the need to provide a higher rebate to achieve preferred formulary positioning impacts the list price of insulin. However, manufacturers do not know

where the dollars from increased rebates flow.

Health plans, pharmacists, and people with diabetes also called for increased transparency, including shedding a light on how the list price is set by the manufacturer. Health plans stated that while there is no requirement to report factors that determine increasing list prices, private and public payers are paying for the majority of the costs as list prices continue to rise. Payers would like more transparency in pharmacy acquisition prices and want more information on the therapeutic benefits of more expensive analog insulins. Pharmacists, patients, and providers also would like formulary decisions to be more transparent.

After research and stakeholder discussions, it is still unclear to the Working Group precisely how the dollars flow and how much each intermediary profits. In the vast majority of cases, discounts and rebates negotiated between PBMs and manufacturers and between PBMs and pharmacies, which affect the cost of insulin for people with diabetes, are confidential. Even PBM clients are not privy to many of these negotiations, nor do they know the net price obtained by the PBM for insulins.

Table 2—Glossary of drug pricing and health insurance terms

Term	Definition
Formulary	List of drugs covered under the health insurance plan. Often has tiers with increasing cost-sharing. Also includes utilization management requirements such as prior authorization, step therapy, or quantity limits.
List price	The price manufacturers set for their medications. Also called wholesale acquisition cost or launch price. This price is often the basis for rebates, discounts, and fees throughout the insulin supply chain.
Rebate	A discount paid after the patient has received the medication. Typically, manufacturers pay rebates to PBMs for prescriptions filled by the PBM's clients. Rebates negotiated between manufacturers and PBMs are often contingent on placement of the drug on the PBM's formulary.
Benefits	Health care items or services covered under a health insurance plan.
Coinsurance	Cost-sharing for covered benefits based on the percentage of the plan's cost (for example, 20%). For example, if the cost-sharing for a doctor's office visit is 20% coinsurance, the enrollee will pay 20% of the plan's cost for the visit.
Co-payment	Cost-sharing for covered benefits that is a flat dollar amount (\$20, for example).
Cost-sharing	The portion of the cost of benefits covered by insurance that the plan enrollee pays out of his/her pocket. This term generally includes deductibles, coinsurance, and co-payments, or similar charges, but it does not include premiums.
Deductible	The amount health plan enrollees pay for covered health care services before the insurance plan starts to pay. With a \$2,000 deductible, for example, the plan enrollee must pay the first \$2,000 of covered benefits before the insurance plan will pay for care.
Premium	The amount paid each month for a health insurance policy. Often health plan enrollees are responsible for paying a portion of the cost of the care they receive in addition to the monthly premium amount (see cost-sharing definition).
Prior authorization	Requires prescribers to obtain preapproval from the health plan before a medication will be covered. Often requires clinical information about the medical necessity of the medication.
Step therapy	Requires patients to try and fail on certain medications before the requested medication will be covered by the plan. Often requires clinical information about the patient's history with medications preferred by the health plan.

How rebates and discounts are distributed is also unclear. To lower patient costs for insulin, the rebates would need to be passed through to individuals with diabetes at the point of sale. Health plan representatives who met with the Working Group pointed out that this would minimize the incentive for PBMs to select for their formulary medications with higher rebates. On the other hand, representatives of the PBMs told the Working Group that when they offer part of the rebates to their customers, it is more common for their customers to use the rebates to lower overall premiums for

the plan than to use them to reduce patients' cost-sharing for insulin at the point of sale. The Working Group could not confirm these claims.

An additional argument presented to the Working Group was that the current system appears to transfer profits from one stakeholder to another. So, it is not clear who really benefits from the rebates and discounts provided to the various stakeholders.

Formulary Decisions and Incentives

Based on the Working Group's review of the insulin supply chain, it is clear that the

insulin manufacturers still control the list price of insulin, but a meaningful share of the negotiating power has shifted from manufacturers to the PBMs. PBMs attempt to keep medication costs down by moving market share between competing products, and their market power is directly related to their ability to provide exclusive formulary coverage for particular brands of medications.

The PBMs told the Working Group that formulary determinations are first and foremost based on clinical considerations. However, when the PBM's clinical experts determine that one type of medication is necessary on a given formulary tier but there is no clinical preference for one brand or formulation over another, the PBM will approach manufacturers to seek rebates in exchange for preferential formulary tiering. These types of negotiations help to determine whether a particular insulin will be available at all to insured individuals with diabetes under a given health plan, and on which cost-sharing tier an insulin formulation will be placed. Sometimes a PBM will exclude a medication from its national formulary if the PBM's net cost for the medication is higher than a competitive or similar product. In addition to formulary placement, PBMs determine which and how many medications on the formulary are subject to utilization management, such as prior authorization, step therapy, or quantity limits to steer prescribers and patients to medications with better safety or efficacy profiles and/or lower net costs. PBMs may also develop a list of preventive or essential medications, recommending the health plan cover medications on the list without patient cost-sharing. Some types or brands of insulins may be included on these lists, but it varies from PBM to PBM and health plan to health plan.

The Working Group was informed that the PBMs generally pass a portion of the rebates received from manufacturers back to the employer or health plan and that in some cases, less than 10% of the rebate is retained by the PBM. These statements were not confirmed by the Working Group. In addition to negotiating rebates with manufacturers, PBMs charge employers, plans, and pharmacies administrative fees for a variety of services. Specifically, health plans and employers pay PBMs a fee for utilization management, such as prior authorization requests for plan enrollees. To ensure the

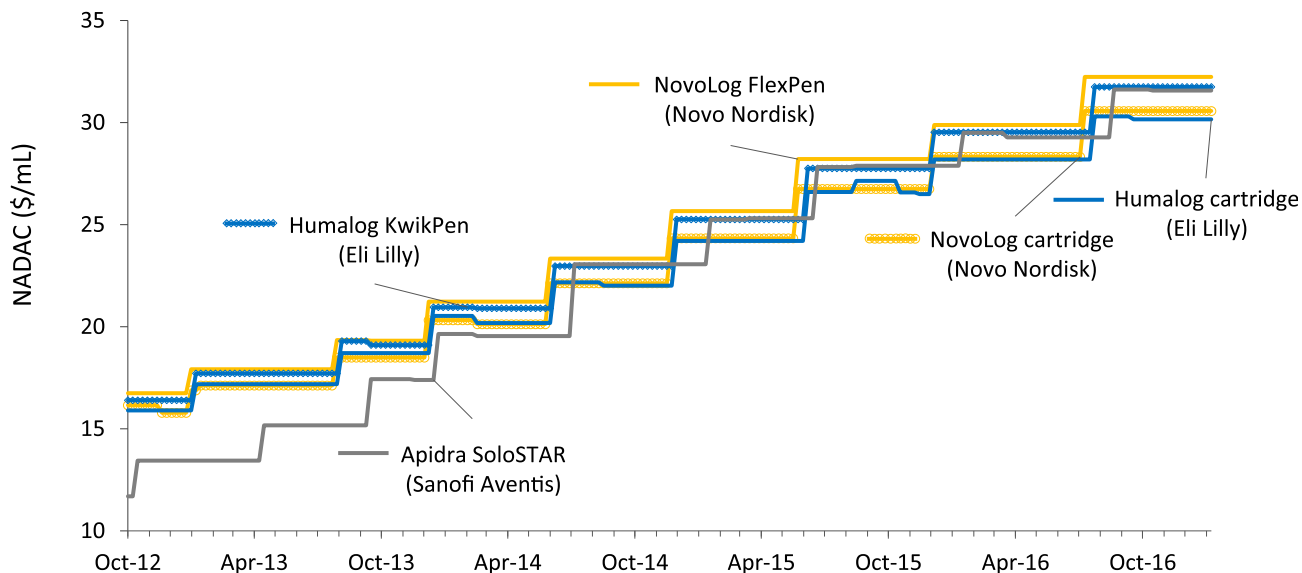


Figure 4—NADAC for five rapid-acting insulin pen or cartridge products, 2012–2016. Source: USC Schaeffer Center analysis of Centers for Medicare & Medicaid Services NADAC data.

PBM does not have a financial incentive tied to the number of medications requiring utilization management, some employers or plans outsource the processing of utilization management requests and approvals to another company.

The insulin manufacturers told the Working Group that they are not privy to the negotiations that take place between PBMs and health plans. Further, employers and health plans that work with PBMs noted that they are not privy to the net prices the PBM negotiates with manufacturers on their behalf. Instead, the PBM guarantees at the beginning

of the plan year the total dollar amount of rebates it will pay to the employer or health plan.

The health plans the Working Group interviewed reported that plans and PBMs have an incentive to select medications for their formularies that offer a higher rebate. It was also suggested to the Working Group that the need to offer higher rebates in order to achieve preferential formulary positioning from PBMs creates an incentive for manufacturers to raise the list price. In addition, wholesalers are paid for their distribution services as a percentage of the list price of the

medications they handle, even though their handling costs may not differ from one product to another. Thus, there are incentives throughout the insulin supply chain for high list prices.

In contrast, stakeholders have noted that the current structure of the Medicaid best price requirements limit the amount of discounts or rebates manufacturers provide in the commercial market. If a manufacturer agrees to provide specific rebates to the Medicaid program, all of its medications will be covered (with some exceptions) (25). The basic Medicaid rebate calculation defined in federal law is

Market Share of Insulin Categories

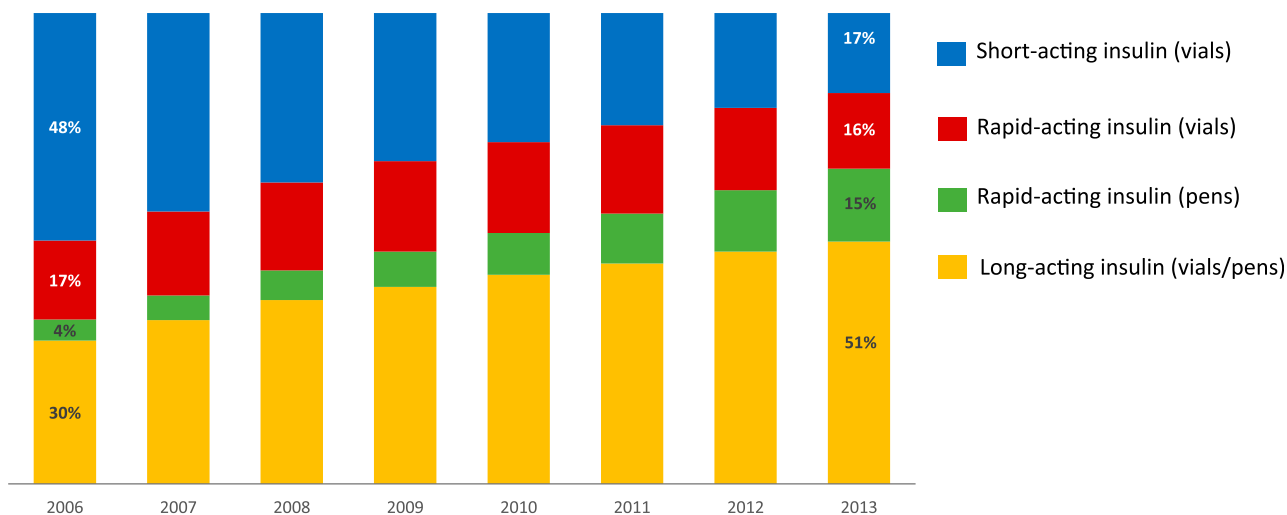


Figure 5—Medicare market share of four insulin product categories, 2006–2013. Source: USC Schaeffer Center analysis of Medicare Part D claims data.

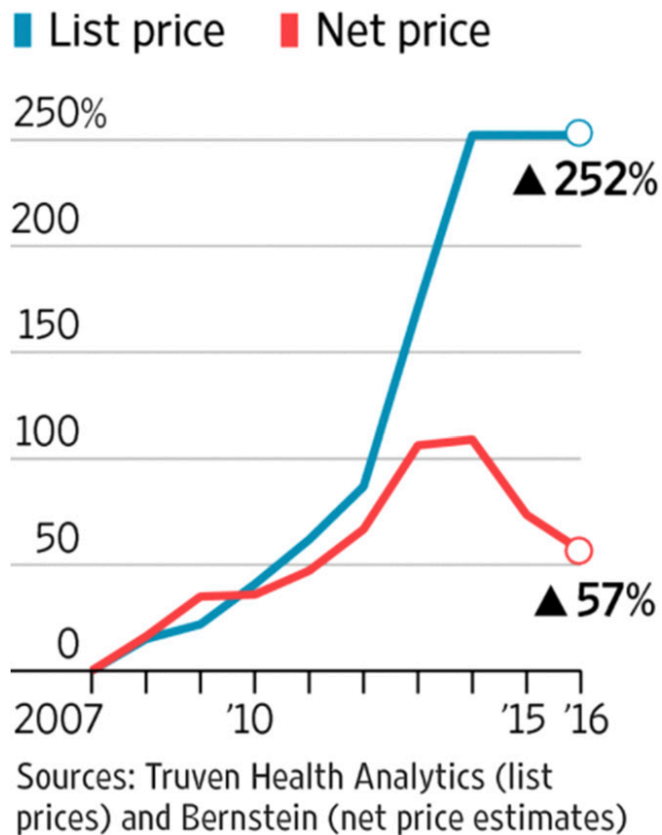


Figure 6—Report of changes in list and net prices for Lantus. Reprinted by permission of the *Wall Street Journal*, Copyright © 2016, Dow Jones & Company, Inc. All Rights Reserved Worldwide. License number 4321941207734 (20).

the larger of a standard percentage of the medication's average net price, or the average net price minus the "best price" the manufacturer provided to another payer. In addition, if a medication's average net price increased by more than inflation, the manufacturer must pay an additional rebate to Medicaid. If a manufacturer's rebate agreement with a non-Medicaid PBM or health plan results in a net price lower than the net price Medicaid would receive using the standard percentage rebate calculation, the manufacturer must use that rebate agreement amount to calculate the medication's rebate for all Medicaid enrollees. Stakeholders shared that the Medicaid best price requirement essentially sets a floor for negotiations with PBMs and health plans since manufacturers are hesitant to provide a very large rebate to non-Medicaid plans that will also have to be paid to Medicaid.

Formulary Decisions and Patient Health

It is clear that decisions made from negotiations between stakeholders that

affect formulary choice may not be in the best financial or medical interest of the patient. People with diabetes informed the Working Group that they have little choice in medication coverage, particularly for those enrolled in employer-sponsored plans. PBMs often exclude from formularies the insulins made by the manufacturer who offers the lowest rebate. As a result of these negotiations, rules for coverage differ from plan to plan and year to year, or even within the same plan year. When insulins are excluded from the formulary, moved to a different cost-sharing tier, or removed during the plan year (sometimes called "non-medical switching"), providers and people with diabetes can be inconvenienced and patients' health may be adversely affected. For example, patients with high cost-sharing may be less adherent to recommended medication dosing and administration, resulting in harm to their health (9,26–30). In addition, formulary exclusions and frequent formulary changes cause uncertainty, increase financial costs for patients, increase work required by

providers, and could be undermining patient health (31,32).

The Working Group noted concern about the increased burden on people with diabetes and reduced adherence to effective management strategies. The ADA was provided with numerous stories and complaints from constituents regarding this concern. One such example comes from Kathy Sego, who signed the ADA's Make Insulin Affordable petition and whose son, Hunter, has type 1 diabetes. Hunter requires approximately four vials of insulin per month to properly manage his diabetes, at a monthly out-of-pocket cost of \$1,948 until the family meets the health plan deductible. Knowing the impact of this cost on his family, Hunter, a college student in 2016, began skipping insulin doses, which can lead to serious and even deadly complications (33). Hunter Sego is one example of the many individuals who struggle to obtain the insulin they need to survive. When people are unable to afford their cost-sharing, many resort to rationing or skipping doses in order to make their insulin supply last longer, risking their health and their lives.

Formulary Decisions and Patient Financial Burden

Formulary exclusions and frequent formulary changes increase financial costs for patients. In addition, patients are bearing more of the cost of medications because of high-deductible plans, increased use of coinsurance, growing number of formulary tiers, and fewer medications covered per tier (34–36). Since negotiated discounts or rebates are usually not passed directly to people with diabetes, their financial obligations for purchasing insulin are often based on the list price. Clearly, this varies depending on the type of insurance the person has and the type of insulin purchased (see below) but specifically impacts those with a high deductible, those who have to pay coinsurance, or those who are in the Medicare Part D coverage gap. People without insurance are often required to pay list price for insulins.

Health plans noted that out-of-pocket insulin costs could be lower for some people with diabetes if health savings account-eligible high-deductible health plans could exempt insulin from the deductible. Manufacturers agree that exempting insulin from the plan's deductible is a critical step in lowering

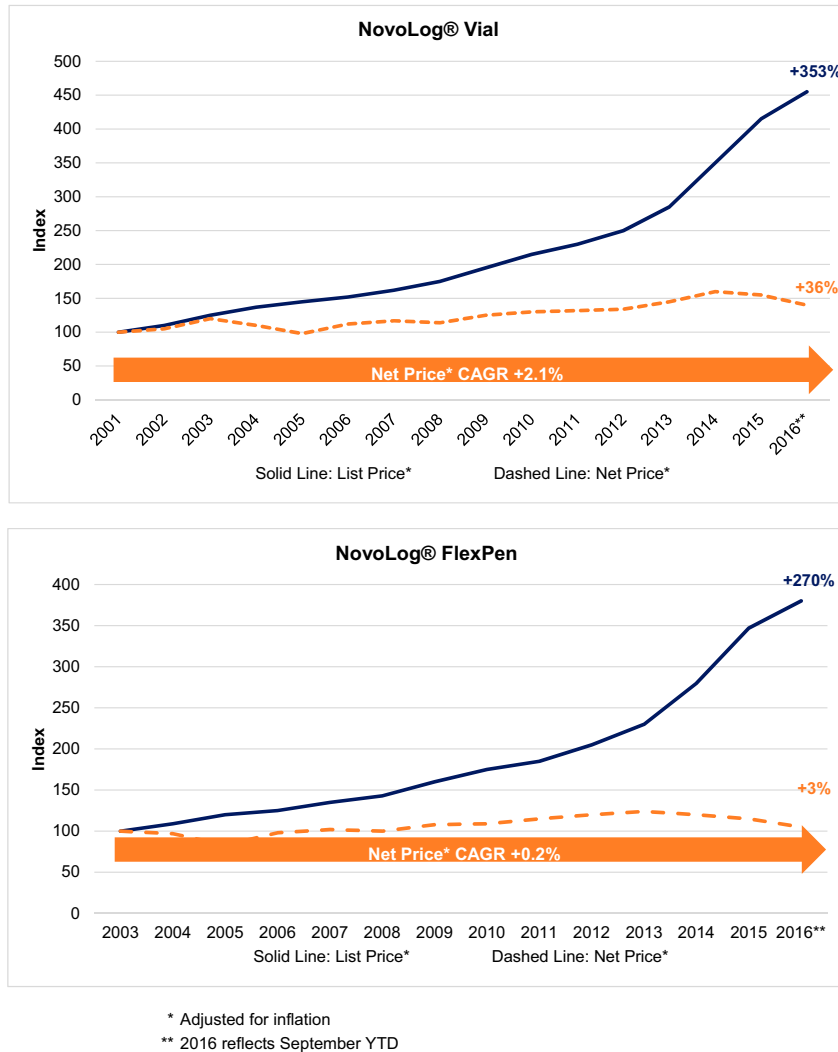


Figure 7—Reported changes in NovoLog list and net prices. Adapted from Hobbs (22). YTD, year to date.

out-of-pocket insulin costs. Until there is a systematic plan that addresses a change in benefit design to lower out-of-pocket insulin costs for people with diabetes, human insulin may be a valid alternative to more expensive analog insulins for some patients (19,37). In this regard, there would need to be significant education of people with diabetes and health care providers on the appropriate use of human and analog insulins, and careful selection of people who may benefit from analog insulin.

While data on average patient out-of-pocket spending for insulin are not widely available, one study found that patient out-of-pocket expenses for insulin doubled over a 10-year period. Using a private insurance administrative claims database for all insulin prescriptions filled at least once, the median out-of-pocket cost to patients went from \$19 per vial of insulin

in 2000 to \$36 per vial of insulin in 2010 (38). In addition, Working Group members with the USC Schaeffer Center found that average Medicare Part D beneficiary out-of-pocket costs for all insulin types doubled between 2006 and 2013, from \$27 per month to \$65 per month. However, it should be noted that these results are average costs and do not capture fluctuations in cost-sharing that patients experience throughout the year (such as during the deductible phase), and they do not capture patient costs when their insulin is not on their health plan's formulary. In addition, these studies do not include people who are uninsured. More information is needed to better quantify insulin costs for people with diabetes.

Biosimilar Insulins

Another issue raised by stakeholders was the lack of competition in the insulin

manufacturing sector and whether introduction of biosimilar insulins will lead to lower prices. The Working Group spoke with manufacturers who want to introduce a biosimilar insulin into the U.S. market who said the increased regulatory burden associated with the development, as well as U.S. Food and Drug Administration (FDA) approval, of biosimilars is deterring manufacturers from producing biosimilar insulins.

Insulin is a biologic medication made from living cells and far more complex to manufacture than small-molecule medications, which are made by combining different chemical ingredients (37). Before 2010, a regulatory path was not in place to allow for the development of biosimilar medications, as there has been for decades for small-molecule drugs. If a biologic medication no longer had patent protection, another company could manufacture its own version. In order to obtain FDA approval, the company would not be able to rely exclusively on safety and efficacy data from the original manufacturer's research, as is the case with small-molecule generic drugs. To address this problem, Congress enacted the Biologics Price Competition and Innovation Act (BPCIA) as part of the Affordable Care Act in 2010. Under the BPCIA, companies developing alternatives to biologic medications (called "biosimilar" medications) must prove that their medication is "highly similar" to the original biologic and that there are no "clinically meaningful" differences from the original biologic (39). According to the FDA, "[t]his generally means that biosimilar manufacturers do not need to conduct as many expensive and lengthy clinical trials, potentially leading to faster access to these products, additional therapeutic options, and reduced costs for patients" (39). The manufacturer of a biosimilar medication can submit additional data to the FDA to be deemed "interchangeable" with the original biologic medication. These data must show that the biosimilar is "expected to produce the same clinical result" as the original biologic medication and that "switching between the proposed interchangeable product and the reference product does not increase safety risks or decrease effectiveness compared to using the reference product without such switching" (39). Depending on state laws, if a biosimilar is deemed interchangeable by the FDA, a pharmacist

may fill a prescription written for the original version with the biosimilar version, much like they currently do for other types of medications with so-called generic medications. Prior to passage of BPCIA, alternative versions of original biologic medications were referred to as “follow-on biologics.” As of this writing, there are no biosimilar insulins on the market, but to date, three follow-on biologic human insulin analogs have been approved by the FDA (40–42). Discussion with stakeholders revealed differing opinions on how much biosimilars would lower the price of insulin. Currently, the only follow-on biologic insulin on the market was introduced with a list price approximately 15% less than the original version (43,44).

Patient Assistance Programs

The Working Group also reviewed information regarding the value of pharmaceutical patient assistance programs as a solution to help people with diabetes afford their insulin. However, it is beyond the scope of this current report to provide details, benefits, and value of all the available programs. People with diabetes will need to discuss this option with their physician and health plan (if applicable) to determine what, if any, benefit these patient assistance programs could provide to them individually. Although the Working Group did not address this option in detail, it was not deemed to be a long-term or comprehensive answer to the rising cost of insulin for the vast majority of people with diabetes.

Continued Innovation for Diabetes Therapies

One issue of importance to people with diabetes is the need for continued innovation in diabetes management and prevention. New technologies, pharmacotherapies, and strategies continue to be needed to prevent the disease, to diminish adverse side effects like hypoglycemia and weight gain, to promote adherence, and to prevent complications. Such innovation would generate substantial value to people with diabetes both now and in the future (45). One of the best ways to encourage innovation is to better link reimbursement to value (46). With value-based insurance design, the amount of cost-sharing for a medical treatment or service is set according to its value rather than its cost. Value-based insurance design provides coverage for evidence-based

treatments that improve health by lowering or eliminating patient cost-sharing. Efforts to encourage value-based insurance design, wherein cost-sharing is linked to population health outcomes, may improve adherence and lower patient financial burden (47).

PATIENT COST-SHARING: INSURANCE TYPE MATTERS

There are many factors that impact how much people with diabetes pay for insulin, including the amount and type of insulin and delivery system they use. Another major factor is whether the person has insurance and, if so, what type. Whether the person's health insurance plan or its PBM has negotiated rebates with insulin manufacturers also impacts the cost to people with diabetes. In the U.S., there are many different types of health insurance.

Almost half of Americans have health insurance provided through their employer or a family member's employer (48). Employer coverage is generally regulated by federal law, but employers have leeway in determining which benefits to cover and how much to charge enrollees. Medicaid, a health insurance program for low-income individuals, covers more than 68 million Americans (20% of the population) (49). Each state manages and administers the Medicaid programs for their residents; however, they are required to follow federal guidelines, which include limits to the out-of-pocket costs to beneficiaries. Medicare, the federal health care program for Americans over age 65 years, people with disabilities under age 65 years, and people with end-stage renal disease, covers about 14% of Americans (48). Federal rules dictate the benefits covered under Medicare and how much enrollees pay, including Medicare Part D, the program's prescription drug benefit. Approximately 7% of Americans purchase insurance on their own directly from an insurer or through state health insurance exchanges (called individual market insurance) (48). Federal and state laws dictate which benefits are covered in individual market insurance plans as well as enrollees' annual spending on care. Roughly 2% of Americans are covered under other government programs like military or Veterans Administration coverage, and 9% have no health insurance coverage (48).

To further understand how having insurance and insurance type impact

an individual's insulin costs, the Working Group provides several case scenarios, using an insulin with a list price of \$480 per vial as an example. (See Table 2 for a glossary of health insurance terms.)

The Uninsured Person

An uninsured person with diabetes will pay the full \$480 for the insulin, regardless of any rebates offered by the manufacturer. He or she could directly receive payment assistance from the manufacturer or a pharmaceutical patient assistance program, but eligibility for those programs varies based on the individual's income, state, and medication.

The Person With Commercial Insurance

A person with diabetes who has commercial insurance may pay less than the \$480 list price, but the amount paid depends upon the person's insurance contract. If the person is required to pay an annual deductible that has not yet been reached (for example, if this is the patient's first expenditure in the new year), the person with diabetes will pay the full \$480 list price for the insulin until the person spends enough to meet the deductible. Once the deductible is met, if the person's insurance contract specifies a fixed co-payment, he or she will pay a flat amount, for example, \$50 per prescription, even if the person with diabetes uses multiple vials of the same insulin product per month. However, if the insurance plan requires coinsurance, the person with diabetes will pay a percentage, for example, 20% of the cost of each vial of insulin. Importantly, the coinsurance is based on the list price of the insulin, not the net cost after any rebates or discounts negotiated by the PBM. In this case, the out-of-pocket cost by the person with diabetes for the insulin is \$96 per vial (20% of the \$480 list price).

The Person With Medicare

A Medicare beneficiary with Part D prescription drug coverage could face an array of different benefit designs and out-of-pocket expenditures, depending on the type of plan in which the person with diabetes enrolls, where the prescription is filled, and the phase of coverage. For example, in 2018 under the standard benefit (see Fig. 8 for overview of Medicare standard benefit structure) (50), beneficiaries face a deductible of \$405 and a coinsurance rate of 25%. Thus,

on the first fill, the first \$405 is paid out-of-pocket, plus 25% of the remaining cost of the drug (25% of \$75) for a total of \$423.75. The 25% coinsurance rate applies to additional fills until the person reaches the plan’s initial coverage limit (\$3,750 in most plans in 2018) and enters the coverage gap, commonly known as the “donut hole.” Historically, beneficiaries paid 100% of the Part D plan’s brand-name drug costs in the donut hole, but the Affordable Care Act has reduced some of that burden. In 2018, beneficiaries pay 35% of the Part D plan’s brand-name drug costs (or \$168 per prescription in this example) in the coverage gap until their annual out-of-pocket expense reaches \$5,000. After that, beneficiaries pay 5% of a drug’s list price (\$24) for the remainder of the calendar year. Beginning in 2019, beneficiaries in the standard plan will pay 25% (or \$120 per vial in this example) of the cost of their brand-name prescription drugs once they meet their deductible until they reach the out-of-pocket maximum.

The Person With Medicaid

For a person with diabetes with Medicaid drug coverage, co-payments are generally limited to a nominal amount (\$1–\$5) for drugs on the preferred drug list. Medicaid drug coverage varies from state to state, however, all states include some insulins on their preferred drug lists. If a Medicaid enrollee needs a medication not on the state’s preferred drug list, the prescriber can

submit a request on his or her behalf stating the medical need for the drug.

CONCLUSIONS AND RECOMMENDATIONS

After discussions with more than 20 stakeholders in the insulin supply chain, the Working Group remains concerned by the complexity of the system. As outlined, there are numerous stakeholders involved in the delivery of insulin, with multiple opaque transactions between and among these stakeholders (Fig. 3). It was also the consensus of the Working Group that incentives throughout the insulin supply chain facilitate and may even promote high list prices. The following sections provide the conclusions and recommendations of the Working Group.

Conclusions

- List prices of insulin have risen precipitously in recent years. Between 2002 and 2013, the average price of insulin nearly tripled.
- The current pricing and rebate system encourages high list prices.
 - As list prices increase, the profits of the intermediaries in the insulin supply chain (wholesalers, PBMs, pharmacies) increase since each may receive a rebate, discount, or fee calculated as a percentage of the list price.
- There is a lack of transparency throughout the insulin supply chain. It is unclear precisely how the dollars flow and how much each intermediary profits.

- Manufacturers are rarely paid the list price for insulin. The so-called net price—which reflects what the manufacturers receive—is much lower; however, in most cases, the data are not available.
- In the vast majority of cases, discounts and rebates negotiated between PBMs and manufacturers and between PBMs and pharmacies, which affect the cost of insulin for the person with diabetes, are confidential.
 - PBM clients (often large employers in most cases) are not privy to these negotiations, nor do they know the net price obtained by the PBM for insulins.
- Formulary considerations and decisions are not transparent.
- PBMs have substantial market power.
 - PBMs’ primary customers are health plans and employers, not patients.
 - PBMs negotiate rebates from manufacturers using formulary placement as leverage.
 - PBMs often exclude from formularies the insulins made by the manufacturer who offers the lowest rebate.
 - As a result of negotiation, rules for coverage differ from plan to plan and year to year, or even within the same plan year.
 - When insulins are excluded from the formulary, moved to a different cost-sharing tier, or removed during the plan year, it places a burden on people with diabetes and providers and may have a negative health impact.
 - PBMs receive administrative fees from their clients (health insurance plans) for utilization management services (prior authorization, etc.). Often it is the PBM that determines which and how many drugs on the formulary are subject to utilization management.
- People with diabetes are financially harmed by high list prices and high out-of-pocket costs.
 - Regardless of the negotiated net price, the cost of insulin for people with diabetes is greatly influenced by the list price for insulins.
 - Out-of-pocket costs vary depending upon the type of health insurance each individual has and the type of insulin prescribed. The costs can be

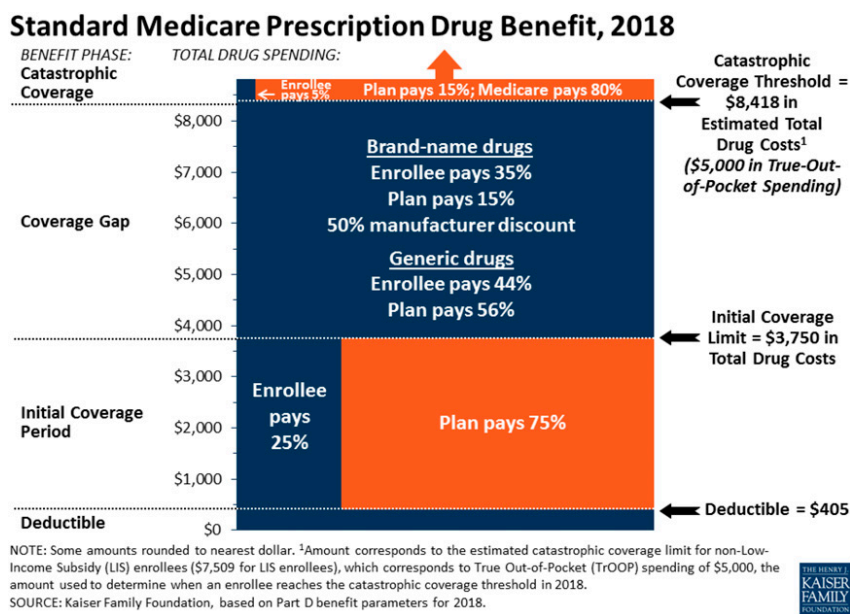


Figure 8—Standard Medicare prescription drug benefit, 2018 (50).

significantly higher for people who are uninsured, who have an insurance plan with a high deductible, or who are in the Medicare Part D donut hole.

- Manufacturer rebates often are not directly passed on to people with diabetes.
- Patients' medical care can be adversely affected by formulary decisions.
 - People with high cost-sharing are less adherent to recommended dosing, which results in short- and long-term harm to their health.
 - Formulary exclusions and frequent formulary changes cause uncertainty, increase financial costs for people with diabetes, and could have serious negative consequences on the health of people with diabetes.
- The regulatory framework for development and approval of biosimilar insulins is burdensome for manufacturers.
 - There are not enough biosimilar insulins on the market.
 - Prices for biosimilar insulins are not likely to be lower unless there are multiple biosimilars that can be substituted for the brand-name analog insulin, rather than only one.
- Prescribing patterns have favored newer, more expensive insulins.
 - Newer insulins, including analogs, are more expensive than older insulins including human insulins.
 - Human insulin may be an appropriate alternative to more expensive analog insulins for some people with diabetes.

Recommendations

- Providers, pharmacies, and health plans should discuss the cost of insulin preparations with people with diabetes to help understand the advantages, disadvantages, and financial implications of potential insulin preparations.
- Providers should prescribe the lowest-priced insulin required to effectively and safely achieve treatment goals.
 - This may include using human insulin in appropriately selected patients.
 - Providers should be aware of the rising cost of insulin preparations and how this negatively impacts adherence to the clinical treatment by people with diabetes.
 - Providers should be trained to appropriately prescribe all forms of insulin preparations based on evidence-based medicine.

- Cost-sharing for insured people with diabetes should be based on the lowest price available.
- Uninsured people with diabetes should have access to high-quality, low-cost insulins.
- Researchers should study the comparative effectiveness and cost-effectiveness of the various insulins.
- List price for insulins should more closely reflect net price, and rebates based on list price should be minimized. The current payment system should rely less on rebates, discounts, and fees based on list price.
- Health plans should ensure that people with diabetes can access their insulin without undue administrative burden or excessive cost.
 - Payers, insurers, manufacturers, and PBMs should design pharmacy formularies that include a full range of insulin preparations, including human insulin and insulin analogs, in the lowest cost-sharing tier.
- PBMs and payers should use rebates to lower costs for insulin at the point of sale for people with diabetes.
- There needs to be more transparency throughout the insulin supply chain.
- Payers, insurers, manufacturers, PBMs, and people with diabetes should encourage innovation in the development of more effective insulin preparations.
- The FDA should continue to streamline the process to bring biosimilar insulins to market.
- Organizations such as the ADA should do the following:
 - Advocate for access to affordable and evidence-based insulin preparations for all people with diabetes.
 - Ensure that health providers receive ongoing medical education on how to prescribe all insulin preparations, including human insulins, based on scientific and medical evidence.
 - Develop and regularly update clinical guidelines or standards of care based on scientific evidence for prescribing all forms of insulins and make these guidelines easily available to health care providers.
 - Make information about the advantages, disadvantages, and financial implications of all insulin preparations easily available to people with diabetes.

Duality of Interest. D.G. has received research support from the ADA to examine trends in insulin

pricing. D.G. is also a consultant to Precision Health Economics and owns equity in its parent company, Precision Medicine Group. W.H.H. serves as Chair, Data Safety Monitoring Board, Merck Sharp & Dohme, and as a consultant for Janssen Scientific Affairs, LLC. K.V.N. received research support from the ADA to examine trends in insulin pricing and has consulted for Precision Health Economics. A.C.P. has served on the Board of Directors for the ADA. S.I.T. has served as a consultant for Ionis Pharmaceuticals; has received research support provided to University of Maryland School of Medicine by Regeneron Pharmaceuticals; and owns stock in Celgene, Amgen, and Abbott Laboratories. A.L.Y. served on the Board of Directors for the ADA and owns stock in Amgen and Bristol-Myers Squibb through a broker-managed account. No other potential conflicts of interest relevant to this article were reported.

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The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: August 16, 2019

I respectfully request that **Senate Bill #116**, relating to Prescription Insulin Drugs, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Janet Cruz", written over a horizontal line.

Senator Janet Cruz
Florida Senate, District 18

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

SB 116

Bill Number (if applicable)

Topic Insulin Drug - Prescription

Amendment Barcode (if applicable)

Name Steve ~~Rosser~~ Rosser

Job Title Engineer - Dad

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Street

Oakland FL 34787

City

State

Zip

Email stinger93@mac.com

Speaking: For Against Information

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

Representing my SON

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)

12/10/19

Meeting Date

116

Bill Number (if applicable)

Topic Insulin Drugs

Amendment Barcode (if applicable)

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Email _____

Speaking: For Against Information

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

Representing FMA

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)

12/10/19

Meeting Date

SB 116

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

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

Representing American Diabetes Association + American Academy of Pediatrics

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)

12/10/19

Meeting Date

5B 116

Bill Number (if applicable)

Topic Prescription Insulin Drug

Amendment Barcode (if applicable)

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Speaking: For Against Information

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

Representing My son & American Diabetes Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

SB 116

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

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State

Zip

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

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

Representing Myself & ADA

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19 Meeting Date

SB 116 Bill Number (if applicable)

Topic insulin co-pay cap

Amendment Barcode (if applicable)

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

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

Representing AMERICAN DIABETES ASSOCIATION

Appearing at request of Chair: [X] 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.

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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)

12-10-19
Meeting Date

SB116
Bill Number (if applicable)

Topic Insulin Affordability

Amendment Barcode (if applicable)

Name Karen Young Kirksey

Job Title Publicist

Address 2259 Upland Way
Tallahassee, FL 32311
Street City State Zip

Phone 850-322-6329

Email karenykirksey@gmail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

SB116

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Jared Willis

Job Title Director of Government Relations

Address 2544 Blairstone Pines Dr

Phone 284-1996

Street

Tallahassee

FL

32301

Email govaffairs@foma.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Florida Osteopathic Medical 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

116
Bill Number (if applicable)

Topic Insulin drugs

Amendment Barcode (if applicable)

Name BETH LABASKY

Job Title Mother

Address 1400 Village Square Blvd

Phone 850 322 7335

Street

St 03-116

Email bethlabasky@att.com

City

Tallevast Fla

State

Zip

32312

Speaking: For Against Information

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

Representing mother of Type 1 daughter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/19
Meeting Date

SB 116
Bill Number (if applicable)

Topic SB 116

Amendment Barcode (if applicable)

Name Dr. Otis Kirksey

Job Title Director of Pharmacy, Neighborhood Medical Center

Address 2259 Upland Way, Tallahassee

Phone 850 284 6873

Tallahassee FL 32311
City State Zip

Email OWKirksey@gmail.com

Speaking: For Against Information

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

Representing American Diabetes 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

December 10, 2019

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

SB 116

Meeting Date

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Nora Clark

Job Title Asst. Director for Digital & Social Living for FSD Front

Address 45110 Cavendish Pt

Phone 850-567-9107

Street

Tallahassee
City

FL
State

32309
Zip

Email nora.clark@fla.gov

Speaking: For Against Information

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

Representing Nora Clark / self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

December 10, 2019

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

SB 116

Meeting Date

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name CHRIS CLARK

Job Title HEALTH COACH 'ULTRA ENDURANCE' ATHLETE

Address 4516 CAVENDISH CT

Phone (541) 390-2122

Street

JALAHASSEE

FL

32309

Email itc77@gmail.com

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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12/10/19

Meeting Date

SB 116

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Ivonne Fernandez

Job Title ASSOCIATE STATE Director -

Address 215 Monroe Street

Phone 954-850-7262

Street

Tallahassee Florida

Email ifernandez@carp.org

City

State

Zip

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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12/10/2019

Meeting Date

SB 116

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe Street

Phone 850-205-9000

Street

Tallahassee

FL

Email doug.bell@mhdfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chapter of the American Academy of Pediatrics

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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12/10/19
Meeting Date

SB 116
Bill Number (if applicable)

Topic Insulin Coping

Amendment Barcode (if applicable)

Name Maria Perez

Job Title Corrections Officer

Address 4407 Stonefield Drive
Street

Phone 407 719 3084

Orlando FL 32826
City State Zip

Email mbailey1776@yahoo.com

Speaking: For Against Information

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

Representing Maria Perez

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

December 10, 2019

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

SB 116

Meeting Date

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Geri Leaman

Job Title retired

Address 23404 Hobbs Road

Phone 407-234-3127

Sorrento FL 32776

Email leamans2@comcast.net

City State Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

December 10, 2019

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

SB 116

Meeting Date

Bill Number (if applicable)

Topic Prescription Insulin Drugs

Amendment Barcode (if applicable)

Name Charles A. Fernandez

Job Title Type 1 Diabetic - Advocate

Address 1260 Continental Court

Phone (850) 345-7355

Street

Tallahassee

FL

32304

City

State

Zip

Email Charles.fernandez@gmail.com

Speaking: For Against Information

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

Representing T1 International

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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12/10/2019

Meeting Date

116
SB ~~109~~

Bill Number (if applicable)

Topic Perscription Insulin Drugs

Amendment Barcode (if applicable)

Name Emmabella Rudd

Job Title Legislative & Policy Lead of Insulin4All

Address 3308 Founders Club Drive

Phone 941-807-1250

Street

Sarasota

Florida

34240

Email emmabellarudd@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Insulin4All

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19 Meeting Date

SB 116 Bill Number (if applicable)

Topic Insulin Co Pay

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title

Address 3005 Duval St, # 410

Phone 425-4000

City

State

Zip

Email joy@meenanlawfirm.com

Speaking: For [] Against [x] Information []

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

Representing

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

Lobbyist registered with Legislature: Yes [x] 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 140

INTRODUCER: Community Affairs Committee and Senators Hutson and Bradley

SUBJECT: Fireworks

DATE: December 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 140 provides an exemption from the prohibition of fireworks usage during designated holidays. The designated holidays are Memorial Day, the last Monday in May; Independence Day, July 4; New Year's Eve, December 31; and New Year's Day, January 1.

II. Present Situation:

Chapter 791, F.S., sets forth the framework for the regulation of fireworks in Florida under the State Fire Marshal's (SFM) office within the Department of Financial Services (DFS). While ch. 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement departments.¹ The statutes prohibit the retail sale and use of fireworks² by the public. However, provisions of ch. 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban. The law does allow sparklers and other novelty products,³ like smoke devices and noisemakers, to be sold at retail to the public and to be used by the public.⁴ Sparklers and similar items, as opposed to fireworks, do not contain explosive

¹ Section 791.001, F.S.

² Florida Statutes provide specific definitions of what are and are not fireworks, which is outlined in later sections of the analysis.

³ Section 791.01(4)(c), F.S. Novelty products include: snakes or glow worms, smoke devices, trick noisemakers, party poppers, booby traps, snappers, trick matches, cigarette load, and auto burglar alarms.

⁴ Retailers that sell sparklers to the general public are classified into two groups: "seasonal retailers" are persons who sell sparklers only from June 20 through July 5 and from December 10 through January 2 (the temporary stands and tents near roads are operated by seasonal retailers); "retailers" are persons who sell sparklers throughout the year from a fixed location.

compounds, cannot be propelled through the air, and are hand-held or ground-based.

Federal Fireworks Provisions

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has adopted federal regulations to distinguish explosives from fireworks, which are sold in the United States as either “display fireworks” or “consumer fireworks.”⁵ Display fireworks are large fireworks used in shows, generally under the supervision of a trained pyrotechnician.⁶

ATF does not regulate consumer fireworks, which it characterizes as the small fireworks usually sold at stands around the Fourth of July holiday.⁷ The manufacturing of consumer fireworks requires an explosives license from ATF because consumer fireworks contain pyrotechnic compositions classified as explosive materials.⁸

Products Classified as Fireworks in Florida

Section 791.01(4)(a), F.S., defines the term “fireworks” as certain combustible or explosive substances or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes “blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrockets, roman candles, dago bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.” Section 791.02(1), F.S., provides that it is unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks.

“Sparklers” are defined as “a device which emits showers of sparks upon burning, does not contain any explosive compounds, does not detonate or explode, is handheld or ground based, cannot propel itself through the air, and contains not more than 100 grams of the chemical compound which produces sparks upon burning.” Any sparkler that is not approved by the SFM is classified as fireworks.⁹ All approved sparkler products are legal for sale until January 31 of the following year.¹⁰ Fraudulent misrepresentation of a device as approved for sale as a sparkler amounts to a misdemeanor of the first degree.¹¹

Public Displays of Fireworks in Florida

Section 791.02, F.S., also allows counties and cities to adopt reasonable rules and regulations for the granting of permits for the supervised public display of fireworks within their boundaries. Display operators must apply for a permit at least 15 days in advance and obtain approval from

See s. 791.015, F.S.

⁵ See ATF, *Fireworks Safety and Security*, available at <https://www.atf.gov/explosives/fireworks-safety-and-security> (last visited Dec. 5, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Section 791.01(8), F.S.

¹⁰ Section 791.013(1), F.S.

¹¹ *Id.*

municipal chiefs of police and fire departments. Section 791.03, F.S., authorizes counties to require a bond of not less than \$500 for any damages caused by a fireworks display.

The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA), which establishes minimum safety standards for outdoor public displays.¹² Local governments may adopt more stringent restrictions for the outdoor display of fireworks, but cannot enact less stringent provisions.¹³

State Fire Marshal Role in Fireworks Regulation

The SFM issues a Certificate of Registration to persons and companies engaged in the business of manufacturing, distributing, wholesaling, and retailing sparklers and imposes an annual fee.¹⁴ All sparklers must be annually tested¹⁵ and approved by the SFM according to specified standards prior to sale or use.¹⁶ Any product that is not approved by the SFM is classified as fireworks. The SFM promulgates an annual list of approved sparklers on its website.¹⁷

According to the SFM, there are currently 710 registered sparkler retailers, which sell to the public from 3,740 fixed places of business throughout the year. There are 841 registered sparkler seasonal retailers, which may sell from June 20 through July 5 and from December 10 through January 2. Presently, there are 92 registered sparkler wholesalers, 7 registered sparkler distributors and 3 registered sparkler manufacturers.¹⁸ Section 791.04, F.S., allows wholesalers, distributors, and manufacturers registered with the SFM to sell fireworks at wholesale, but only if the purchaser meets one of the enumerated exemptions. These exemptions allow the sale of fireworks to:

- Other manufacturers, distributors, or wholesalers registered with the SFM;
- Other registered manufacturers, distributors, or wholesalers who ship fireworks directly out of Florida;
- Persons holding a permit from any board of county commissioners (or municipality) at the display covered by such permit;
- Railroads or other transportation agencies for signal, illumination, quarrying, blasting or other industrial use;
- A show or theater for the sale or use of blank cartridges;

¹² Section 791.012, F.S.

¹³ *Id.* Section 791.055, F.S., further outlines restrictions on the storage of sparklers to ensure such products are kept in a safe manner.

¹⁴ Section 791.015, F.S. The certificate issued by the SFM is mandatory and contains the licensed address where sales are permitted and must be posted at the registered location. Fees for manufacturers, distributors, and wholesalers of sparklers are \$1,000; for retailers the fees are \$15; and for seasonal retailers, the fee is \$200. Revenue from registration fee payments is deposited in the Insurance Regulatory Trust Fund for the purposes of implementing the registration and testing provisions of ch. 791, F.S.

¹⁵ Sparklers, unless they are subsequently altered, are only tested once by the SFM.

¹⁶ Sections 791.015 and 791.013, F.S. Sparklers must be submitted for testing to the SFM's Bureau of Forensic Fire and Explosives Analysis Laboratory in Tallahassee prior to September of each year. The SFM does not test novelties or trick Noisemakers.

¹⁷ Division of State Fire Marshal, *List of Approved Sparklers: February 1, 2019 to January 31*, available at: <https://www.myfloridacfo.com/division/sfm/BFP/documents/2019-2020SparklerList.pdf> (last visited December 5, 2019).

¹⁸ Section 791.01, F.S., and email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services (Sep. 29, 2019) (on file with the Senate Committee on Community Affairs).

- Athletics or sports for signal or ceremonial purposes;
- Military organizations, or organizations composed of the Armed Forces of the United States; and
- Licensed manufacturers who experiment by exploding and storing fireworks in their own
- Compounds.

Enforcement of Florida Fireworks Laws

It is a first-degree misdemeanor penalty for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks.¹⁹ It is not, however, a violation of the law to merely possess fireworks. The law imposes a similar penalty for individuals, members of a partnership, and officers of an association or corporation who violate the terms of ch. 791, F.S.,²⁰ and for persons who alter approved sparklers and subsequently sell such products or fraudulently represent a device as approved for sale as a sparkler by the SFM when it is not approved.²¹ In addition, the sheriff or any other police officer is authorized to seize, take or remove at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored, or held in violation of ch. 791, F.S.²²

Agriculture Works and Fish Hatcheries Fireworks Exemption and Fireworks Retailer Waivers

The importation, purchase, sale, or use of fireworks to be used solely and exclusively to frighten birds from agricultural works and fish hatcheries is authorized pursuant to s. 791.07, F.S.²³ The Department of Agriculture and Consumer Services (DACCS) governs this provision pursuant to its rules, which mandate that persons who utilize this exemption must first file a written statement with the county sheriff verifying such persons are engaged in agriculture or operate a fish hatchery.²⁴ These persons must then present this statement to the seller at the point of sale. The processes and procedures for the agriculture works and fish hatcheries exemption should not be confused with “certificates,” “waivers,” or “affidavits” that fireworks retailers often ask fireworks buyers to sign when a person purchases something above a sparkler. While waivers may acknowledge and cite the agricultural exemption in s. 791.07, F.S., or the wholesale exemptions in s. 791.04, F.S., these documents do not waive these laws. The SFM has previously advised persons to not sign waivers in order to purchase illegal fireworks, stating that signing a waiver will not clear a consumer of responsibility if caught illegally using fireworks.²⁵

¹⁹ Sections 791.02, F.S., and 791.06, F.S. A misdemeanor penalty is one year in jail and a \$1,000 fine; see ss.775.082 and 775.083, F.S.

²⁰ Section 791.06, F.S. Firms, copartnerships, or corporations found to violate the law are subject to a \$1,000 fine.

²¹ Section 791.013, F.S.

²² Section 791.05, F.S.

²³ Specially designed pyrotechnic explosives and propane canons are commonly used and effective bird dispersal tools. See U.S. Department of Agriculture Animal & Plant Health Inspection Service, Bird Dispersal Technics (Aug. 2016), available at

https://www.aphis.usda.gov/wildlife_damage/reports/Wildlife%20Damage%20Management%20Technical%20Series/BirdDispersal-Techniques-WDM-Technical-Series.pdf (last visited Dec. 5, 2019).

²⁴ Rules 5A-3.001 and 5A-3.002, F.A.C.

²⁵ Florida Chief Financial Officer Press Release, Florida State Fire Marshal’s Office Urges Floridians to Celebrate Safely this Fourth of July (July 3, 2017), available at

<https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=4848> (last visited Dec. 5, 2019).

The Miketa Case

Issues surrounding fireworks buyer certificates were addressed in 2002 in *State v. Miketa*.²⁶ The Third District Court of Appeal held that ch. 791, F.S., did not require a seller of fireworks to use due diligence to determine if a purchaser met one of the statutory wholesale exemptions under the law. The Court reasoned that all that is required of the seller, before she or he could lawfully sell the fireworks, was for the purchaser to sign a statement, supplied by the seller, that the purchaser is covered by one of the exemptions to the statute. Since the statute was penal in nature, it should be strictly construed against the state. Because the fireworks statute failed to include a requirement that the seller make a bona fide attempt to determine if the purchase is exempt by requiring supporting documentation, such a requirement could not be read into the law.

Florida Consumer Fireworks Task Force (2007-2008)

In 2007, the Legislature enacted ch. 2007-67, Laws of Florida, and established a Consumer Fireworks Task Force (Task Force) within the DACS for the purpose of studying issues concerning consumer fireworks.²⁷ Pending completion of the Legislature's review of the Task Force's report and to ensure uniformity of fire prevention and safety standards, the Legislature enacted limits on retail sales facilities for consumer fireworks, which provided:

- A new permanent retail sales facility engaged in sales permitted under s. 791.07, F.S., (i.e., for agricultural and fish hatchery uses) may not be opened in Florida after March 8, 2007, unless construction for the permanent retail sales facility received site plan approval and construction begun on or before March 8, 2007; and
- The number of permits for temporary retail sales facilities, such as tents, engaged in sales otherwise permitted by s. 791.07, F.S., (i.e., for agricultural and fish hatchery uses) issued after March 8, 2007, by a county, municipality, or other unit of local government, may not exceed the number of permits the governmental entity issued for such facilities during the 2006 calendar year.²⁸

Under ch. 2007-67, s. 10(5), Laws of Florida, a municipality, county, or other unit of local government may not adopt an ordinance, rule, regulation, or other law after March 8, 2007 which directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use, or possess consumer fireworks in Florida.²⁹

Key recommendations adopted by the Task Force in its final report included:

- Clear definitions and conditions for the use of consumer fireworks;
- Removal or amendments to existing exemptions;
- Establishment of consistent local government regulations, compliance and penalties;

²⁶ 824 So. 2d 970, 974 (Fla. 3d DCA 2002).

²⁷ See ch. 2007-67, s. 10, Laws of Fla.; as set forth in s.10(4), transmittal of the Task Force report to the President of the Senate and the Speaker of the House of Representatives abolished the Task Force.

²⁸ See ch. 2007-67, s. 10(5), Laws of Fla.

²⁹ *Id.* Further, if the Legislature enacts legislation to provide for the comprehensive regulation of fire prevention and safety standards for the use of consumer fireworks to replace s. 791.07, F.S., on or before July 1, 2008, s. 791.07, F.S., does not prohibit opening any such facility, permitting any such temporary facility, or adopting any such ordinance or other law after such legislation is enacted. However, no such legislation was enacted on or before July 1, 2008.

- Baseline regulation and safety standards for temporary retail sales facilities;
- Regulation of hours and location of the use of consumer fireworks; and
- Ensure that fees be developed sufficient to ensure that all aspects of the Task Force's recommendations are revenue neutral to state and local governments.³⁰

Other States' Regulation of Fireworks

Industry association information indicates that nationally, one state, Massachusetts, bans all consumer fireworks, three states allow only wire or wood stick sparklers and other novelty items, and 46 states and the District of Columbia allow some or all types of consumer fireworks permitted by federal regulations.³¹

State law in Georgia allows fireworks use on any day from 10:00 a.m. to 11:59 p.m., unless the noise from such use is not in compliance with a noise ordinance of a county or municipal corporation.³² A noise ordinance provision does not apply on January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year. In addition, on January 1 of each year, fireworks use is permitted from 12:00 midnight up to 1:00 a.m.

In Michigan,³³ local units of government may enact certain ordinances regulating fireworks but such ordinances shall not regulate the use of consumer fireworks on the following days beginning at 11:00 a.m.:

- December 31 until 1 a.m. on January 1;
- The Saturday and Sunday immediately preceding Memorial Day until 11:45 p.m. on each of those days;
- June 29 to July 4 until 11:45 p.m. on each of those days;
- July 5, if that date is a Friday or Saturday, until 11:45 p.m.; and
- The Saturday and Sunday immediately preceding Labor Day until 11:45 p.m. on each of those days.

Fireworks Related Injuries and Fires

According to the U.S. Consumer Product Safety Commission's (CPSC) 2018 Fireworks Annual

³⁰ Department of Agriculture and Consumer Services, *Florida Consumer Fireworks Task Force: Final Report* (Jan. 15, 2008), available at https://consensus.fsu.edu/Fireworks-Task-Force/pdfs/Fireworks_Final.pdf (last visited Dec. 5, 2019).

³¹ See American Pyrotechnics Association, *2019 State Fireworks Control Laws* (June 2019) available at <https://www.americanpyro.com/assets/docs/FactsandFigures/Rev2019%20State%20Laws%20Firework%20Map.pdf> (last visited Dec. 5, 2019).

³² See Official Code of Georgia, § 25-10-2, available at <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=326894ef-3894-4c3d-a276-3c354a51ae72&config=00JAA1MDBIYzczZi11YjFILTQxMTgtYWE3OS02YTgyOGM2NWJIMDYKAFBvZENhdGFsb2fed0oM9qoQOMCSJFX5qkd&pddocfullpath=%2Fshared%2Fdocument%2Fstatuteslegislation%2Furn%3AcontentItem%3A5WRH-YDC1-JKB3-X17P-00008-00&pddocid=urn%3AcontentItem%3A5WRHYDC1-JKB3-X17P-00008-00&pdcontentcomponentid=234186&pdteaserkey=sr4&pditab=allpods&ecomp=h567kkk&earg=sr4&prid=67d7319f-75b1-4851-9d42-29b12824fa69> (last visited Oct. 29, 2019).

³³ See Michigan Fireworks Safety Act, Section 28.457, available at [http://www.legislature.mi.gov/\(S\(k5phsamwcqvfiul5qtah2lsu\)\)/mileg.aspx?page=GetObject&objectname=mcl-28-457](http://www.legislature.mi.gov/(S(k5phsamwcqvfiul5qtah2lsu))/mileg.aspx?page=GetObject&objectname=mcl-28-457) (last visited Dec. 5, 2019).

Report,³⁴ fireworks were involved in an estimated 9,100 injuries treated in U.S. hospital emergency departments during calendar year 2018. Approximately 81 percent of the victims treated at emergency departments were released upon receiving care. The report found that there is not a statistically significant trend in estimated emergency department-treated, fireworks-related injuries from 2003 to 2018. CPSC staff received reports of five non-occupational fireworks-related deaths during the year.

The National Fire Protection Association reports³⁵ that fireworks start an average of 18,500 fires per year, including 1,300 structure fires, 300 vehicle fires, and 16,900 outside and other fires. These fires caused an average of three deaths, 40 civilian injuries, and an average of \$43 million in direct property damage.

According to DFS, in 2018, there were 108 fires in Florida in which fireworks were reported as the cause.³⁶ DFS states those fires resulted in estimated property damage of \$287,751. In 2017, DFS identified 173 fires in the state in which fireworks were reported as the cause, which resulted in one civilian death and estimated property damage of \$500,660.³⁷

III. Effect of Proposed Changes:

Section 1 creates s. 791.08, F.S., to provide, during designated holidays, an exemption from the prohibition of fireworks usage. Subsection (1) defines “designated holiday” as Memorial Day, the last Monday in May; Independence Day, July 4; New Year’s Eve, December 31; and New Year’s Day, January 1.

Subsection (2) provides that ch. 791, F.S., does not prohibit the use of fireworks solely and exclusively during a designated holiday. This subsection further states that s. 791.08, F.S., is not intended to provide for the comprehensive regulation of fireworks as described in s. 10(5), ch. 2007-67³⁸, Laws of Florida, or to supersede any local government regulation relating to the use

³⁴ U.S. Consumer Product Safety Commission, *2018 Fireworks Annual Report* (June 2019), available at https://www.cpsc.gov/s3fs-public/Fireworks_Report_2018.pdf?5kZ4zdr9jPFyhPmeg3MoL35mGX8fB0s7 (last visited Dec. 5, 2019).

³⁵ National Fire Protection Association, Public Education: Fireworks, available at <https://www.nfpa.org/PublicEducation/Fire-causes-and-risks/Seasonal-fire-causes/Fireworks> (last visited Dec. 5, 2019).

³⁶ Department of Financial Services, Senate Bill 140 Agency Analysis (Sep. 20, 2019) (on file with the Senate Committee on Community Affairs).

³⁷ *Id.*

³⁸ Section 10(5), ch. 2007-67, Laws of Florida, provides “Pending completion of the Legislature’s review of the task force’s report and to ensure that fire prevention and safety standards are uniform, a new permanent retail sales facility engaged in sales otherwise permitted under s. 791.07, Florida Statutes, may not be opened in this state after March 8, 2007, unless the permanent retail sales facility has received siteplan approval and construction has begun on or before March 8, 2007; the number of permits for temporary retail sales facilities, such as tents, engaged in sales otherwise permitted by s. 791.07, Florida Statutes, which are issued after March 8, 2007, by a county, municipality, or other unit of local government may not exceed the number of permits that such governmental entity issued for such facilities during the previous calendar year; and a municipality, county, or other unit of local government may not adopt an ordinance, rule, regulation, or other law after March 8, 2007, which directly prohibits or directly interferes with the safety standards established by state law or the right to purchase, sell, use, or possess consumer fireworks in this state. However, if the Legislature enacts legislation to provide for the comprehensive regulation of fire prevention and safety standards for the use of consumer fireworks to replace this subsection on or before July 1, 2008, this subsection does not prohibit opening any such facility, permitting any such temporary facility, or adopting any such ordinance or other law after such legislation is enacted.”³⁸ The Department of Agriculture and Consumer Services’ *Florida Consumer Fireworks Task Force: Final Report* was issued January 15,

of fireworks as provided in s. 10(5), ch. 2007-67, Laws of Florida. This is intended to maintain prohibitions enacted in that bill on the opening of new permanent retail sales facilities, the issuance of permits for temporary retail sales facilities in greater numbers than were permitted in 2006, and on the enactment of certain local government ordinances.

Section 2 provides that the bill shall take effect upon becoming law.

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:

Sellers of fireworks may experience increased sales.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the bill removes the prohibition on fireworks usage on certain designated holidays, it is silent on the importation, purchase, or sale of fireworks on or for usage on these days. In addition, seasonal retailer sales dates do not currently include any time around Memorial Day.

VIII. Statutes Affected:

This bill creates section 791.08 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 Community Affairs on November 4, 2019:

- Added New Year’s Day to the list of designated holidays that are exempt from the current prohibition on fireworks use.
- Removed a rulemaking requirement for the Division of State Fire Marshal.

CS/CS by Banking and Insurance on December 10, 2019:

- Added that s. 791.08, F.S., is not intended to provide for the comprehensive regulation of fireworks as described in s. 10(5), ch. 2007-67, Laws of Florida, or to supersede any local government regulation relating to the use of fireworks as provided in s. 10(5), ch. 2007-67, Laws of Florida.

- B. **Amendments:**

None.



726310

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/10/2019	.	
	.	
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	.	

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

Senate Amendment (with title amendment)

Delete line 20
and insert:
solely and exclusively during a designated holiday. This section is not intended to provide for the comprehensive regulation of fireworks as described in s. 10(5), chapter 2007-67, Laws of Florida, or to supersede any local governmental regulation relating to the use of fireworks as provided in s. 10(5), chapter 2007-67, Laws of Florida.



726310

11
12
13
14
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16
17

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

And the title is amended as follows:

Delete line 5

and insert:

and exclusively during a designated holiday; providing
construction; providing

By the Committee on Community Affairs; and Senator Hutson

578-01160-20

2020140c1

1 A bill to be entitled
2 An act relating to fireworks; creating s. 791.08,
3 F.S.; defining the term "designated holiday";
4 providing an exemption for the use of fireworks solely
5 and exclusively during a designated holiday; providing
6 an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 791.08, Florida Statutes, is created to
11 read:
12 791.08 Use during designated holidays; exemption.-
13 (1) As used in this section, the term "designated holiday"
14 means:
15 (a) New Year's Day, January 1;
16 (b) Memorial Day, the last Monday in May;
17 (c) Independence Day, July 4; or
18 (d) New Year's Eve, December 31.
19 (2) This chapter does not prohibit the use of fireworks
20 solely and exclusively during a designated holiday.
21 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: November 7, 2019

I respectfully request that **Senate Bill #140**, relating to Fireworks, be placed on the:

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

A handwritten signature in black ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/10/19

Meeting Date

SB 140

Bill Number (if applicable)

726310

Amendment Barcode (if applicable)

Topic Fireworks

Name Kenny Johnson

Job Title Deputy Mayor

Address 120 Malabar Road

Phone 321-474-0183

Street

Palm Bay

FL

State

32908

Zip

Email kenny.johnson@palmbayflorida.org

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

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

Representing City of Palm Bay

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

Lobbyist registered with Legislature: [] Yes [X] 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)

12/10/19

Meeting Date

SB-140

Bill Number (if applicable)

726310

Amendment Barcode (if applicable)

Topic FIREWORKS

Name DOMINICK MONTANARO

Job Title COUNCILMAN - CITY OF SATELLITE BCH

Address 565 CASSIA BLVD

Street

Phone 321-501-4316

SATELLITE BEACH

City

State

Zip

Email MONTANARO@SATELLITEBEACH.ORG

Speaking: [] For [] Against [] Information

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

Representing CITY OF SATELLITE BEACH

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

Lobbyist registered with Legislature: [] Yes [X] 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)

12/10/2019

Meeting Date

SB 140

Bill Number (if applicable)

726310

Amendment Barcode (if applicable)

Topic Fireworks

Name Beth Alvi

Job Title Director of Policy

Address 308 N. Monroe

Phone 850-999-1028

Street

Tallahassee

FL

32312

Email Beth.Alvi@audubon.org

City

State

Zip

Speaking: For Against Information

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

Representing Audubon Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/19

Meeting Date

140

Bill Number (if applicable)

726 310

Amendment Barcode (if applicable)

Topic Fireworks

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

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 Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

THE FLORIDA SENATE

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

12/10/19

Meeting Date

Fireworks

Topic

Kate Magfall

Name

State Director

Job Title

1206 Welfton Dr.

Address

Street

Lalokhooe FL

City

State

32312

Zip

lcm@llwehs.us.org

Email

850 528-1001

Phone

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Norman Society of the United States

Representing

Yes No

Appearing at request of Chair:

Yes No

Lobbyist registered with Legislature:

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)

12/10/2019
Meeting Date

SB140
Bill Number (if applicable)

Topic FIREWORKS

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W COLLEGE AVE
Street

Phone 786.260.9283

TALLAHASSEE FL 32301
City State Zip

Email Cgr@Tales@belibre.com

Speaking: For Against Information

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

Representing AMERICANS FOR PROSPERITY

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)

12/10/19

Meeting Date

Bill Number (if applicable)

Topic

Fireworks

Amendment Barcode (if applicable)

Name

Rou Book

Job Title

Address

104 W. Jefferson

Phone

813 224 3427

Street

TLH

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

TNT + Dept of Fireworks

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 312

INTRODUCER: Senator Stewart

SUBJECT: Motor Vehicle Insurance Coverage for Windshield Glass

DATE: November 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Unfavorable
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 312 prohibits motor vehicle repair shops and their employees from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair. This prohibition also applies to individuals who are not employees of the repair shop, but are compensated for their solicitation of insurance claims.

II. Present Situation:

Automobile Insurance Coverage Related to Windshield Repair

Comprehensive coverage provides coverage for damage to the insured vehicle caused by events other than a collision.¹ This coverage type also covers damage to the vehicle's windshield, and is required by most lenders for purposes of protecting the financial interest of the lender.² For insured vehicles with comprehensive coverage, insurers may not apply the insurance policy deductible to the damaged windshield.³

In-Network Versus Out-of-Network Motor Vehicle Repair Shops

Insurers frequently create preferred vendor networks with motor vehicle repair shops to expedite windshield repairs and negotiate rates for services to be paid directly by the insurer.⁴ An out-of-network motor vehicle repair shop receives payment either from the insured in the form of direct payment or from the insurer by obtaining an assignment of benefits (AOB) of the insured's

¹Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited October 8, 2019)

² *Id.*

³ Section 627.7288, F.S.

⁴ Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).

insurance policy.⁵ Where the policyholder has executed an AOB with the out-of-network motor vehicle repair shop, the shop can either negotiate with, or file a lawsuit against, the insurer if the two sides do not agree on the claim amount.⁶

In Florida, the insured has the right to select either an in-network motor vehicle repair shop or an out-of-network motor vehicle repair shop to repair the damaged windshield.⁷ However, an insurer can elect to require a particular repair shop to restore the damaged windshield, in which case the shop must restore the windshield to its pre-accident condition no matter the cost to the insurer.⁸

Windshield Litigation

The Florida Department of Financial Services provided the following information on the volume of windshield litigation involving an AOB⁹:

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Auto Glass Lawsuits	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	26,664	17,399

Similarly, the Office of Insurance Regulation notes the rising volume of windshield litigation involving an AOB supersedes the volume of water remediation litigation involving an AOB.¹⁰

Florida Motor Vehicle Repair Act

The Department of Agriculture and Consumer Services (DACs) regulates motor vehicle repair shops in Florida under the Florida Motor Vehicle Repair Act.¹¹ This Act requires that all motor vehicle repair shops, with limited exceptions, register with the DACs.¹² A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.¹³ Under the Act, it is unlawful for a motor vehicle repair shop or its employee to engage in various activities such as misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.¹⁴ The Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.¹⁵ In addition, a customer

⁵ *Id.*

⁶ *Id.*

⁷ Florida Department of Financial Services, *Automobile Insurance A Toolkit for Consumers*, <https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited October 8, 2019)

⁸ Section 626.9743(3), F.S.

⁹ Data provided by the Florida Department of Financial Services to the Senate Committee on Banking and Insurance on January 22, 2019 (Senate Meeting Packet) http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf (last visited October 24, 2019).

¹⁰ Florida Financial Services Commission, *Meeting of the Governor and Cabinet* (August 17, 2017) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

¹¹ Sections 559.901-559.9221, F.S.

¹² Section 559.904, F.S.

¹³ Section 559.903(6) and (7), F.S.

¹⁴ Section. 559.920, F.S.

¹⁵ Section 559.921, F.S.

injured by a violation of the Motor Vehicle Repair Act may bring an action against a repair shop. The prevailing party is entitled to damages plus court costs and reasonable attorney fees.¹⁶

Use of Inducements by Motor Vehicle Repair Shops

The Florida Motor Vehicle Repair Act does not prohibit motor vehicle repair shops from offering inducements to consumers. Some out-of-network motor vehicle repair shops advertise inducements to compete for business with in-network vehicle repair shops,¹⁷ while others offer inducements if a consumer files a qualified insurance claim for windshield replacement.¹⁸

Regulation of Inducements in Related Insurance Fields

Prohibited Practices by Insurance Agents

Insurance agents are subject to prosecution under the Unfair Insurance Trade Practices Act¹⁹ for knowingly misrepresenting the benefits, advantages, conditions, or terms of any insurance policy,²⁰ offering inducements to enter into an insurance contract in many settings,²¹ and causing false insurance claims to be filed.²²

Prohibited Practices by Public Adjusters

Public adjusters are subject to prosecution for unfair and deceptive insurance practices²³ if the adjuster offers a monetary or other valuable inducement to invite a policyholder to submit a claim.²⁴ Such unfair and deceptive trade practices also include making an untrue, deceptive, or misleading representation with respect to the business of insurance,²⁵ inviting a policyholder to submit a claim when the policyholder does not have coverage,²⁶ or inviting a policyholder to submit a claim by stating that there is “no risk” to the policyholder by submitting such claim.²⁷

III. Effect of Proposed Changes:

The bill provides that a motor vehicle repair shop may not provide an inducement in the form of a rebate, gift, gift card, cash, coupon, or any other thing of value, in exchange for making an insurance claim for motor vehicle glass replacement or repair. An employee of the motor vehicle repair shop and a nonemployee who is compensated for soliciting insurance claims based on the repair of a motor vehicle glass replacement or repair are both also prohibited from offering such

¹⁶ Section 559.921(1), F.S.

¹⁷ Florida Senate, *Meeting of the Committee on Banking and Insurance* (March 11, 2019) (statement of Keith Seamann, Glass Replacements, LLC).

¹⁸ See, e.g.: <https://www.auto-glassamerica.com/freewindshieldflorida> <https://expressautoglass.biz/windshield-replacement-gift-card.php> (last visited November 1, 2019).

¹⁹ Section 626.9541, F.S.

²⁰ Section 626.9541(1)(a)(1), F.S.

²¹ Section 626.9541(1)(h), F.S.

²² Section 626.9541(1)(u)(1), F.S.

²³ Section 626.854(7), F.S.

²⁴ Section 626.854(7)(a)(2), F.S.

²⁵ *Id.*

²⁶ Section 626.854(7)(a)(1), F.S.

²⁷ Section 626.851(7)(a)(3), F.S.

inducements. Motor vehicle repair shops would be subject to disciplinary actions by the DACS for violations of the bill's provisions.

The bill provides an effective date of July 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:

None.

B. Private Sector Impact:

Motor vehicle repair shops will be prohibited from providing certain inducements to customers. This may negatively affect their businesses.

Indeterminate with respect to insurance premium. A reduction in auto glass costs resulting in a reduction in insurance premiums for auto comprehensive coverage is difficult to estimate as comprehensive coverage includes a wide variety of coverages including, but not limited to, flood, hail, theft, and hurricane.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.920 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.



199336

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
12/11/2019	.	
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The Committee on Banking and Insurance (Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 559.920, Florida Statutes, is amended to
read:

559.920 Unlawful acts and practices.—It shall be a
violation of this act for any motor vehicle repair shop or
employee thereof to do any of the following:

- (1) Engage or attempt to engage in repair work for



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11 compensation of any type without first being registered with or
12 having submitted an affidavit of exemption to the department.†

13 (2) Make or charge for repairs which have not been
14 expressly or impliedly authorized by the customer.†

15 (3) Misrepresent that repairs have been made to a motor
16 vehicle.†

17 (4) Misrepresent that certain parts and repairs are
18 necessary to repair a vehicle.†

19 (5) Misrepresent that the vehicle being inspected or
20 diagnosed is in a dangerous condition or that the customer's
21 continued use of the vehicle may be harmful or cause great
22 damage to the vehicle.†

23 (6) Fraudulently alter any customer contract, estimate,
24 invoice, or other document.†

25 (7) Fraudulently misuse any customer's credit card.†

26 (8) Make or authorize in any manner or by any means
27 whatever any written or oral statement which is untrue,
28 deceptive or misleading, and which is known, or which by the
29 exercise of reasonable care should be known, to be untrue,
30 deceptive or misleading.†

31 (9) Make false promises of a character likely to influence,
32 persuade, or induce a customer to authorize the repair, service,
33 or maintenance of a motor vehicle.†

34 (10) Substitute used, rebuilt, salvaged, or straightened
35 parts for new replacement parts without notice to the motor
36 vehicle owner and to her or his insurer if the cost of repair is
37 to be paid pursuant to an insurance policy and the identity of
38 the insurer or its claims adjuster is disclosed to the motor
39 vehicle repair shop.†



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40 (11) Cause or allow a customer to sign any work order that
41 does not state the repairs requested by the customer or the
42 automobile's odometer reading at the time of repair.~~†~~

43 (12) Fail or refuse to give to a customer a copy of any
44 document requiring the customer's signature upon completion or
45 cancellation of the repair work.~~†~~

46 (13) Willfully depart from or disregard accepted practices
47 and professional standards.~~†~~

48 (14) Have repair work subcontracted without the knowledge
49 or consent of the customer unless the motor vehicle repair shop
50 or employee thereof demonstrates that the customer could not
51 reasonably have been notified.~~†~~

52 (15) Conduct the business of motor vehicle repair in a
53 location other than that stated on the registration
54 certificate.~~†~~

55 (16) Rebuild or restore a rebuilt vehicle without the
56 knowledge of the owner in such a manner that it does not conform
57 to the original vehicle manufacturer's established repair
58 procedures or specifications and allowable tolerances for the
59 particular model and year.~~†~~~~or~~

60 (17) Offer to a customer a rebate, gift, gift card, cash,
61 coupon, or any other thing of value in exchange for making an
62 insurance claim for motor vehicle glass replacement or repair,
63 including an offer made through a nonemployee who is compensated
64 for the solicitation of insurance claims.

65 (18) Pursuant to the repair or replacement of motor vehicle
66 glass for motor vehicles equipped with safety-related systems
67 requiring calibration, fail to provide written notice to the
68 consumer that repair or replacement will require recalibration



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69 of safety-related systems and whether that calibration will be
70 performed and meet or exceed the manufacturer's procedures or
71 specifications, and, if recalibration is not performed or not
72 completed successfully, written notice to the consumer that the
73 vehicle should be taken to be recalibrated by a professional
74 capable of performing a recalibration that meets or exceeds the
75 manufacturer's procedures or specifications. Written notice must
76 be in at least 12-point type.

77 (20)-(17) Perform any other act that is a violation of this
78 part or that constitutes fraud or misrepresentation.

79 (19)-(18) Violate any provision of s. 713.585.

80 Section 2. Section 559.9201, Florida Statutes, is created
81 to read:

82 559.9201 Repairs pursuant to assignment agreements.-

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

84 (a) "Assignee" means a person who is assigned post-loss
85 benefits under comprehensive or combined additional coverage
86 under a motor vehicle insurance policy for windshield damage
87 through an assignment agreement.

88 (b) "Assignment agreement" means any instrument by which
89 post-loss benefits under comprehensive or combined additional
90 coverage under a motor vehicle insurance policy for windshield
91 damage are assigned, transferred, or acquired in any manner, in
92 whole or in part, to or from a person providing services to
93 repair or replace motor vehicle glass.

94 (c) "Assignor" means a person who assigns post-loss
95 benefits under comprehensive or combined additional coverage
96 under a motor vehicle insurance policy for windshield damage to
97 another person through an assignment agreement.



199336

98 (2) In order for an assignment agreement to be valid:

99 (a) The assignment agreement must include all of the
100 following:

101 1. A written repair estimate pursuant to s. 559.905, which
102 cannot be waived, with a clearly defined total amount to be
103 billed to the insurer.

104 2. The following disclosure in at least 16-point type:

105
106 ...(INSERT ASSIGNEE NAME)... HAS TAKEN AN ASSIGNMENT
107 OF BENEFITS FOR YOUR COMPREHENSIVE OR COMBINED
108 ADDITIONAL COVERAGE UNDER YOUR MOTOR VEHICLE INSURANCE
109 POLICY. ...(INSERT ASSIGNEE NAME)... INTENDS TO FILE A
110 CLAIM WITH YOUR INSURANCE COMPANY, AND MAY ALSO BE
111 ENTITLED TO FILE A LAWSUIT IN YOUR NAME, PURSUANT TO
112 THIS ASSIGNMENT OF BENEFITS AGREEMENT. PLEASE SIGN
113 BELOW TO ACKNOWLEDGE THAT ...(INSERT ASSIGNEE NAME)...
114 INTENDS TO FILE A CLAIM WITH YOUR INSURANCE COMPANY,
115 AND THAT A LAWSUIT REGARDING YOUR INSURANCE POLICY MAY
116 BE FILED IN YOUR NAME.

117
118 3. The name, phone number, and address of the assignee and
119 the assignor, and the assignor's signature.

120 (b) The assignee must, at the time of providing an
121 assignment agreement to the consumer, comply with s.
122 559.920(18).

123 (c) The assignment agreement may not include services not
124 provided, including, but not limited to, recalibration of
125 safety-related systems.

126 (3) The assignment agreement must be provided to the



199336

127 insurer at the time of filing the claim with the insurer.
128 Failure to do so precludes a court from awarding attorney fees
129 to the assignee under s. 626.9373 or s. 627.428.

130 (4) (a) An assignee must provide the insurer and the
131 assignor with a written notice of intent to initiate litigation
132 before filing suit under the policy. Such notice must be served
133 by certified mail, return receipt requested, or electronic
134 delivery at least 30 days before filing suit. The notice must
135 specify the damages in dispute, the amount claimed, and a
136 presuit settlement demand. Concurrent with the notice, and as a
137 precondition to filing the suit, the assignee must provide the
138 insurer and the assignor a detailed written invoice of services,
139 including itemized information on equipment, materials, and
140 supplies; the number of labor hours; and, in the case of work
141 performed, proof that the work has been performed in accordance
142 with accepted industry standards.

143 (b) An insurer must respond in writing to the notice within
144 15 days after receiving the notice specified in paragraph (a) by
145 making a presuit settlement offer or requiring the assignee to
146 participate in appraisal or other methods of alternative dispute
147 resolution under the policy. An insurer must have a procedure
148 for the prompt investigation, review, and evaluation of the
149 dispute stated in the notice and must investigate each claim
150 contained in the notice in accordance with the Florida Insurance
151 Code.

152 Section 3. This act shall take effect July 1, 2020.

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

155 And the title is amended as follows:



156 Delete everything before the enacting clause
157 and insert:

158 A bill to be entitled
159 An act relating to motor vehicle glass; amending s.
160 559.920, F.S.; prohibiting motor vehicle repair shops
161 or their employees from offering anything of value to
162 a customer in exchange for making an insurance claim
163 for motor vehicle glass replacement or repair,
164 including offers made through certain persons;
165 providing that the failure of a motor vehicle shop or
166 one of its employees to provide certain written notice
167 to consumers regarding recalibration of safety-related
168 systems is an unlawful act; creating s. 559.9201,
169 F.S.; defining terms; providing requirements that must
170 be met in order for an assignment agreement to be
171 valid; requiring that an assignment agreement be
172 provided to an insurer at a specified time;
173 prohibiting courts from awarding attorney fees to
174 assignees if the assignment agreement is not provided
175 to the insurer at a specified time; providing
176 requirements relating to service of written notices of
177 intent to initiate litigation; requiring insurers to
178 respond to a notice in a specified manner and within a
179 specified timeframe; requiring insurers to have
180 certain procedures relating to disputes; providing an
181 effective date.



880470

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
12/11/2019	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (199336) (with title**
2 **amendment)**

3
4 Between lines 151 and 152
5 insert:

6 Section 3. Section 627.7288, Florida Statutes, is amended
7 to read:

8 627.7288 Comprehensive coverage; deductibles for deductible
9 ~~not to apply to motor vehicle glass.-~~

10 (1) The deductible provisions of any policy of motor



880470

11 vehicle insurance, delivered or issued in this state by an
12 authorized insurer, providing comprehensive coverage or combined
13 additional coverage are not ~~shall not be~~ applicable to damage to
14 the windshield of any motor vehicle covered under such policy.

15 (2) An insurer may offer a separate deductible for damage
16 to the glass of any motor vehicle covered under a motor vehicle
17 insurance policy delivered or issued by the insurer in this
18 state.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 180

23 and insert:

24 certain procedures relating to disputes; amending s.
25 627.7288, F.S.; authorizing insurers to offer separate
26 deductibles for damage to motor vehicle glass;
27 providing an



907190

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 559.920, Florida Statutes, is amended to
read:

559.920 Unlawful acts and practices.—It shall be a
violation of this act for any motor vehicle repair shop or
employee thereof to do any of the following:

- (1) Engage or attempt to engage in repair work for



907190

11 compensation of any type without first being registered with or
12 having submitted an affidavit of exemption to the department.†

13 (2) Make or charge for repairs which have not been
14 expressly or impliedly authorized by the customer.†

15 (3) Misrepresent that repairs have been made to a motor
16 vehicle.†

17 (4) Misrepresent that certain parts and repairs are
18 necessary to repair a vehicle.†

19 (5) Misrepresent that the vehicle being inspected or
20 diagnosed is in a dangerous condition or that the customer's
21 continued use of the vehicle may be harmful or cause great
22 damage to the vehicle.†

23 (6) Fraudulently alter any customer contract, estimate,
24 invoice, or other document.†

25 (7) Fraudulently misuse any customer's credit card.†

26 (8) Make or authorize in any manner or by any means
27 whatever any written or oral statement which is untrue,
28 deceptive or misleading, and which is known, or which by the
29 exercise of reasonable care should be known, to be untrue,
30 deceptive or misleading.†

31 (9) Make false promises of a character likely to influence,
32 persuade, or induce a customer to authorize the repair, service,
33 or maintenance of a motor vehicle.†

34 (10) Substitute used, rebuilt, salvaged, or straightened
35 parts for new replacement parts without notice to the motor
36 vehicle owner and to her or his insurer if the cost of repair is
37 to be paid pursuant to an insurance policy and the identity of
38 the insurer or its claims adjuster is disclosed to the motor
39 vehicle repair shop.†



907190

40 (11) Cause or allow a customer to sign any work order that
41 does not state the repairs requested by the customer or the
42 automobile's odometer reading at the time of repair.~~†~~

43 (12) Fail or refuse to give to a customer a copy of any
44 document requiring the customer's signature upon completion or
45 cancellation of the repair work.~~†~~

46 (13) Willfully depart from or disregard accepted practices
47 and professional standards.~~†~~

48 (14) Have repair work subcontracted without the knowledge
49 or consent of the customer unless the motor vehicle repair shop
50 or employee thereof demonstrates that the customer could not
51 reasonably have been notified.~~†~~

52 (15) Conduct the business of motor vehicle repair in a
53 location other than that stated on the registration
54 certificate.~~†~~

55 (16) Rebuild or restore a rebuilt vehicle without the
56 knowledge of the owner in such a manner that it does not conform
57 to the original vehicle manufacturer's established repair
58 procedures or specifications and allowable tolerances for the
59 particular model and year.~~†~~~~or~~

60 (17) Offer to a customer a rebate, gift, gift card, cash,
61 coupon, or any other thing of value in exchange for making an
62 insurance claim for motor vehicle glass replacement or repair,
63 including an offer made through a nonemployee who is compensated
64 for the solicitation of insurance claims.

65 (18) Pursuant to the repair or replacement of motor vehicle
66 glass for motor vehicles equipped with safety-related systems
67 requiring calibration, fail to provide written notice to the
68 consumer that repair or replacement will require recalibration



69 of safety-related systems and whether that calibration will be
70 performed and meet or exceed the manufacturer's procedures or
71 specifications, and, if recalibration is not performed or not
72 completed successfully, written notice to the consumer that the
73 vehicle should be taken to be recalibrated by a professional
74 capable of performing a recalibration that meets or exceeds the
75 manufacturer's procedures or specifications. Written notice must
76 be in at least 12-point type.

77 (20)-(17) Perform any other act that is a violation of this
78 part or that constitutes fraud or misrepresentation.

79 (19)-(18) Violate any provision of s. 713.585.

80 Section 2. Section 559.9201, Florida Statutes, is created
81 to read:

82 559.9201 Repairs pursuant to assignment agreements.-

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

84 (a) "Assignee" means a person who is assigned post-loss
85 benefits under comprehensive or combined additional coverage
86 under a motor vehicle insurance policy for windshield damage
87 through an assignment agreement.

88 (b) "Assignment agreement" means any instrument by which
89 post-loss benefits under comprehensive or combined additional
90 coverage under a motor vehicle insurance policy for windshield
91 damage are assigned, transferred, or acquired in any manner, in
92 whole or in part, to or from a person providing services to
93 repair or replace motor vehicle glass.

94 (c) "Assignor" means a person who assigns post-loss
95 benefits under comprehensive or combined additional coverage
96 under a motor vehicle insurance policy for windshield damage to
97 another person through an assignment agreement.



907190

98 (2) In order for an assignment agreement to be valid:

99 (a) The assignment agreement must include all of the
100 following:

101 1. A written repair estimate pursuant to s. 559.905, which
102 cannot be waived, with a clearly defined total amount to be
103 billed to the insurer.

104 2. The following disclosure in at least 16-point type:

105
106 ...(INSERT ASSIGNEE NAME)... HAS TAKEN AN ASSIGNMENT
107 OF BENEFITS FOR YOUR COMPREHENSIVE OR COMBINED
108 ADDITIONAL COVERAGE UNDER YOUR MOTOR VEHICLE INSURANCE
109 POLICY. ...(INSERT ASSIGNEE NAME)... INTENDS TO FILE A
110 CLAIM WITH YOUR INSURANCE COMPANY, AND MAY ALSO BE
111 ENTITLED TO FILE A LAWSUIT IN YOUR NAME, PURSUANT TO
112 THIS ASSIGNMENT OF BENEFITS AGREEMENT. BY SIGNING THIS
113 ACKNOWLEDGMENT, YOU ACKNOWLEDGE THAT ...(INSERT
114 ASSIGNEE NAME)... INTENDS TO FILE A CLAIM WITH YOUR
115 INSURANCE COMPANY, AND THAT A LAWSUIT REGARDING YOUR
116 INSURANCE POLICY MAY BE FILED IN YOUR NAME.

117
118 3. The assignee's name, phone number, address, and
119 registration number from the certificate issued by the
120 department pursuant to s. 559.904 and the assignor's name, phone
121 number, address, and signature.

122 (b) The assignee must, at the time of providing an
123 assignment agreement to the consumer, comply with s.
124 559.920(18).

125 (c) The assignment agreement may not include services not
126 provided, including, but not limited to, recalibration of



907190

127 safety-related systems.

128

129 An assignee that fails to meet these requirements for a valid
130 assignment under this subsection must hold harmless the assignor
131 for any costs that may be greater than what is covered by the
132 assignor's insurer.

133 (3) The assignment agreement must be provided to the
134 insurer at the time of filing the claim with the insurer.

135 (4) (a) An assignee must provide the insurer and the
136 assignor with a written notice of intent to initiate litigation
137 before filing suit under the policy. Such notice must be served
138 by certified mail, return receipt requested, or electronic
139 delivery at least 30 days before filing suit. The notice must
140 specify the damages in dispute, the amount claimed, and a
141 presuit settlement demand. Concurrent with the notice, and as a
142 precondition to filing the suit, the assignee must provide the
143 insurer and the assignor a detailed written invoice of services,
144 including itemized information on equipment, materials, and
145 supplies; the number of labor hours; and, in the case of work
146 performed, proof that the work has been performed in accordance
147 with accepted industry standards.

148 (b) An insurer must respond in writing to the notice within
149 15 days after receiving the notice specified in paragraph (a).
150 An insurer must have a procedure for the prompt investigation,
151 review, and evaluation of the dispute stated in the notice and
152 must investigate each claim contained in the notice in
153 accordance with the Florida Insurance Code.

154 Section 3. This act shall take effect July 1, 2020.

155



907190

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

157 And the title is amended as follows:

158 Delete everything before the enacting clause

159 and insert:

160 A bill to be entitled

161 An act relating to motor vehicle glass; amending s.
162 559.920, F.S.; prohibiting motor vehicle repair shops
163 or their employees from offering anything of value to
164 a customer in exchange for making an insurance claim
165 for motor vehicle glass replacement or repair,
166 including offers made through certain persons;
167 providing that the failure of a motor vehicle shop or
168 one of its employees to provide certain written notice
169 to consumers regarding recalibration of safety-related
170 systems is an unlawful act; creating s. 559.9201,
171 F.S.; defining terms; providing requirements that must
172 be met in order for an assignment agreement to be
173 valid; requiring an assignee to hold harmless an
174 assignor when certain requirements are not satisfied;
175 requiring that an assignment agreement be provided to
176 an insurer at a specified time; providing requirements
177 relating to service of written notices of intent to
178 initiate litigation; requiring insurers to respond to
179 a notice within a specified timeframe; requiring
180 insurers to have certain procedures relating to
181 disputes; providing an effective date.



423096

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/11/2019	.	
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	.	
	.	

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

1 **Senate Amendment to Amendment (907190) (with title**
2 **amendment)**

3
4 Between lines 153 and 154
5 insert:

6 Section 3. Section 627.7288, Florida Statutes, is amended
7 to read:

8 627.7288 Comprehensive coverage; deductibles for deductible
9 ~~not to apply to motor vehicle glass.-~~

10 (1) The deductible provisions of any policy of motor



423096

11 vehicle insurance, delivered or issued in this state by an
12 authorized insurer, providing comprehensive coverage or combined
13 additional coverage shall not be applicable to damage to the
14 windshield of any motor vehicle covered under such policy.

15 (2) An insurer may offer a separate deductible for damage
16 to the glass of any motor vehicle covered under a motor vehicle
17 insurance policy delivered or issued by the insurer in this
18 state.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 181

23 and insert:

24 disputes; amending s. 627.7288, F.S.; authorizing
25 insurers to offer separate deductibles for damage to
26 motor vehicle glass; providing an effective date.



504718

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/11/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 75 and 76

insert:

Section 2. Section 627.7288, Florida Statutes, is amended to read:

627.7288 Comprehensive coverage; deductibles for deductible
~~not to apply to~~ motor vehicle glass.—

(1) The deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an



504718

11 authorized insurer, providing comprehensive coverage or combined
12 additional coverage are not ~~shall not be~~ applicable to damage to
13 the windshield of any motor vehicle covered under such policy.

14 (2) An insurer may offer a separate deductible for damage
15 to the glass of any motor vehicle covered under a motor vehicle
16 insurance policy delivered or issued by the insurer in this
17 state.

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete lines 2 - 8

22 and insert:

23 An act relating to motor vehicle glass; amending s.
24 559.920, F.S.; prohibiting motor vehicle repair shops
25 or their employees from offering anything of value to
26 a customer in exchange for making an insurance claim
27 for motor vehicle glass replacement or repair,
28 including offers made through certain persons;
29 amending s. 627.7288, F.S.; authorizing insurers to
30 offer separate deductibles for damage to motor vehicle
31 glass; providing an

By Senator Stewart

13-00497-20

2020312__

1 A bill to be entitled
 2 An act relating to motor vehicle insurance coverage
 3 for windshield glass; amending s. 559.920, F.S.;
 4 prohibiting motor vehicle repair shops or their
 5 employees from offering anything of value to a
 6 customer in exchange for making an insurance claim for
 7 motor vehicle glass replacement or repair, including
 8 offers made through certain persons; providing an
 9 effective date.

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

11 Section 1. Section 559.920, Florida Statutes, is amended to
 12 read:

13 559.920 Unlawful acts and practices.—It is ~~shall be~~ a
 14 violation of this act for any motor vehicle repair shop or
 15 employee thereof to do any of the following:

16 (1) Engage or attempt to engage in repair work for
 17 compensation of any type without first being registered with or
 18 having submitted an affidavit of exemption to the department_+
 19 (2) Make or charge for repairs which have not been
 20 expressly or impliedly authorized by the customer_+
 21 (3) Misrepresent that repairs have been made to a motor
 22 vehicle_+
 23 (4) Misrepresent that certain parts and repairs are
 24 necessary to repair a vehicle_+
 25 (5) Misrepresent that the vehicle being inspected or
 26 diagnosed is in a dangerous condition or that the customer's
 27 continued use of the vehicle may be harmful or cause great
 28
 29

Page 1 of 3

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

13-00497-20

2020312__

30 damage to the vehicle_+
 31 (6) Fraudulently alter any customer contract, estimate,
 32 invoice, or other document_+
 33 (7) Fraudulently misuse any customer's credit card_+
 34 (8) Make or authorize in any manner or by any means
 35 whatever any written or oral statement which is untrue,
 36 deceptive or misleading, and which is known, or which by the
 37 exercise of reasonable care should be known, to be untrue,
 38 deceptive or misleading_+
 39 (9) Make false promises of a character likely to influence,
 40 persuade, or induce a customer to authorize the repair, service,
 41 or maintenance of a motor vehicle_+
 42 (10) Substitute used, rebuilt, salvaged, or straightened
 43 parts for new replacement parts without notice to the motor
 44 vehicle owner and to her or his insurer if the cost of repair is
 45 to be paid pursuant to an insurance policy and the identity of
 46 the insurer or its claims adjuster is disclosed to the motor
 47 vehicle repair shop_+
 48 (11) Cause or allow a customer to sign any work order that
 49 does not state the repairs requested by the customer or the
 50 automobile's odometer reading at the time of repair_+
 51 (12) Fail or refuse to give to a customer a copy of any
 52 document requiring the customer's signature upon completion or
 53 cancellation of the repair work_+
 54 (13) Willfully depart from or disregard accepted practices
 55 and professional standards_+
 56 (14) Have repair work subcontracted without the knowledge
 57 or consent of the customer unless the motor vehicle repair shop
 58 or employee thereof demonstrates that the customer could not

Page 2 of 3

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

13-00497-20

2020312__

59 reasonably have been notified.~~;~~

60 (15) Conduct the business of motor vehicle repair in a
61 location other than that stated on the registration
62 certificate.~~;~~

63 (16) Rebuild or restore a rebuilt vehicle without the
64 knowledge of the owner in such a manner that it does not conform
65 to the original vehicle manufacturer's established repair
66 procedures or specifications and allowable tolerances for the
67 particular model and year.~~;~~~~or~~

68 (17) Offer to a customer a rebate, gift, gift card, cash,
69 coupon, or any other thing of value in exchange for making an
70 insurance claim for motor vehicle glass replacement or repair,
71 including an offer made through a nonemployee who is compensated
72 for the solicitation of insurance claims.

73 (19)~~(17)~~ Perform any other act that is a violation of this
74 part or that constitutes fraud or misrepresentation.

75 (18) Violate any provision of s. 713.585.

76 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19 Meeting Date

312 Bill Number (if applicable)

Topic auto glass gift card inducement

Amendment Barcode (if applicable)

Name Ashley Kalifer

Job Title lobbyist

Address 124 W Jefferson Street

Phone 222-9075

Tallahassee FL 32307

Email

Speaking: [X] 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 [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)

12/10/19

Meeting Date

SB 312

Bill Number (if applicable)

Topic Auto Glass Incentives

Amendment Barcode (if applicable)

Name Sarah Seymour

Job Title Office Manager

Address 4802 Lourinia Dr

Phone 880-345-0521

Street

Tallahassee

FL

32311

City

State

Zip

Email office@seminole

autoglass.com

Speaking: For Against Information

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

Representing Seminole Auto Glass

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)

12-10

SB 312

Meeting Date

Bill Number (if applicable)

Topic Ash Glass

Amendment Barcode (if applicable)

Name MICHAEL CARLSON

Job Title CEO

Address 215 S. Monroe St.

Phone 850 597 7425 x21

Street

Tall FL 32301

Email michael.carlson@PIFF.net

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing PERSONAL INSURANCE FEDERATION

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)

12/10

Meeting Date

312

Bill Number (if applicable)

Topic Auto Glass AOB

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address 1727 Highland Place

Phone 850 509 8022

Street

TLH

City

FL

State

32308

Zip

Email greg@blackconsultingllc.com

Speaking: For Against Information

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

Representing R Street 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.

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)

12/10/2019 Meeting Date

312 Bill Number (if applicable)

Topic Motor Vehicle Ins. Coverage for Windshield Glass Amendment Barcode (if applicable)

Name Todd Palmer

Job Title Owner

Address 650 Broker Creek Rd #420 Street

Phone 813-802-2514

Oldsmar Fl. 34677 City State Zip

Email todd@fixmyjunk.com

Speaking: For Against Information

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

Representing Mr. Anfr Glass

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)

12/10/2019
Meeting Date

312
Bill Number (if applicable)

Topic Motor Vehicle Ins. Coverage For Windshield Glass

Amendment Barcode (if applicable)

Name Robert Arnold

Job Title _____

Address 16602 Sounding Shore Pls
Street

Phone (727) 485-4281

Odessa FL 33556
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/19

Meeting Date

312

Bill Number (if applicable)

Topic Motor Vehicle Insurance Coverage for Windshield Glass

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/10/2019
Meeting Date

312
Bill Number (if applicable)

Topic Motor Vehicle Ins. coverage for windshield glass

907190
Amendment Barcode (if applicable)

Name Roberta Arnold

Job Title _____

Address 16602 Sounding Shore Dr,
Street
Odessa FL 33556
City State Zip

Phone (202) 485-4281

Email _____

Speaking: For Against Information

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

Representing Florida Independent Glass 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.

APPEARANCE RECORD

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

12/10/2019
Meeting Date

312
Bill Number (if applicable)

907190
Amendment Barcode (if applicable)

Topic Motor Vehicle Insurance Coverage
for windshield glass

Name Todd Palmer

Job Title Owner

Address 640 Breaker Creek BL #420 Phone 813-802-2516
Street

Oldman Fl. 34677
City State Zip

Email todd@fixmyquack.com

Speaking: For Against Information

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

Representing Mr. Auto Glass

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)

12/10/19

312

Meeting Date

Bill Number (if applicable)

907190

Topic Motor Vehicle Insurance Coverage for Glass

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32311

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-10-19

Meeting Date

SB32

Bill Number (if applicable)

907190

Amendment Barcode (if applicable)

Topic Auto Safety Glass

Name Jason Lamoureux

Job Title Attorney

Address 611 S. Kings Ave

Street

Phone 813-655-5069

Brendon FL 33511

City

State

Zip

Email

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7014

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: OGSR/Payment Instrument Transaction Information/Office of Financial Regulation

DATE: December 9, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Palecki	Knudson		BI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7014 reenacts and removes the scheduled repeal on October 2, 2020, of s. 560.312, F.S., which makes confidential and exempt from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the payment instrument transaction information held by the Office of Financial Regulation’s check cashing database pursuant to section 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

Pursuant to the Open Government Sunset Review, the public records exemption is scheduled for repeal on October 2, 2020, unless reenacted by the Legislature. Since this bill reenacts the exemption as is, and does not expand its scope, this bill requires the favorable majority vote of each chamber for passage.

This bill takes effect October 1, 2020.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.² Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act mostly contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to section 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in section 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). See also; *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁵

Check Cashing Database

The Office of Financial Regulation (OFR) supervises “check cashers,” a type of money services business which the Florida Statutes defines as persons who “sell currency in exchange for payment instruments²⁶ received, except travelers checks.”²⁷ As the regulator and licensing authority, the OFR is responsible for administering and enforcing ch. 560, F.S., the Money Services Business Act. Check cashers are licensed under Part III of the Money Services Business Act, “Check Cashing and Foreign Currency Exchange.”

Prior to the institution of the check cashing database, OFR licensees engaged in check cashing were required to maintain customer files on those customers cashing corporate or third-party payment instruments exceeding \$1,000, and to maintain files for any payment instrument accepted having a face value of \$1,000 or more. These files were required to include a copy of the customer’s photo identification along with a customer thumbprint taken by the licensee. Licensees were required to maintain these files electronically, as prescribed by rule.²⁸ As regulator, the OFR reviewed these records pursuant to their examination authority.²⁹

Due to concerns about the facilitation of workers’ compensation premium fraud through money services businesses, in 2011 the Chief Financial Officer formed a Money Service Business Facilitated Workers’ Compensation Work Group. This group, comprised of regulators (including the OFR), law enforcement, and industry stakeholders, was tasked with studying the issue. The work group made a number of findings and recommendations, including the establishment of a statewide database that could be utilized by regulators and law enforcement to detect workers’ compensation insurance fraud.³⁰ While licensees were already required by rule to keep substantially similar information in an electronic format that was “readily retrievable and capable of being exported” for examination purposes, the database was expected to generate real-time data that could be used proactively to quickly identify and detect this type of fraud.³¹ The

-
- Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ “Payment instrument” means “a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.” Section 560.103(29), F.S.

²⁷ Section 560.103(6), F.S.

²⁸ Section 560.310(1) and (2), F.S. (2012).

²⁹ Section 560.109(1)-(3), F.S. (2012). The OFR continues to review these records pursuant to their examination authority. See Section 560.109(1)-(3), F.S. (2019).

³⁰ A Report by the Money Service Business Facilitated-Workers’ Compensation Fraud Work Group, available online at http://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf (last viewed December 2, 2019).

³¹ *Id.*

database was further expected to enable parties with a need for the information to make sound business decisions.³²

In response to these findings, the Florida Legislature enacted CS/CS/HB 217 (2013), along with a public records exemption companion, CS/HB 7135 (2013).³³ CS/CS/HB 217 (2013) required the OFR to procure a real time, online check cashing database designed to store information submitted by licensees and “combat fraudulent check cashing activity.”³⁴

Since implementation of the database, licensees are required to submit certain transactional information to the OFR in addition to independently maintaining files pursuant to the preexisting record keeping requirements.³⁵ Licensees must submit the following transactional information to the OFR for inclusion in the database:

- Transaction date
- Payor name as displayed on the payment instrument
- Payee name as displayed on the payment instrument
- Conductor³⁶ name, if different from the payee name
- Amount of the payment instrument
- Amount of currency provided
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument
- Amount of the fee charged for cashing of the payment instrument
- Branch or location where the payment instrument was accepted
- The type of identification and identification number presented by the payee or conductor
- Payee workers’ compensation insurance policy number or exemption certificate number, if the payee is a business, and
- Such additional information as required by rule.³⁷

When licensees submit this information, the OFR assumes custodianship of both personal financial information and private business transaction information. The Legislature found that public availability of such payment transaction information would reveal sensitive, personal financial information about payees and conductors which is traditionally private. The Legislature also found that the public release of payment instrument transaction information identifying licensees or payors may reveal private business transaction information that could be used by competitors to harm one another in the marketplace. Thus, the Legislature found it to be a public necessity that payment transaction information held by the OFR in the database which identifies a licensee, payor, payee, or conductor be confidential and exempt from public records disclosure requirements.³⁸

³² *Id.*

³³ Chapters 2013-139 and 2013-155, Laws of Florida.

³⁴ Section 560.310(4), F.S.

³⁵ Section 560.310(1), (2)(a)-(c), F.S. Further, licensees and authorized vendors must maintain such information for 5 years unless a longer period is required by other state or federal law. Section 560.1105, F.S. Willful failure to comply with records retention requirements is a felony of the third degree. Section 560.1105(4), F.S.

³⁶ “Conductor” means “a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.” Section 560.103(9), F.S.

³⁷ Section 560.310(2)(d), F.S.

³⁸ Chapter 2013-155, Laws of Florida.

The confidential and exempt information remains accessible under certain circumstances; licensees may access the information they submit, and the OFR is authorized to enter into information sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in order to detect and deter financial crimes and workers' compensation violations. Agencies receiving the confidential and exempt information must maintain the confidentiality of such information, unless a court order compels production. In addition, the federal Bank Secrecy Act and U.S. Treasury regulations require financial institutions, including money services businesses like check cashers, to file currency transaction reports for any cash transaction over \$10,000 a day.³⁹ Florida law requires money services businesses, and thus, check cashers, to comply with these requirements.⁴⁰

This public records exemption, as enacted in 2013, was subject to the Open Government Sunset Review Act and scheduled for automatic repeal on October 2, 2018, unless reenacted. However, in 2018 the Legislature extended this repeal date to October 2, 2020, in conjunction with an amendment to Section 560.312 which clarified that the OFR was authorized to release payment transaction information in the aggregate, so long as the information released did not reveal information identifying a licensee, payor, payee, or conductor.⁴¹ Thus, this exemption will sunset on October 2, 2020, unless saved from repeal by the Legislature.

OGSR Survey and Results

In September of 2019, Professional Staff of the Senate Banking and Insurance Committee submitted a questionnaire to the Office of Financial Regulation (OFR) to ascertain whether the public records exemption in s. 560.312, F.S., remains necessary.⁴² Section 560.312, F.S., makes confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the payment instrument transaction information held by the OFR's check cashing database which identifies a licensee, payor, payee, or conductor. Staff reviewed OFR's responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

As part of their response to the questionnaire, the OFR affirmed the legislative findings of public necessity that accompanied the enactment of the exemption. These findings indicated that public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. These findings noted that such information is traditionally private and sensitive, and that protecting the confidentiality of information identifying these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. Further, public release of payment instrument transaction information would identify licensees or payors, and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensees or payors in the marketplace. The Legislature noted that if such information were publicly available, competitors could determine the amount of business conducted by other licensees or

³⁹ 31 U.S.C. ss. 5311-5330 and 31 C.F.R. s. 103.22.

⁴⁰ Section 560.123, F.S.

⁴¹ Chapter 2018-116, Laws of Florida.

⁴² See survey correspondence dated October 2, 2019, on file with the Senate Committee on Banking and Insurance.

payors. Additionally, the OFR indicated that the exemption was still necessary to protect the identities of individuals appearing in the database from undue risk to their reputations and safety, and to protect the confidential business information related to competition.

The OFR indicated it has received public records requests for the exempted records, and did not release the information. The OFR did, however, indicate that it had released such records pursuant to exceptions to the exemption, such as through information-sharing agreements with other governmental agencies and responses to subpoenas and court orders.⁴³ The OFR stated that all records released under such circumstances were released pursuant to the terms of a memorandum of understanding, and when released electronically, were sent via an encrypted connection. The OFR stated that the exempted records are not readily available via alternative means, and are not protected by another exemption.

The OFR recommends reenacting the public records exemption without changes. Additionally, the OFR indicated that this exemption protects Florida consumers' financial and identification records from potentially being used for illicit purposes, and cautioned that repeal may expose personal identifying information to a significant risk of identity theft.

III. Effect of Proposed Changes:

Section 1 reenacts and removes the scheduled repeal on October 2, 2020, of s. 560.312, F.S., which makes confidential and exempt from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the payment instrument transaction information held by the Office of Financial Regulation's check cashing database pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

Section 2 provides an effective date of October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a public necessity statement and a two-thirds vote for passage if, in reenacting an exemption or repealing the sunset date, the exemption is expanded. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment nor does it require a public necessity statement.

The Open Government Sunset Review Act provides that a public records or open meetings exemption may be maintained only if it serves an identifiable public purpose and is no broader than is necessary. An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the

⁴³ Section 560.312(2)(a) and (b), F.S.

exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;⁴⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁴⁵ or
- It protects trade or business secrets.⁴⁶

The identifiable public purpose of this law is to protect sensitive, personal financial information about payees and conductors who use check cashing programs, along with private business transaction information that could be used by competitors to harm other licensees or payors in the marketplace. Both types of records are sensitive and traditionally private. This bill exempts only payment instrument transaction information held by the Office of Financial Regulation's check cashing database pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

Licensees, payors, payees, and conductors would continue to have their personal financial information and business transaction information protected.

⁴⁴ Section 119.15(6)(b)1., F.S.

⁴⁵ Section 119.15(6)(b)2., F.S.

⁴⁶ Section 119.15(6)(b)3., F.S.

C. Government Sector Impact:

The exemption will continue to allow the OFR, other governmental agencies, and law enforcement to access real time data to aid in the prevention of fraud.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 560.312 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.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-01119-20

20207014pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 560.312, F.S., relating to an exemption from public records requirements for certain payment instrument transaction information held by the Office of Financial Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 560.312, Florida Statutes, is amended to read:

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) A licensee may access information that it submits to the office for inclusion in the database.

(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes and workers' compensation violations, pursuant to chapter 440. Any department

Page 1 of 2

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

597-01119-20

20207014pb

or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of the information to a specific party or parties.

(3) The office may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.

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

Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

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

**The Senate Banking and Insurance Committee
September 10, 2019**

Open Government Sunset Review Questionnaire

PLEASE RETURN THIS QUESTIONNAIRE BY OCTOBER 15 , 2019, TO:

**Ann Michelle Palecki
Senior Attorney
Senate Banking and Insurance Committee
Palecki.annmichelle@flsenate.gov
(850)487-5361**

In 2013, the Legislature created a public record exemption in Section 560.312, Florida Statutes, for payment instrument transaction information held by the Florida Office of Financial Regulation which identifies a licensee, payor, payee, or conductor. This public record exemption stands repealed on October 2, 2020, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (Section 119.15, Florida Statutes).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTIONS 560.312(1), 560.310(1)-(3), (5), AND 560.103(9), (19), AND (29), FLORIDA STATUTES, ARE ATTACHED FOR YOUR CONVENIENCE.

Agency or Organization Completing this Questionnaire:

**Florida Office of Financial Regulation – Division of Consumer
Finance**

Name of Person Completing the Questionnaire:

Greg Oaks

Title:

Division Director

Telephone Number:

850.410.9829

E-mail Address:

Greg.Oaks@flofr.com

Date that this Questionnaire was Completed:

10/2/2019

I. Database of payment instrument transactions; confidentiality

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

560.310 Records of check cashers and foreign currency exchangers.—

(1) A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds \$1,000, the following additional information must be maintained or submitted:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed \$1,000.

(b) A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) The office shall, at a minimum, require licensees to submit the following information to the check cashing database or electronic log, before entering into each check cashing transaction for each payment instrument being cashed, in such format as required by rule:

1. Transaction date.
2. Payor name as displayed on the payment instrument.
3. Payee name as displayed on the payment instrument.
4. Conductor name, if different from the payee name.
5. Amount of the payment instrument.
6. Amount of currency provided.
7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.
8. Amount of the fee charged for cashing of the payment instrument.
9. Branch or location where the payment instrument was accepted.
10. The type of identification and identification number presented by the payee or conductor.
11. Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.
12. Such additional information as required by rule.

For purposes of this subsection, multiple payment instruments accepted from any one person on any given day which total \$1,000 or more must be aggregated and reported in the check cashing database or on the log.

(3) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

* * *

(5) The office shall ensure that the check cashing database:

(a) Provides an interface with the Secretary of State’s database for purposes of verifying corporate registration and articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services’ database for purposes of determining proof of coverage for workers’ compensation.

560.103 Definitions.—As used in this chapter, the term:

* * *

(9) “Conductor” means natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

* * *

(19) “Licensee” means a person licensed under this chapter.

* * *

(29) “Payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

II. Public Record Exemption under Review

Section 560.312, Florida Statutes, provides a public record exemption for the payment instrument transaction information maintained by the Florida Office of Financial Regulation (the “Office”) which identifies a licensee, payor, payee, or conductor.

1. What specific records are affected by the public record exemption?

All records contained in the database contain personally identifying information (PII).

- a. What personally identifying information is kept in the database?

Payor name, Payee name, Conductor name, Branch or location where the payment instrument was accepted, type of identification and identification number presented by the payee or conductor, Payee’s workers’ compensation insurance policy number or exemption certificate number, Payee Corporate Document Number as issued by the Secretary of State, Payee Federal Employer Identification Number.

- b. Please describe the types of payment instruments affected by this exemption.

Personal, government issued, and corporate checks.

- c. Please describe the types of licensees that are required to submit these records to the office.

An entity must hold a Florida issued FT2 or FT3 license with a “check cashing modifier” in order to have access to the check cashing database.

2. Please describe any persons or entities that this exemption uniquely affects, as opposed to the general public.

This exemption prevents check cashers from seeing the volume/amount of checks cashed by potential competitors.

3. The Legislative findings for this exemption indicate it is a public necessity to keep payment transaction information held by the Office which identifies a licensee, payor, payee, or conductor confidential and exempt because the public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. It was noted that such information is traditionally private and sensitive, and protecting the confidentiality of information identifying these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. Further, public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensees or payors in the marketplace; if such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors.

a. Does the Office affirm the Legislative findings?

Yes.

i. Can the Office effectively administer the check cashing database without the exemption?

Yes.

ii. Is the exemption still necessary to protect the identity of individuals appearing in the database? Is it still necessary to protect their reputation or safety?

Yes and yes.

iii. Does the exemption protect confidential business information related to competitiveness?

Yes.

b. Are there any additional public purposes or goals the Office has identified in administering the exemption?

No.

c. Should the exemption be modified to include more, less, or different records?

No.

4. Has your agency received any public record requests for any such information?

Yes.

a. If “yes,” please describe the types of entities requesting such information and how many requests were received each year during that period.

Attorneys and Law Enforcement Agencies 17/18 = 2 18/19 = 5

b. If “yes,” was the information released? Please explain.

It was not released in FY 17/18 and was released 4 times in FY 18/19 when OFR was subpoenaed for records.

5. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated by statute. The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the confidential and

exempt information may only be released as provided in statute. Paragraph 560.312(2)(a), Florida Statutes, authorizes release of information that would otherwise be confidential and exempt to the licensee that submitted that information. Paragraph 560.312(2)(b), Florida Statutes, authorizes the Office to enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies for the purpose of detecting and deterring financial crimes and workers' compensation violations pursuant to Chapter 440, Florida Statutes. Information released pursuant to such an agreement must be maintained as confidential, unless, and only to the extent that a court order compels production to a specific party or parties. Finally, Subsection 560.312(3), Florida Statutes, provides that the Office may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.

a. How often is such information requested under these three conditions?

FY 17/18 = 79 FY 18/19 = 69

b. How often is such information released?

FY 17/18 = 79 FY 18/19 = 69

c. Are there other instances when such information must be released (e.g., with another governmental entity in the furtherance of its lawful duties and responsibilities)?

No. This information is only released through MOU, subpoena and court order.

i. If "yes," please list those entities needing access to such information.

N/A.

d. Please describe the process the OFR uses to ensure the confidentiality of the records or information if personal identifying information is released pursuant to each of the above conditions.

All records released are handled pursuant to an MOU and when released electronically are sent via an encrypted connection.

6. Can the information contained in the records be readily obtained by alternate means? If so, how?

Only licensees have similar sets of records, but only records that they submit to the database.

7. Are these records protected by another exemption?

No.

8. Are there other exemptions for the same type of record that would be appropriate to merge with this exemption?

No.

9. Is there any case law interpreting the exemption?

There is no case law interpreting ss. 560.310 or 560.312.

Does your agency recommend that the Legislature repeal the public record exemption, or reenact the public record exemption? Please provide justification for your recommendation.

repeal the exemption

reenact the exemption 'as is'

reenact the exemption with the following changes:

10. Please provide any additional comments regarding the public record exemption under review.

This exemption protects Florida Consumers' financial and identification records from disclosure

and potential use for illicit purposes. Repealing this exemption would expose the public's personal identifying information to significant risk for identity theft.

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:
Judge:

Caption: Senate Committee on Baking and Insurance

Started: 12/10/2019 2:05:26 PM

Ends: 12/10/2019 3:55:36 PM Length: 01:50:11

2:05:26 PM Chair Broxson called meeting to order
2:05:28 PM Sheri call roll
2:05:46 PM Quorum present
2:05:50 PM Chair Broxson is speaking
2:06:00 PM Chair Broxson calling Senator Hutson up for SB 140
2:06:16 PM Senator Hutson presenting bill
2:06:45 PM Chair Broxson ask if there is an amendment on the bill.
2:06:50 PM Senator advised there is
2:06:54 PM Senator Hutson is presenting amendment
2:07:27 PM Chair Broxson thanked him
2:07:32 PM Chair Broxson asked if there are any questions on the amendment
2:07:34 PM Chair Broxson asked if there is any public testimony on the amendment
2:07:42 PM Kenny Johnson speaking
2:08:31 PM Chair Broxson called upon Dominick Montanaro
2:08:37 PM Mr Montanaro waives in support of the amendment
2:08:46 PM Chair Broxson calls Beth Alvi
2:08:53 PM Beth Alvi speaks
2:10:21 PM Chair Broxson calls Casey Cook
2:10:31 PM Casey Cook waives in support of amendment
2:10:40 PM Chair Broxson ask if there is any debate on the amendment
2:10:48 PM Senator Taddeo ask a question
2:11:01 PM Senator Hutson answers
2:11:19 PM Chair Broxson ask if anyone else has something to say
2:11:26 PM Chair Broxson speaking and thanking for amendment
2:11:42 PM Chair Broxson said all infavor of amendment say "yay" not in favor say "nay"
2:11:50 PM Amendment was adopted
2:11:54 PM Chair Broxson ask if there are any question on bill as amended
2:12:07 PM Kate Macfall speaking
2:12:39 PM Chair Broxson calls Cesar Grajales
2:12:50 PM Cesar Grajales waives in support
2:13:04 PM Chair Broxson calls Emmabella Rudd
2:13:10 PM Emmabella Rudd waives in support
2:13:16 PM Senator Lee with a question
2:13:55 PM Chair Broxson talking with Senator Lee
2:14:03 PM Chair Broxson ask if there is anyother debate
2:14:08 PM Senator Hutson speaking
2:14:30 PM Senator Hutson asked for support
2:14:37 PM Sheri calls roll for bill 140
2:14:57 PM Chair Broxson advises the bill is reported favorably
2:15:05 PM Chair Broxson is calling up SPB 7014
2:15:29 PM Senator Rouson presenting the bill
2:16:30 PM Chair Boxson ask if there are any question on the bill
2:16:37 PM Chair Broxson as if there is any debate on the bill
2:16:42 PM Senator Rouson ask that SPB 7014 be submitted as a committee bill
2:16:52 PM Sheri call roll on SPB 7014
2:17:06 PM Chair Broxson advise SPB 7014 is reported as a committee bill
2:17:16 PM Chair Broxson advises now going to Senator Stewart for SB 312
2:17:28 PM Senator Stewart is presenting bill
2:18:43 PM Chair Broxson ask if there are any amendments
2:18:51 PM Senator Stewart presnting amendment
2:22:18 PM Chair Broxson ask if there are any questions on the amendment
2:22:25 PM Vice Chair Rouson has a question

2:22:46 PM Chair Broxson answered the question
2:22:58 PM Chair Broxson calling Robert Arnold
2:23:13 PM Mr Arnold waived in opposition
2:23:44 PM Todd Palmer is now speaking on the amendment
2:31:06 PM Chair Broxson advised Mr. Palmer on matters of bill to get with the sponsor
2:31:36 PM Senator Perry ask question
2:31:48 PM Mr. Palmer answers question
2:33:53 PM Senator Taddeo ask question
2:34:21 PM Mr. Palmer answers the question
2:34:34 PM Senator Lee with question
2:34:51 PM Mr. Palmer answers his question
2:35:26 PM Senator Lee with another question
2:36:05 PM Mr. Palmer answers the question
2:37:26 PM Senator Lee with a follow up
2:38:46 PM Mr. Palmer answers yes
2:39:41 PM Chair Broxson ask if there are any other questions
2:39:50 PM Chair Broxson calls Carolyn Johnson
2:40:04 PM Ms. Johnson speaks
2:41:51 PM Chair Broxson calls Michael Carlson
2:42:20 PM Chair Broxson calls Ashley Kalifel
2:42:29 PM Ms. Kalifel speaks
2:43:30 PM Senator Lee with a question
2:44:24 PM Ms. Kalifel answers
2:44:34 PM Senator Lee with question
2:44:37 PM Ms. Kalifel answers
2:44:42 PM Senator Lee speaking
2:44:52 PM Ms. Kalifel responds
2:45:05 PM Senator Lee ask question
2:45:10 PM Ms. Kalifel answers
2:45:17 PM Senator Lee with question
2:45:22 PM Ms. Kalifel answers
2:46:18 PM Senator Lee with question
2:46:29 PM Ms Kalifel answers
2:46:56 PM Senator Lee with another question
2:47:03 PM Ms Kalifel answers
2:47:21 PM Senator Lee with question
2:47:28 PM Ms Kalifel answers
2:47:44 PM Senator Lee with a follow up
2:48:09 PM Ms Kalifel answers
2:48:41 PM Senator Lee speaking
2:50:02 PM Chair Broxson making a statement
2:50:18 PM Senator Gruters with a question
2:50:39 PM Ms Kalifel answers
2:51:53 PM Senator Gruters with question
2:52:03 PM Ms Kalifel answers
2:53:06 PM Chair Broxson ask if anyone else has a question
2:53:13 PM Senator Brandes with a question
2:53:17 PM Ms Kalifel answers
2:53:43 PM Chair Broxson ask if there are any other questions
2:53:52 PM Chair Broxson calls Ron Haynes
2:56:50 PM Chair Broxson ask if anyone has questions
2:57:49 PM Senator Lee has a question
2:57:56 PM Mr Haynes answer
2:58:29 PM Senator Lee with a question
2:58:59 PM Mr Haynes answers
2:59:27 PM Sent Lee question
2:59:38 PM Mr Haynes answers
3:00:43 PM Sen Lee question
3:01:41 PM Mr Haynes responds
3:03:36 PM Chair Broxson speaking
3:03:42 PM Mr Haynes answers
3:04:10 PM Chair Broxson with question

3:04:14 PM Mr Haynes answers
3:04:32 PM Chair Broxson speaking
3:04:40 PM Senator Brandes ask question
3:04:52 PM Mr Haynes answer
3:05:01 PM Senator Brandes has question
3:05:06 PM Mr Haynes answers
3:05:29 PM Senator Brandes with a question
3:05:38 PM Mr Haynes answers
3:05:42 PM Senator Brandes with question
3:05:49 PM Mr Haynes answers
3:06:35 PM Senator Brandes ask question
3:06:46 PM Mr Haynes answers
3:07:14 PM Senator Brandes ask question
3:07:19 PM Mr Haynes answer
3:07:31 PM Senator Brandes with question
3:07:39 PM Mr Haynes answers
3:08:37 PM Senator Brandes has a question
3:08:42 PM Mr. Haynes answers
3:08:58 PM Chair Broxson ask if there are any other questions
3:09:05 PM Chair Broxson calls Jason Lamourex
3:09:19 PM Chair Broxson speaking to Senator Cruz
3:09:29 PM Jason Lamourex talking on his point
3:10:50 PM Chair Broxson speaks to Mr Lamourex
3:11:03 PM Chair Broxson calls Mark Delegul
3:11:16 PM Mr Delegul speaking his point
3:13:03 PM Mark speaking his point
3:15:26 PM Sen Lee with comment
3:17:26 PM Mr Delegul replys
3:17:57 PM Senator Lee ask question
3:18:13 PM Mr Delegul answers
3:18:46 PM Chair Broxson has question
3:18:59 PM Mr Delegul answers
3:19:37 PM Chair Broxson has question
3:19:50 PM Mr Delegul answers
3:20:28 PM Chair Broxson ask if anyone else has any questions
3:21:02 PM Senatotr Gruters with question
3:21:11 PM Mr Delegul answers
3:22:39 PM Senator Gruters with follow up
3:24:00 PM Mr Delegul answers
3:24:47 PM Senator Gruters with question
3:24:52 PM Senator Rouson has question
3:25:16 PM Mr Delegul answers
3:26:21 PM Senator Rouson with follow up
3:26:49 PM Mr Delegul answers
3:27:40 PM Senator Brandes with question
3:27:51 PM Mr Delegul answers
3:28:23 PM Chair Broxson with final question
3:29:03 PM Mr Delegul answers
3:29:29 PM Chari roxson talks
3:29:41 PM Mr Delegul replys
3:30:26 PM Chair Broxson ask any other question
3:30:40 PM Chair Broxson adv late filed amendment by Senator Brandes
3:30:51 PM Senator Brandes speaking about amendment
3:31:33 PM Chair Broxson ask if there are any questions
3:31:41 PM Chair Broxson speaking about new amendment
3:32:12 PM Sen Brandes makes comment
3:32:45 PM Chair Broxson ask Mr Haynes to come back up and speak if he wants to
3:33:50 PM Mr Haynes come back up to comment on new amendment
3:34:50 PM Sen Brandes has question
3:35:21 PM Mr Haynes replys
3:35:30 PM Senator Brandes comment
3:35:42 PM Mr Haynes replys

3:36:37 PM Sen Brandes makes comment
3:37:12 PM Ron Haynes gives his name for the record per Chair Broxson
3:37:21 PM Sen Rouson makes a request for a motion
3:37:33 PM Actual motion to the delete all amendment
3:37:48 PM Chair ask you want time certain on main amendment
3:38:02 PM Chair ask you want time certain on main amendment
3:38:05 PM Chair Broxson ask all in favor
3:38:13 PM Chair Broxson states we will vote at 3:40 on the amendment
3:38:23 PM Senator Perry with a question
3:38:29 PM Mr Haynes answers
3:38:36 PM Senator Perry question
3:38:43 PM Mr Haynes answers
3:38:46 PM Chair maybe a little debate for amend to amend
3:39:00 PM Sen Lee makes a comment
3:39:24 PM Chair ask all in favor adv say yay
3:39:35 PM Sheri call roll
3:39:58 PM Chair adv that we are back on amendment barcode 907190
3:40:19 PM Chair ask all in favor
3:40:25 PM Chair asked Sheri to call roll
3:40:31 PM Sheri call roll on strike all
3:40:53 PM Chair Broxson said to show strike all not approved
3:41:02 PM Chair Bronson back on bill and we have appearance cards
3:41:16 PM Ashley Kalifel waive in support
3:41:23 PM Sarah Seymore speaking
3:43:27 PM Chair Broxson call Greg Black
3:43:37 PM Todd Palmer waives in opposition
3:43:47 PM Robert Arnold to stand
3:43:55 PM Chair adv motion from Sen Rouson for time cert at 10 till on underline bill
3:44:14 PM Chair Broxson asked if there is any debate?
3:44:18 PM Mottion was approved
3:44:29 PM Robert Arnold speaking
3:45:21 PM Chair adv we are in debate
3:45:43 PM Senator Brandes speaks
3:45:56 PM Brandes speaking on amendment
3:46:09 PM Chair ask any questions
3:46:19 PM Chair any debate
3:46:21 PM Sent Lee makes comme
3:47:05 PM Chair any other debate
3:47:10 PM Chair Broxson all in favor say ya
3:47:16 PM Chair Broxson asked Sheri to call roll
3:47:20 PM Sheri call roll
3:47:29 PM Chair show amendment approved
3:47:40 PM Chair Broxson adv we are now back on the bill
3:47:45 PM Chair Broxson asked if there are any questions
3:47:49 PM Senator Taddeo with question
3:48:16 PM Chair Broxson asked if there is any other debate
3:48:22 PM Senator Stewart is closing on bill
3:49:31 PM Chair Broxson asked Sheri to call roll
3:49:35 PM Sheri call roll
3:49:58 PM Chair adv bill failed
3:50:04 PM Chair adv we have 10 minutes
3:50:11 PM Chair speaking to Senator Cruz
3:50:20 PM Sent Cruz explaining bill
3:51:09 PM Chair speaking on bill
3:51:29 PM Chair ask to TP bill and bring it back
3:51:45 PM Sen Brandes speaking
3:51:57 PM Chair adv well siad
3:52:07 PM Motion is approved
3:52:20 PM Chair making comment to sent Brandes
3:52:51 PM Sen Brandes speaking
3:55:02 PM Sen Brandes adv he will withdraw motion
3:55:13 PM Chair adv motion with drawn

3:55:20 PM Meeting adjourn