SB 1208 by **BI**; (Identical to H 7111) OGSR/Unclaimed Property/Department of Financial Services

SB 1230 by **BI**; (Similar to H 7107) OGSR/Public Records Exemption/Consumer Complaints and Inquiries

SB 1232 by **BI**; (Identical to H 7033) OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies

SB 1404 by **Altman**; (Compare to CS/H 0643) Title Insurance

577578	D		S	FAV	BI, Negron	Delete everything after	01/26 03:46 PM

SB 1406 by **Altman**; (Compare to CS/H 0643) Public Records/Title Insurance Data/Department of Financial Services

424926	D		S	FAV	BI, Negron	Delete everything after	01/26 03:46 PM

CS/SB 752 by **JU, Flores**; (Identical to CS/H 0565) Equitable Distribution of Marital Assets and Liabilities

SB 1090 by **Richter**; (Identical to CS/H 0483) Uniform Commercial Code

SB 1152 by **Richter**; (Identical to H 4087) Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement

SM 1822 by **Hays**; (Similar to H 1307) Sarbanes-Oxley Act

SM 1778 by **Richter**; (Identical to H 1321) Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

SB 826 by **Bennett**; (Identical to H 0961) Title Insurance Claims

443100	D		S	WD	BI, Bennett	Delete everything after	01/26 03:46 PM
233862	A		S L	FAV	BI, Bennett	Delete L.12 - 18:	01/26 03:46 PM

SB 1262 by **Oelrich**; (Compare to CS/H 1011) Warranty Associations

157488	D		S	FAV	BI, Oelrich	Delete everything after	01/26 03:46 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Thursday, January 26, 2012
TIME: 1:30 —3:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1208** Banking and Insurance	OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO	Favorable Yeas 10 Nays 0
2	**SB 1230** Banking and Insurance	OGSR/Public Records Exemption/Consumer Complaints and Inquiries; Amending provisions relating to a public records exemption for certain records from consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO	Favorable Yeas 10 Nays 0
3	**SB 1232** Banking and Insurance (Identical H 7033)	OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies; Amending provisions relating to a public records exemption for personal identifying information and policy numbers in personal injury protection and property damage liability insurance policies; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable GO	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1404** Altman (Compare CS/H 643, CS/CS/H 645, H 4147, CS/S 938, S 1694, Link S 1406)	Title Insurance; Specifying continuing education requirements for title insurance agents; requiring that certain attorney-owned entities that engage in business as a title insurance agency, other than the active practice of law, must be licensed as a title insurance agency with a designated agent in charge; specifying requirements that apply to title insurance agencies relating to the designation of an agent in charge at specified locations; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency, etc. BI 01/26/2012 Fav/CS JU BC	Fav/CS Yeas 10 Nays 0
5	**SB 1406** Altman (Compare CS/H 643, CS/CS/H 645, Link S 1404)	Public Records/Title Insurance Data/Department of Financial Services; Providing an exemption from public records requirements for financial information, such as revenue, loss, and expense data, which is supplied periodically by a licensed title insurance agency to the Department of Financial Services in order to assist the department in analyzing title insurance premium rates, title search costs, and the financial viability of the title insurance industry in the state; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act, etc. BI 01/26/2012 Fav/CS GO BC	Fav/CS Yeas 10 Nays 0
6	**CS/SB 752** Judiciary / Flores (Identical CS/H 565)	Equitable Distribution of Marital Assets and Liabilities; Redefining the term “marital assets and liabilities” to include the value of the marital portion of the passive appreciation of nonmarital real property; authorizing a court to require security and the payment of a reasonable rate of interest if installment payments are required for the distribution of marital assets and liabilities; requiring the court to provide written findings regarding any installment payments; providing formulas for the calculation of the value of the marital portion of nonmarital real property subject to equitable distribution; requiring the court in the dissolution action to use the formulas unless sufficient evidence is presented showing that the application of the formulas is not equitable, etc. JU 01/12/2012 Fav/CS BI 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1090** Richter (Identical CS/H 483)	Uniform Commercial Code; Revising and providing provisions of the Uniform Commercial Code relating to secured transactions to conform to the revised Article 9 of the Uniform Commercial Code as prepared by the National Conference of Commissioners on Uniform State Laws; revising provisions relating to control of electronic chattel paper; providing rules that apply to certain collateral to which a security interest attaches; providing rules relating to certain financing statements; revising when a record of a mortgage satisfying the requirements of ch. 697, F.S., is effective as a filing statement; creating part VIII of ch. 679, F.S., relating to transition from prior law under the chapter to law under the chapter as amended by the act, etc. CM 01/19/2012 Favorable BI 01/26/2012 Favorable BC	Favorable Yeas 9 Nays 0
8	**SB 1152** Richter (Identical H 4087)	Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement; Repealing provisions relating to the duty of the Financial Services Commission to contract for a periodic report regarding an actuarial peer review and analysis of the ratemaking process of any licensed rating organization that makes rate filings for workers' compensation insurance, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Favorable BC	Favorable Yeas 10 Nays 0
9	**SM 1822** Hays (Similar HM 1307)	Sarbanes-Oxley Act ; Urging Congress to repeal the Sarbanes-Oxley Act of 2002, etc. BI 01/26/2012 Favorable	Favorable Yeas 6 Nays 4
10	**SM 1778** Richter (Identical HM 1321)	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; Urging Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, etc. BI 01/26/2012 Favorable	Favorable Yeas 7 Nays 3
11	**SB 826** Bennett (Identical H 961)	Title Insurance Claims; Providing that after a specified time, a title insurer must pay the claim or cover the insured's costs until the claim is cured, etc. BI 01/19/2012 Not Considered BI 01/26/2012 Fav/CS JU BC	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 1262** Oelrich (Compare CS/H 1011)	Warranty Associations; Providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; providing an exception to the requirement that motor vehicle service agreement companies undergo periodic examinations; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities operating as motor vehicle service agreement companies; authorizing rather than requiring the Office of Financial Regulation to examine home warranty associations, etc. BI 01/26/2012 Fav/CS CM BC	Fav/CS Yeas 10 Nays 0

Other related meeting documents

By the Committee on Banking and Insurance

597-01561A-12 20121208__

A bill to be entitled

An act relating to public records; amending s. 717.117, F.S.; revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (8) of section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8) ~~(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.~~

~~(b)~~ Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(c) Social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, Florida-certified public accountant, private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.~~

Florida Senate - 2012 **(Corrected Copy)** **SB 1208**

597-01561A-12 20121208__

(a) ~~(d)~~ This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

(b) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(c) ~~(c)~~ This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed October 2, 2017 ~~2012~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that social security numbers contained in reports of unclaimed property remain confidential and exempt from public records requirements. Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identify theft. Such use defrauds the rightful owner or the State School Fund, which is the depository for all remaining unclaimed funds.

Section 3. This act shall take effect October 1, 2012.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic 1208 - SSN's

Bill Number 1208 *(if applicable)*

Name Ashley Mayer

Amendment Barcode *(if applicable)*

Job Title Dir. Legis Policy Affairs

Address Capitol - PL-11 *Street*

Phone 413-2863

Tallahassee FL *City* *State* *Zip*

E-mail ashley.mayer@myfloridacfo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CFO Atwater

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic SB 1208 Bill Number 1208 *(if applicable)*

Name TOM WEISKOTTEN Amendment Barcode _____ *(if applicable)*

Job Title OWNER / PRIVATE INVESTIGATOR

Address 3375-C CAPITAL CIR NE Phone _____
Street

TALLAHASSEE FL 32308 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☑ ~~Against~~ ☐ Information

Representing G.R. ROBBINS + ASSOCIATES, P.A.

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

01-26-12
Meeting Date

Topic UNCLAIMED PROPERTY Bill Number 1208 *(if applicable)*

Name HARRY CARSON Amendment Barcode *(if applicable)*

Job Title LICENSED PRIVATE INVESTIGATOR

Address 1815 MICCOUSKEE COMMONS DR STE 106 Phone 850-385-9626
Street

TALLAHASSEE FL 32308 E-mail
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing PROFESSIONAL LOCATOR ASSOCIATION, INC

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

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 Banking and Insurance Committee

BILL:	SB 1208
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Unclaimed Property/ Department of Financial Services
DATE:	January 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

Section 717.117(8), F.S., is an exemption for social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Property identifiers could include bank account numbers, credit card numbers, or insurance policy numbers. This public records exemption will sunset on October 2, 2012, unless saved from repeal by the Legislature.

This bill substantially amends the following section of the Florida Statutes: 717.117(8).

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record

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[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety, or;
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature

[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(4)(b), F.S.

cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 717.117(8), F.S., Exemption

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S., the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for $15 million that is retained in a separate account for the prompt payment of verified claims.[17] The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over $250 in a cost-effective manner.

Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and through a power-of-attorney agreement offer assistance in recovering the property in exchange for a fee. In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau.

Under the exemption in s. 717.117(8)(b), F.S., social security numbers and property identifiers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that replaced the phrase "financial account numbers" with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed property."[18] Property identifiers contained within property reports could include bank account numbers, credit card numbers, or insurance policy numbers. The parties affected by this exemption include owners of unclaimed property, registered claimants' representatives, and other non-registered third parties. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).
[17] Section 717.123, F.S.
[18] Section 717.117(8)(a), F.S.

Section 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants' representatives from the Bureau's website or compact discs produced by the Bureau. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual's social security number can result in exploitation of that individual's financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants' representatives for the sole purpose of locating the owners of the unclaimed property. However, there have been reports that unregistered persons have received the Bureau's compact discs containing the social security numbers of unclaimed property owners, which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

III. Effect of Proposed Changes:

The bill would reenact all current public records exemptions in s. 717.117(8), F.S., relating to social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Additionally, the bill would further exempt the release of social security numbers to registered claimants' representatives who are currently provided a compact disk of various descriptors including full social security numbers which they utilize to identify and locate, for a fee, the owners of any unclaimed or abandon property held by DFS.

The act is effective October 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that:

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 717.117(8), F.S. *See,* Interim Report 2012-314 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property and other misuses of social security numbers and property identifiers related to personal finances and other private information.

Registered claimants' representatives' ability to locate owners may be impacted by no longer providing them with the social security numbers of those individuals who have unclaimed or abandoned property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-01560A-12 20121230__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 624.23, F.S., relating to a public records exemption for certain records from consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption; providing an effective date.

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

Section 1. Section 624.23, Florida Statutes, is amended to read:

624.23 Public records exemption.—

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

(a) "Consumer" means:

1. A prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer.

2. An employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. The existence, nature, source, or amount of a consumer's

597-01560A-12 20121230__

personal income or expenses;

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

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

5. A history of a consumer's personal medical diagnosis or treatment;

6. The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) Personal financial and health information held by the department or office relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to personal financial and health information held by the department or office before, on, or after the effective date of this exemption.

(3) Such confidential and exempt information may be disclosed to:

(a) Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and

(b) The National Association of Insurance Commissioners.

~~(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, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2012.

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

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 Banking and Insurance Committee

BILL: SB 1230

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/ Consumer Complaints and Inquiries Received by the Department of Financial Services

DATE: January 11, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

Section 624.23, F.S., makes exempt from the public record requirements certain personal financial and health information of a consumer held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code or s. 440.191, F.S., (Workers' Compensation Employee Assistance and Ombudsman Office). The exempt information includes consumers' personal health condition, disease, or injury and certain records relating to a consumer's personal finances and insurance coverage. The public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal. This bill saves the exemption from repeal.

This bill substantially amends the following section of the Florida Statutes: 624.23.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

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[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical*

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5 year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

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

Center v. News-Journal Corporation, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

[12] Attorney General Opinion 85-62.

[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[14] Section 119.15, F.S.

[15] Section 119.15(4)(b), F.S.

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 624.23, F.S., Exemption

The protection of personal financial and health information against identity theft and other misuse is the main purpose of s. 624.23, F.S. In responding to consumers' complaints and inquiries the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) receive certain personal health and financial information from consumers. In 2002, legislation was enacted to provide that specified personal and financial information of a consumer held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code is confidential and exempt from the public records law. Disclosure of the exempted information is allowed to the National Association of Insurance Commissioners (NAIC) and other governmental entities if necessary to perform their duties and responsibilities. However the NAIC and other governmental entities must maintain the confidentiality and exempt status of the information.

Initially, s. 624.23, F.S., did not contain an exemption for the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the DFS for the purpose of resolving disputes and complaints of employees. Subsequently, in 2007 legislation was enacted that expanded the exemption to include the specified personal financial and health information provided to DFS and regulated under s. 440.191, F.S. (Workers' Compensation Employee Assistance and Ombudsman Office). Additionally, the 2007 legislation limited the scope of records applicable to the exemption by specifying the personal financial and health information considered confidential and exempt. The exempt information includes consumers' personal health condition, disease, or injury and certain records relating to the existence and nature of a consumer's personal finances and insurance coverage. Furthermore, the 2007 legislation deleted bank account numbers, debit, and charge card numbers from the exemption since they were already exempt under the general exemption of s 119.071(5)(b), F.S.

This public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal by reenactment by the Legislature.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

III. Effect of Proposed Changes:

The bill reenacts the public records exemption provided under s. 624.23, F.S., by deleting section four containing the repeal date and provision subjecting the bill to Open Government Sunset Review.

The bill provides that this act will take effect on October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that:

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 624.23, F.S. *See*, Interim Report 2012-313 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-01559A-12 20121232__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 324.242, F.S., relating to a public records exemption for personal identifying information and policy numbers in personal injury protection and property damage liability insurance policies; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption; providing an effective date.

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

Section 1. Section 324.242, Florida Statutes, is amended to read:

324.242 Personal injury protection and property damage liability insurance policies; public records exemption.—

(1) The following information regarding personal injury protection and property damage liability insurance policies held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Personal identifying information of an insured or former insured; and

(b) An insurance policy number.

(2) Upon receipt of a written request and a copy of a crash report as required under s. 316.065, s. 316.066, or s. 316.068, the department shall release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

(a) Any person involved in such accident;

597-01559A-12 20121232__

(b) The attorney of any person involved in such accident; or

(c) A representative of the insurer of any person involved in such accident.

(3) This exemption applies to personal identifying information of an insured or former insured and insurance policy numbers held by the department before, on, or after October 11, 2007 ~~the effective date of this section~~.

~~(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, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2012.

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 Banking and Insurance Committee

BILL: SB 1232

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/ Personal Identifying Information in Personal Injury Protection and Property Damage Liability Insurance Policies

DATE: January 11, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

Section 324.242, F.S., provides an exemption from public records requirements for personal identifying information and the insurance policy number contained in personal injury protection (PIP) and property damage liability insurance policies. The public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal. This bill is the result of an Open Government Sunset Review. *See,* Interim Report 2012-312.

This bill substantially amends the following section of the Florida Statutes: 324.242.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11] There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record

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[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature

[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(4)(b), F.S.

cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 324.242, F.S., Exemption

Within Florida every registrant of a motor vehicle must obtain and provide proof of holding a motor vehicle insurance policy that includes $10,000 in personal injury protection (PIP). Additionally, s. 324.022, F.S., requires owners and operators of Florida-registered motor vehicles to maintain the ability to pay at least $10,000 in property damage, which may be met by maintaining $10,000 in property damage liability coverage. A higher financial requirement is placed on commercial motor vehicles, taxicab owners and operators, for-hire passenger transportation vehicles, and registered vehicle owners or operators found guilty or that have plead nolo contendere to driving under the influence.

The Department of Highway Safety and Motor Vehicles (DHSMV) is notified by insurers that supply policies with personal injury protection or property damage liability coverage of renewals, cancellations, and non-renewals of these policies within 45 days of their effective dates, as required by s. 324.0221, F.S. The insurer must also notify the named insured in writing of the cancellation or non-renewal of a policy and give notice of the consequences from the failure of maintaining PIP and property damage coverage, including the loss of registration, loss of driving privileges, and imposition of reinstatement fees. The records held by the DHSMV contain the insurance company code, the policy number, driver's license number, personal identifying information (name and address), and information identifying the vehicle, including the vehicle identification number and the make, model, and year of the vehicle.

This bill's predecessor s. 627.736(9)(a), F.S., was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007. The Legislature designed s. 324.242, F.S., to take the place of s. 627.736(9)(a), F.S., and exempt from public records requirements personal identifying information, including the name, address, and driver's license number of insureds and former insureds and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies. The exemption serves to protect sensitive personal information concerning individuals whose reputation or safety from identity theft would be jeopardized if the information were released. The exemption also protects confidential information used for business advantage against competitors. The disclosure of this information could injure insurance companies in the market since competitors would be able to solicit the business of their policyholders.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

The information exempted by s. 324.242, F.S., is neither obtainable by alternate means nor protected under other exemptions. However under s. 324.242, F.S., the DHSMV must release the policy number for a vehicle involved in an accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident upon receipt of a written request and copy of the crash report.

III. Effect of Proposed Changes:

The bill reenacts the public records exemption provided under s. 324.242, F.S., by deleting section four containing the repeal date and provision subjecting the bill to Open Government Sunset Review.

The bill provides that this act will take effect on October 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 324.242, F.S. *See*, Interim Report 2012-312 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
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The Committee on Banking and Insurance (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(3)

(d) Any person who holds a license as a customer representative, limited customer representative, ~~title agent,~~

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motor vehicle physical damage and mechanical breakdown insurance agent, crop or hail and multiple-peril crop insurance agent, or as an industrial fire insurance or burglary insurance agent and who is not a licensed life or health insurance agent, must ~~shall be required to~~ complete 10 hours of continuing education courses every 2 years.

(l) Any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education courses every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 1.5 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

Section 2. Subsection (11) is added to section 626.8437, Florida Statutes, to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(11) Failure to timely submit data as required by s. 627.782, unless a rule challenge has been filed pursuant to s. 120.56 as to the form or substance of data to be provided.

Section 3. Subsection (8) is added to section 626.8473, Florida Statutes, to read:

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626.8473 Escrow; trust fund.—

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Section 4. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—

(1) A title insurer may not issue or agree to issue any form of title insurance commitment, title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the office. The office may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

(2) The office shall approve or disapprove a form filed for approval within 180 days after receipt.

(3) When the office approves any form, it shall determine if the current rate in effect applies or if the coverages require the adoption of a rule pursuant to s. 627.782.

(4) The office may revoke approval of any form after providing 180 days' notice to the title insurer.

(5) An insurer may not achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, the office shall

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expeditiously approve the forms of other insurers who apply for approval if those forms contain identical coverages, rates, and deviations which have been approved under s. 627.783.

Section 5. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by March 31 of the year after the reporting year. The commission shall adopt rules to assist in the collection and analysis of the data from the title insurance industry. ~~The commission may, by rule, require licensees under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.~~

Section 6. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to title insurance; amending s.

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626.2815, F.S.; specifying continuing education requirements for title insurance agents; amending s. 626.8437, F.S.; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency; amending s. 626.8473, F.S.; requiring an attorney serving as a title or real estate settlement agent to deposit and maintain certain funds in a separate trust account and permit the account to be audited by the applicable title insurer, unless prohibited by the rules of The Florida Bar; amending s. 627.777, F.S.; providing procedures and requirements relating to the approval or disapproval of title insurance forms by the Office of Insurance Regulation; amending s. 627.782, F.S.; requiring title insurance agencies and certain insurers to submit specified information to the office to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry; requiring the Financial Services Commission to adopt rules; providing an effective date.

By Senator Altman

24-00987-12 20121404__

A bill to be entitled

An act relating to title insurance; amending s. 626.2815, F.S.; specifying continuing education requirements for title insurance agents; authorizing the Department of Financial Services to contract with a private entity for services related to continuing education for title insurance agents; amending s. 626.841, F.S.; providing a definition for the term "agent in charge of a title insurance agency"; amending s. 626.8417, F.S.; requiring that certain attorney-owned entities that engage in business as a title insurance agency, other than the active practice of law, must be licensed as a title insurance agency with a designated agent in charge; amending s. 626.8418, F.S.; deleting specified financial security and bond requirements relating to an applicant for licensure as a title insurance agency; amending s. 626.8419, F.S.; increasing the amount of a fidelity bond that a title insurance agency must file with the department and limiting the amount of the deductible applicable to such bond; creating s. 626.8422, F.S.; specifying requirements that apply to title insurance agencies relating to the designation of an agent in charge at specified locations; providing a penalty for failing to designate an agent in charge under certain circumstances; amending s. 626.8437, F.S.; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency; amending s. 626.8473,

Florida Senate - 2012 **SB 1404**

24-00987-12 20121404__

F.S.; requiring an attorney serving as a title or real estate settlement agent to deposit and maintain certain funds in a separate trust account and permit the account to be audited by the applicable title insurer, unless prohibited by the rules of The Florida Bar; amending s. 627.777, F.S.; providing procedures and requirements relating to the approval or disapproval of title insurance forms by the department; creating s. 627.7815, F.S.; specifying requirements for submission of a document or information to the department in order for a person to claim that the document is a trade secret; requiring each page or portion to be labeled as a trade secret and be separated from non-trade secret material; requiring the submitting party to include an affidavit certifying certain information about the documents claimed to be trade secrets; providing that certain data submitted by a title insurance agent or title insurer is presumed to be a trade secret whether or not so designated; amending s. 627.782, F.S.; requiring title insurance agencies and certain insurers to submit specified information to the department to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry; creating s. 627.7985, F.S.; authorizing the department to adopt specified rules relating to title insurance; providing penalties for willful violation of any such rule; creating s. 689.263, F.S.; specifying requirements

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

that a title insurance agent or agency must meet in order to distribute funds relating to certain real estate sales or purchases; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended, paragraph (l) is added to that subsection, and subsection (8) is added to that section, to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(3)

(d) Any person who holds a license as a customer representative, limited customer representative, ~~title agent,~~ motor vehicle physical damage and mechanical breakdown insurance agent, crop or hail and multiple-peril crop insurance agent, or as an industrial fire insurance or burglary insurance agent and who is not a licensed life or health insurance agent, must ~~shall be required to~~ complete 10 hours of continuing education courses every 2 years.

(l) Any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education courses every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance

and closing services.

(8) The department may contract with a private entity for services related to the administration, review, or approval of a continuing education program for title insurance agents. The contract shall be procured as one for a contractual service pursuant to s. 287.057.

Section 2. Section 626.841, Florida Statutes, is amended to read:

626.841 Definitions.—The term:

(1) "Agent in charge of a title insurance agency" means an attorney or a licensed and appointed title insurance agent who is designated as agent in charge pursuant to s. 626.8422.

(2) "Title insurance agency" means an insurance agency under which title insurance agents and other employees determine insurability in accordance with underwriting rules and standards prescribed by the title insurer represented by the agency, and issue and countersign commitments, endorsements, or policies of title insurance, on behalf of the appointing title insurer. The term does not include a title insurer.

(3) ~~(1)~~ "Title insurance agent" means a person appointed in writing by a title insurer to issue and countersign commitments or policies of title insurance on ~~in~~ its behalf.

Section 3. Paragraph (c) of subsection (4) of section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(4)

(c) If one or more ~~an attorney or~~ attorneys own a corporation or other legal entity that ~~which~~ is doing business as a title insurance agency other than an entity engaged in the

active practice of law, the agency must be licensed and appointed as a title insurance agency with an agent in charge designated for the agency.

Section 4. Section 626.8418, Florida Statutes, is amended to read:

626.8418 Application for title insurance agency license.—Before ~~Prior to~~ doing business in this state as a title insurance agency, a title insurance agency ~~must meet all of the following requirements:~~

~~(1) The applicant~~ must file with the department an application for a license as a title insurance agency, on printed forms furnished by the department, that includes all of the following:

(1) ~~(a)~~ The name of each majority owner, partner, officer, and director of the agency.

(2) ~~(b)~~ The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3) ~~(c)~~ The name of the agency and its principal business address.

(4) ~~(d)~~ The location of each agency office and the name under which each agency office conducts or will conduct business.

(5) ~~(e)~~ The name of each agent to be in full-time charge of an agency office and specification of which office.

(6) ~~(f)~~ Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code.

~~(2) The applicant must have deposited with the department~~

~~securities of the type eligible for deposit under s. 625.52 and having at all times a market value of not less than $35,000. In place of such deposit, the title insurance agency may post a surety bond of like amount payable to the department for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. If a properly documented claim is timely filed with the department by a damaged title insurer, the department may remit an appropriate amount of the deposit or the proceeds that are received from the surety in payment of the claim. The required deposit or bond must be made by the title insurance agency, and a title insurer may not provide the deposit or bond directly or indirectly on behalf of the title insurance agency. The deposit or bond must secure the performance by the title insurance agency of its duties and responsibilities under the issuing agency contracts with each title insurer for which it is appointed. The agency may exchange or substitute other securities of like quality and value for securities on deposit, may receive the interest and other income accruing on such securities, and may inspect the deposit at all reasonable times. Such deposit or bond must remain unimpaired as long as the title insurance agency continues in business in this state and until 1 year after termination of all title insurance agency appointments held by the title insurance agency. The title insurance agency is entitled to the return of the deposit or bond together with accrued interest after such year has passed, if no claim has been made against the deposit or bond. If a surety bond is unavailable generally, the department may adopt rules for alternative methods to comply with this subsection.~~

~~With respect to such alternative methods for compliance, the department must be guided by the past business performance and good reputation and character of the proposed title insurance agency. A surety bond is deemed to be unavailable generally if the prevailing annual premium exceeds 25 percent of the principal amount of the bond.~~

Section 5. Paragraph (a) of subsection (1) of section 626.8419, Florida Statutes, is amended to read:

626.8419 Appointment of title insurance agency.—

(1) The title insurer engaging or employing the title insurance agency must file with the department, on printed forms furnished by the department, an application certifying that the proposed title insurance agency meets all of the following requirements:

(a) The agency must have obtained a fidelity bond in an amount, not less than $250,000, with a deductible not exceeding 1 percent of the bond amount ~~$50,000~~, acceptable to the insurer appointing the agency. If a fidelity bond is unavailable generally, the department must adopt rules for alternative methods to comply with this paragraph.

Section 6. Section 626.8422, Florida Statutes, is created to read:

626.8422 Agent in charge.—

(1) Each location within this state of a title insurance agency or branch office of a title insurance agency that is regularly open to the public for closing services, as defined in s. 627.7711, and at which disbursement of escrow funds or policy issuance services are regularly performed must have a separate agent in charge designated by the title insurance agency. The

failure of a title insurance agency to designate an agent in charge, on a form prescribed by the department, within 10 working days after an agency begins business at a location or makes a change of the agent in charge, is a violation of this chapter, punishable as provided in s. 626.844.

(2) The agent in charge shall perform the activities described in subsection (1) at the location where he or she is the designated agent in charge.

(3) An agency shall designate an attorney duly admitted to practice law in this state and in good standing with The Florida Bar or a title insurance agent licensed in this state as agent in charge for each location of the agency or insurer as described in subsection (1). In the case of multiple locations where the activities as described in subsection (1) are performed, the agency shall designate a separate agent in charge for each location.

Section 7. Subsections (11) and (12) are added to section 626.8437, Florida Statutes, to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(11) Failure to timely submit data as required by the department.

(12) If a licensee, being charged with an insurance or

financial-related felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country.

Section 8. Subsection (8) is added to section 626.8473, Florida Statutes, to read:

626.8473 Escrow; trust fund.—

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Section 9. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—

(1) A title insurer may not issue or agree to issue any form of title insurance commitment, title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the office. The office may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

(2) If the form filed for approval is a form certified and adopted by the American Land Title Association at the time of filing, the department shall approve or disapprove the form within 180 days after receipt. If the form is not a form certified by the American Land Title Association at the time of

filing, the department shall approve or disapprove the form within 1 year after receipt.

(3) When the department approves any form, it shall determine if the current rate in effect applies or if the coverages require the adoption of a rule pursuant to s. 627.782.

(4) The department may revoke approval of any form after providing 180 days' notice to the title insurer if the basis for revocation is that the American Land Title Association has decertified a previously approved form.

(5) An insurer may not achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, the department shall expeditiously approve the forms of other insurers who apply for approval if those forms contain identical coverages, rates, or deviations which have been approved under s. 627.783.

Section 10. Section 627.7815, Florida Statutes, is created to read:

627.7815 Trade secret documents.—If any person who is required to submit a document or other information to the department pursuant to this part or by rule or order of the department claims that such submission contains a trade secret, such person may file with the department a notice of trade secret. Failure to do so constitutes a waiver of any claim by the person that the requested document or information is a trade secret.

(1) Each page of such document or specific portion of a document claimed to be a trade secret must be clearly marked "trade secret."

(2) All material marked "trade secret" must be separated

from all non-trade-secret material, such as being submitted in a separate envelope clearly marked "trade secret."

(3) When submitting a notice of trade secret to the department, the submitting party must include an affidavit certifying under oath to the truth of the following statements concerning all information and documents that are claimed to be trade secrets:

(a) [I consider/My company considers] this information a trade secret that has value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.

(b) [I have/My company has] taken measures to prevent the disclosure of the information to anyone other than those who have been selected to have access for limited purposes, and [I intend/my company intends] to continue to take such measures.

(c) The information is not, and has not been, reasonably obtainable without [my/our] consent by other persons by use of legitimate means.

(d) The information is not publicly available elsewhere.

(4) Any data submitted by a title insurance agent or title insurer pursuant to s. 627.782 are presumed to be a trade secret under this section whether or not so designated.

Section 11. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency licensed to do business in this state and each insurer engaging in direct, retail, or affiliated business in this state shall maintain and submit information, including revenue, loss, and expense data, as the

department determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the department annually by March 31 of the year after the reporting year. The department shall adopt rules to assist in the collection and analysis of the data from the title insurance industry. ~~The commission may, by rule, require licensees under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.~~

Section 12. Section 627.7985, Florida Statutes, is created to read:

627.7985 Rules as to title insurance.—

(1) In addition to the authority to adopt rules relating to title insurance authorized elsewhere in the Florida Insurance Code, the department may adopt rules that:

(a) Define the license and appointment requirements for title insurance agents and agencies.

(b) Establish penalty guidelines for enforcing the requirements of the Florida Insurance Code.

(c) Describe the fiduciary responsibilities and duties of title insurers, title insurance agents, and title insurance agencies, including, but not limited to, responsibilities and duties related to escrow accounts.

(d) Identify the responsibilities, duties, and designations of the agent in charge of the title insurance agency.

(e) Enable the collection and analysis of information

relating to the title insurance business submitted by title insurers, title insurance agents, and title insurance agencies.

(f) Set reasonable requirements for the timely recording of documents and the delivery of final title insurance policies.

(g) Set reasonable requirements for the timely disbursement of escrow funds unless a written escrow agreement specifies a longer holding period.

(h) Establish rules for the protection, calculation, and timely remittance of premiums that are owed to title insurers.

(i) Prohibit the markup of the cost of any third-party goods and services that do not add value.

(2) In addition to any other penalty provided for under the Florida Insurance Code for a violation of a rule, a title insurer or title insurance agent or agency is subject to suspension or revocation of a certificate of authority or license, as may be applicable, for the willful violation of any rule.

Section 13. Section 689.263, Florida Statutes, is created to read:

689.263 Sale of residential property; settlement statement requirements.—A title insurance agent or title insurance agency may not disburse funds pursuant to a completed purchase and sale transaction or refinance transaction subject to the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. ss. 2601 et seq., as amended, without requiring a statement of settlement costs meeting the following requirements:

(1) The settlement statement must be executed by the buyer, borrower, seller, if any, and settlement agent as defined by RESPA.

(2) If a title insurance premium is to be disbursed, the title insurer and the title insurance agent or title insurance agency, if any, must be disclosed.

Section 14. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-12
Meeting Date

Topic TITLE INSURANCE

Bill Number 1404/1406 *(if applicable)*

Name NORWOOD GAY

Amendment Barcode *(if applicable)*

Job Title CHIEF LEGAL OFF'CR

Address 6545 CORPORATE CENTRE BLVD *Street*

Phone 800-336-3863

ORLANDO FL 32822
City *State* *Zip*

E-mail RNGAY@THEFUND.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing ATTORNEYS' TITLE FUND SERVICES

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-12
Meeting Date

Topic Title Insurance

Bill Number 1404/1406 *(if applicable)*

Name Alan Fields

Amendment Barcode *(if applicable)*

Job Title Exec Director

Address 249 E Virginia St
Street
Tallahassee
City *State* *Zip*

Phone 727-773-6664

E-mail Alan@FLTA.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Land Title 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.

S-001 (10/20/11)

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 Banking and Insurance Committee

BILL:	CS/SB 1404
INTRODUCER:	Banking and Insurance Committee and Senator Altman
SUBJECT:	Title Insurance
DATE:	January 26, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents and agencies, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[1] and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).[2]

The CS makes the following changes with regard to title insurance agents and agencies:

- Changes to the continuing educational requirements for agents.
- Allows the DFS to deny the renewal of licensure for failure to timely report data.
- Requires attorneys to maintain separate trust accounts for title transactions.
- Requires the OIR to approve forms within certain time period from when they are submitted.
- Requires title agents and agencies to maintain and submit records to the OIR.

[1] Section 627.777, F.S.
[2] Section 627.782, F.S.

This bill substantially amends the following sections of the Florida Statutes: 626.2815, 626.8437, 627.777, 627.782.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[3] Title insurance is a policy issued by a title insurer[4] that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Title Insurance Agencies and Agents

Title insurance agencies must apply for and be licensed by the DFS, and are separately appointed[5] by each title insurer they represent. To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling. Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee. Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years[6] on any insurance products sold in Florida.

III. Effect of Proposed Changes:

The CS makes the following changes with regard to title insurance agents and agencies

[3] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.
[4] 627.7711(3), F.S.
[5] An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.
[6] Section 626.2815(3)(d), F.S.

Continuing Education

The CS does not change the number of hours (10) a licensed agent must complete every two years, but it does require the DFS to approve 10 hours of courses specific to title insurance and escrow management. Additionally 1.5 of the 10 hours of courses approved by the DFS must be about ethics, rules and compliance with state and federal regulations pertaining to title insurance and closing services.

Submission of Data

The CS requires each title insurance agency doing business in the state to maintain and submit to the OIR by March 31st of each year information the OIR may determine necessary to assist in the analysis of title insurance rates, title search costs and the condition of the title insurance industry in the state. Allows the DFS to suspend or revoke a license for failure to timely report data as requested by the OIR.

Attorneys

The CS requires attorneys acting in the capacity of a title insurance agent to keep in a separate trust account all escrowed funds collected from title insurance transactions, these accounts are to be made available for audit by the insurer unless particular accounts for certain clients would violate applicable rules of The Florida Bar.

Title Insurance Forms

The OIR is required to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, the OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, the OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations.

This act shall take effect July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensees could face revocation for failure to timely submit data to the OIR.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The DFS has raised implementing concerns with the 1.5 hour course on ethics, rules and compliance. The half hour poses a problem with their computing software. The DFS recommends changing the course back to 3 hours as drafted in the originally filed bill.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance Committee on January 26, 2012.

The CS changed the continuing educational requirements from 3 hours to 1.5 hours pertaining to ethics, rules and compliance with state and federal regulations of title services.

The CS corrected an error in the originally filed bill that mistakenly referred to the "department" (DFS) and not the "office" (OIR).

The CS also removed the following provisions from the originally file bill.

- Removed the definition of agent in charge and the outline of relevant responsibilities.
- Removed the section that the applicant no longer deposit securities.
- Removed an increase in fidelity bonding that an agency must maintain.
- Removed the authority of DFS to deny the renewal of licensure for certain offenses.
- Removed the process for labeling submitted documents as trade secrets.

- Removed a provision that a statement of settlement cost be required before funds can be dispersed.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

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(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

(3) This section is subject to the Open Government Sunset

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Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information relating to the title insurance industry, title insurers, and title insurance agents, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue, loss expense data, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, the amount of employee wages paid, and the detailed documentation substantiating such performance information, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, or any subsidiary or contractor of the

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office, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information held by the Office of Insurance Regulation or its designee, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers, title insurance agents, and the title insurance industry held by the Office of Insurance Regulation, or any subsidiary, contractor,


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or agent of the office, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that SB 1404 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for proprietary business information provided by title insurance agencies and insurers to the Office of Insurance Regulation; providing a definition; authorizing disclosure of aggregated information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

By Senator Altman

24-00988-12 20121406__

A bill to be entitled

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for financial information, such as revenue, loss, and expense data, which is supplied periodically by a licensed title insurance agency to the Department of Financial Services in order to assist the department in analyzing title insurance premium rates, title search costs, and the financial viability of the title insurance industry in the state; requiring that the information be supplied to the department by a specified date; requiring the department to adopt rules; authorizing the department to disclose the total combined responses of all agencies and reporting entities; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Collection of title insurance information; confidential information.—

(1)(a) Each title insurance agency licensed to do business in this state and each insurer doing direct, retail, or affiliated business in this state shall maintain and submit

24-00988-12 20121406__

information, including revenue, loss, and expense data, as the department determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the financial viability of the title insurance industry in this state.

(b) This information must be transmitted to the department no later than March 31 of each year following the reporting year.

(c) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(2) The financial information supplied by each title insurance agency or insurer is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution in order to prevent disclosure of private information of that agency or insurer to the public. However, the total combined responses of all the agencies and reporting insurers may be disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information relating to the title insurance industry, title insurers, and title insurance agents, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue,

loss expense data, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, the amount of employee wages paid, and the detailed documentation to substantiate such performance information, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, may refrain from providing accurate and unbiased data and would thus impair the Department of Financial Services in setting fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Department of Financial Services, or any subsidiary or contractor of the department, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information held by the department or its designee, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under public records laws would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of

reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position of the proprietor of the proprietary business information in the marketplace. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers, title insurance agents, and the title insurance industry held by the Department of Financial Services, or any subsidiary, contractor, or agent of the department, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

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

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 Banking and Insurance Committee

BILL:	CS/SB 1406
INTRODUCER:	Banking and Insurance Committee and Senator Altman
SUBJECT:	Public Records/Title Insurance
DATE:	January 26, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.			GO	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The CS creates a public records exemption for proprietary business information provided to the Office of Insurance Regulation (OIR) by title insurers and title insurance agencies. It also sets forth a statement of public necessity for the exemption.

The CS provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.[1]

This CS creates the following section of the Florida Statutes: 626.84195

II. Present Situation:

Public Records Law

[1] Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[2]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

III. Effect of Proposed Changes:

The CS creates a public records exemption for proprietary business information provided to the Office of Insurance Regulation (OIR) by title insurance agencies and title insurers.

The CS sets forth legislative findings of public necessity for proprietary business information to be made confidential and exempt from public records disclosure, and provides examples of such information, including trade secrets and other specified information. The exemption does not preclude the reporting of such statistics in the aggregate, or the release of the names of title insurance agencies and title insurers that submit data to the OIR.

The CS takes effect on the date that SB 1404, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session and subsequently enacted into law, takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[2] Section 24(c), Art. I of the State Constitution.
[3] Section 119.15, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present for final passage.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance Committee on January 26, 2012.

The originally filed bill referred to information provided to the "department" (DFS) not the "office" (OIR). The CS corrected this error.

Additionally the CS added SB 1404 to the effective date of section 3.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Flores

590-01851-12 2012752c1

A bill to be entitled

An act relating to equitable distribution of marital assets and liabilities; amending s. 61.075, F.S.; redefining the term "marital assets and liabilities" to include the value of the marital portion of the passive appreciation of nonmarital real property; authorizing a court to require security and the payment of a reasonable rate of interest if installment payments are required for the distribution of marital assets and liabilities; requiring the court to provide written findings regarding any installment payments; creating s. 61.0765, F.S.; providing formulas for the calculation of the value of the marital portion of nonmarital real property subject to equitable distribution; requiring the court in the dissolution action to use the formulas unless sufficient evidence is presented showing that the application of the formulas is not equitable; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) and subsection (10) of section 61.075, Florida Statutes, are amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the

590-01851-12 2012752c1

marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

c. The value of the marital portion of the passive appreciation of nonmarital real property as provided in s. 61.0765(2).

d.~~c.~~ Interspousal gifts during the marriage.

e.~~d.~~ All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the entireties, whether acquired before ~~prior to~~ or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired before ~~prior to~~ or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

(10)(a) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the

equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

(b) If installment payments are ordered, the court may require security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If security or interest is required, the court shall make written findings relating to any deferred payments, the amount of any security required, and the interest. This paragraph does not preclude the application of chapter 55, relating to judgments, to any subsequent default.

Section 2. Section 61.0765, Florida Statutes, is created to read:

61.0765 Valuation of marital portion of nonmarital real property.—

(1)(a) The total value of the marital portion of nonmarital real property consists of the sum of the following:

1. The value of the active appreciation of the property as described in s. 61.075(6)(a)1.b.

2. The amount of the mortgage principal paid from marital funds.

3. A portion of any passive appreciation of the property, if the mortgage principal was paid from marital funds.

(b) The value of the marital portion of nonmarital real property may not exceed the total net equity of the property on the valuation date in the dissolution action.

(2) The marital portion of the passive appreciation as provided in subparagraph (1)(a)3. is calculated by multiplying the passive appreciation of the property by the marital fraction.

(a) The passive appreciation of the property is calculated by subtracting all of the following from the value of the property on the valuation date in the dissolution action:

1. The gross value of the property on the date of the marriage or on date the property was acquired, whichever is later.

2. The value of the active appreciation of the property during the marriage as described in s. 61.075(6)(a)1.b.

3. The amount of any additional debts secured by the property during the marriage.

(b) The numerator of the marital fraction consists of the amount of the mortgage principal paid on any mortgage on the property from marital funds. The denominator consists of the value of the property on the date of the marriage, the date of acquisition of the property, or the date the property was first encumbered by a mortgage on which principal was paid from marital funds, whichever is later.

(3) The court in a dissolution action must apply the formulas provided in this section to determine the value of the marital portion of nonmarital real property subject to equitable dissolution unless a party presents sufficient evidence to establish that the application of these formulas is not equitable under the particular circumstances of the case.

Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2012
Meeting Date

Topic Equitable Distribution

Bill Number SB 752 *(if applicable)*

Name David L. Manz

Amendment Barcode *(if applicable)*

Job Title ATTY

Address Suite 40 58th O/L Hwy
Street

Phone 305-743-2351

Marathon, Florida 33050
City *State* *Zip*

E-mail dmanz@bellsouth.net

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Bar Family Law Section

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 (10/20/11)

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 Judiciary Committee

BILL:	CS/SB 752
INTRODUCER:	Judiciary Committee and Senator Flores
SUBJECT:	Equitable Distribution of Marital Assets and Liabilities
DATE:	January 23, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Rubio	Burgess	BI	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding. Under the bill, the value of the marital portion of nonmarital real property is comprised of the following:

- The mortgage principal paid during the marriage from marital funds.
- A portion of the passive appreciation of the property which is related to the amount of marital funds used to pay the mortgage.
- Any active appreciation of the property resulting from the efforts or contributions of either party during the marriage.

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If a court requires security or interest, the court must make written findings relating to any deferred payments, the amount of any security required, and the interest. The bill does not preclude the intended recipient of the installment payments from

taking action under the procedures to enforce a judgment, in chapter 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

This bill creates section 61.0765, Florida Statutes.

This bill amends section 61.075, Florida Statutes.

II. Present Situation:

Statutory Framework for the Equitable Distribution of Marital Assets and Liabilities

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. Under s. 61.075, F.S., a court must distribute the marital assets and liabilities based on the premise that the distribution be equal.[1] The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S. In a contested marital dissolution in which a stipulation and agreement has not been entered and filed, the distribution of marital assets or liabilities must be supported by factual findings in the court order based on competent substantial evidence with reference to the relevant statutory factors. The court's findings must identify which assets are nonmarital and those that are marital.[2]

"Marital assets and liabilities" generally include:

- Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.[3]
- The enhancement in value and appreciation of nonmarital assets resulting from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.[4]
- Interspousal gifts during the marriage.[5]
- All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.[6]
- Real property held by the parties as tenants by the entireties.[7]
- All personal property titled jointly by the parties as tenants by the entireties.[8]

"Nonmarital assets and liabilities" generally include:

- Assets acquired and liabilities incurred by either party prior to marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.[9]
- Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets.[10]

[1] Section 61.075(1), F.S.
[2] Section 61.075(3)(a) and (b), F.S.
[3] Section 61.075(6)(a)1.a., F.S.
[4] Section 61.075(6)(a)1.b., F.S.
[5] Section 61.075(6)(a)1.c., F.S.
[6] Section 61.075(6)(a)1.d., F.S.
[7] Section 61.075(6)(a)2., F.S.
[8] Section 61.075(6)(a)3., F.S.
[9] Section 61.075(6)(b)1., F.S.

- All income derived from nonmarital assets during the marriage unless the income was treated, used, relied upon by the parties as a marital asset.[11]
- Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities.[12]
- Any liability incurred by forgery or unauthorized signature by one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party having committed forgery or having affixed the unauthorized signature.[13]

Equitable Distribution of Marital Assets and Liabilities under *Kaaa v. Kaaa*[14]

In *Kaaa v. Kaaa*, the Florida Supreme Court held that "passive appreciation of the marital home that accrues during the marriage is subject to equitable distribution even though the home itself is a nonmarital asset."[15] Payment of a mortgage for real property with marital funds subjects the passive appreciation in the value of the real property to equitable distribution.[16] The Court recognized that the marital portion of nonmarital property encumbered by a mortgage paid down with marital funds includes two components: (1) a portion of the enhancement value of the marital asset resulting from the contributions of the nonowner spouse and (2) a portion of the value of the passive appreciation of that asset that accrued during the marriage.[17]

In *Kaaa*, the Supreme Court provided a methodology for courts to use in determining the value of the passive appreciation of nonmarital real property to be equitably distributed and in allocating that value to both owner and nonowner spouse.[18] Pursuant to the methodology, a court must make several steps:

> First, the court must determine the overall current fair market value of the home. Second, the court must determine whether there has been a passive appreciation in the home's value. Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2)[, F.S]. This step must include findings of fact by the trial court that marital funds were used to pay the mortgage and that the nonowner spouse made contributions to the property. Moreover, the trial court must determine to what extent the contributions of the nonowner spouse affected the appreciation of the property. Fourth, the trial court must determine the value of the passive appreciation that accrued during the marriage and is subject to equitable distribution. Fifth, after the court determines the value

[10] Section 61.075(6)(b)2., F.S.
[11] Section 61.075(6)(b)3., F.S.
[12] Section 61.075(6)(b)4., F.S.
[13] Section 61.075(6)(b)5., F.S.
[14] *Kaaa v. Kaaa*, 58 So. 3d 867 (Fla. 2010).
[15] *Kaaa*, 58 So. 3d at 868.
[16] *Id.* at 869.
[17] *Id.* at 871-872.
[18] *Id.* at 872

> of the passive appreciation to be equitably distributed, the court's next step is to determine how the value is allocated.[19]

The Supreme Court adopted the following formula used in *Stevens v. Stevens*, for the allocation of the appreciated value of nonmarital real property:

> If a separate asset is unencumbered and no marital funds are used to finance its acquisition, improvement, or maintenance, no portion of its value should ordinarily be included in the marital estate, absent improvements effected by marital labor. If an asset is financed entirely by borrowed money which marital funds repay, the entire asset should be included in the marital estate. In general, in the absence of improvements, *the portion of the appreciated value of a separate asset which should be treated as a marital asset will be the same as the fraction calculated by dividing the indebtedness with which the asset was encumbered at the time of the marriage by the value of the asset at the time of the marriage*.[20]

Passive appreciation of a nonmarital asset that is unencumbered is not subject to equitable distribution, absent the use of any marital funds or marital labor for its acquisition, improvement, or maintenance.[21]

Family Law Section's Concern with *Kaaa v. Kaaa*

The Family Law Section of The Florida Bar believes that "the formula adopted by the Supreme Court to quantify the marital portion of the passive appreciation is flawed because there is no relationship between the amount of marital funds utilized to pay down the mortgage during the marriage and the passive appreciation of the subject property."[22] According to the Family Law Section of The Florida Bar, "the formula adopted by the Florida Supreme Court in *Kaaa*, if applied to certain factual scenarios, would result in grossly inequitable results."[23]

The Family Law Section of The Florida Bar additionally argues that the *Kaaa* decision is inconsistent with s. 61.075(6)(a)1.b., F.S., by requiring a nonowner spouse to have made contributions to the property as a prerequisite to sharing in the passive appreciation of the property.[24] Section 61.075(6)(a)1.b., F.S., states that marital assets and liabilities include "the enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage ***or*** from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both."[25]

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[19] *Id.*
[20] *Kaaa*, 58 So. 3d at 872 (quoting *Stevens v. Stevens*, 651 So. 2d 1306, 1307-08 (Fla. 1st DCA 1995).
[21] *Stevens v. Stevens*, 651 So. 2d 1306, 1307 (Fla. 1st DCA 2006); Dawn D. Nichols and Sean K. Ahmed, *Nonmarital Real Estate: Is the Appreciation Marital, Nonmarital, or a Combination of Both?*, 81 FLA. B.J. 75, 75 (Oct. 2007).
[22] Correspondence to committee staff from David Manz, Chairman of Family Law Section, Florida Bar and John W. Foster, Sr., Chairman of Equitable Distribution Committee, Family Law Section, Florida Bar, (Dec. 19, 2011) (on file with the Senate Committee on Judiciary).
[23] *Id.*
[24] *Id.*
[25] (Emphasis added).

Security and Interest for Installment payments

In equitably distributing marital assets and liabilities, pursuant to s. 61.075(10), F.S., a court may order a party to pay a monetary payment in a lump sum or in installments paid over a fixed period. Section 61.075(10), F.S., does not currently give courts the discretion to require the payor to provide security or pay a reasonable rate of interest if installments are ordered.

III. Effect of Proposed Changes:

The bill establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding. Under the bill, the value of the marital portion of nonmarital real property is comprised of the following:

- The mortgage principal paid during the marriage from marital funds.
- A portion of the passive appreciation of the property which is related to the amount of marital funds used to pay the mortgage.
- Any active appreciation of the property resulting from the efforts or contributions of either party during the marriage.

Under the formula, the passive appreciation in the marital property which is subject to equitable distribution must be determined by multiplying the marital fraction by the passive appreciation of the property during the marriage.

The passive appreciation is determined by subtracting the gross value of the property on date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage and less any additional debts secured by the property during the marriage.

The numerator of the marital fraction consists of the amount of mortgage principal paid on any mortgage on the property from marital funds. The denominator consists of the value of the real property on the date of marriage, the date of acquisition of the property, or the date the property was first encumbered by a mortgage on which principal was paid from marital funds, whichever is later.

The value of the marital portion of nonmarital real property may not exceed the total net equity of the property on the valuation date in the dissolution action.

The bill permits a party to argue to a court that the formula would be inequitable, and therefore should not apply to the particular circumstances of the case.

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If a court requires security or interest, the court must make written findings relating to any deferred payments, the amount of any security required, and the interest. The bill does not preclude the intended recipient of the installment payments from

taking action under the procedures to enforce a judgment, in chapter 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that the trial court's task in determining the passive appreciation of real property characterized as a marital asset will continue to be an extremely fact-intensive one. Significant judicial time will be expended in both the determination of the facts and use of the mathematical calculation. The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify any increase in judicial workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 61.075(6)(a)1.b., F.S., states that marital assets and liabilities include "the enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage ***or*** from the contribution to or expenditure thereon of marital funds or other

forms of marital assets, or both."[26] The provision, however, appears to have been interpreted by the Florida Supreme Court to require "that marital funds were used to pay the mortgage ***and*** that the nonowner spouse made contributions to the property" as a prerequisite to entitlement to a share of the passive appreciation of nonmarital real property.[27] The Legislature may wish to amend the bill to clarify what conditions specified in s. 61.075(6)(a)1.b., F.S., must be satisfied to establish entitlement to a share of the passive appreciation of a nonmarital asset.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on January 12, 2012:
The committee substitute makes technical changes to reorganize and clarify concepts in the formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding.

B. Amendments:

None.

[26] (Emphasis added).
[27] *Kaaa*, 58 So. 3d at 872.

By Senator Richter

37-00774A-12 20121090__

A bill to be entitled

An act relating to the Uniform Commercial Code; revising and providing provisions of the Uniform Commercial Code relating to secured transactions to conform to the revised Article 9 of the Uniform Commercial Code as prepared by the National Conference of Commissioners on Uniform State Laws; amending s. 679.1021, F.S.; revising and providing definitions; amending s. 679.1051, F.S.; revising provisions relating to control of electronic chattel paper; amending s. 679.3071, F.S.; revising provisions relating to the location of debtors; amending s. 679.3111, F.S.; making editorial changes; amending s. 679.3161, F.S.; providing rules that apply to certain collateral to which a security interest attaches; providing rules relating to certain financing statements; amending s. 679.3171, F.S.; revising provisions relating to interests that take priority over or take free of a security interest or agricultural lien; amending s. 679.326, F.S.; revising priority of security interests created by a new debtor; amending ss. 679.4061 and 679.4081, F.S.; revising application; amending s. 679.5021, F.S.; revising when a record of a mortgage satisfying the requirements of ch. 697, F.S., is effective as a filing statement; amending s. 679.5031, F.S.; revising when a financing statement sufficiently provides the name of the debtor; amending s. 679.5071, F.S.; revising the effect of certain events on the

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effectiveness of a financing statement; amending s. 679.515, F.S.; revising the duration and effectiveness of a financing statement; amending s. 679.516, F.S.; revising instances when filing does not occur with respect to a record that a filing office refuses to accept; amending s. 679.518, F.S.; revising requirements for claims concerning an inaccurate or wrongfully filed record; amending s. 679.607, F.S.; revising recording requirements for the enforcement of mortgages nonjudicially outside this state; creating part VIII of ch. 679, F.S., relating to transition from prior law under the chapter to law under the chapter as amended by the act; creating s. 679.801, F.S.; providing scope of application and limitations; creating s. 679.802, F.S.; providing that security interests perfected under prior law that also satisfy the requirements for perfection under the act remain effective; creating s. 679.803, F.S.; providing that security interests unperfected under prior law but that satisfy the requirements for perfection under this act will become effective July 1, 2013; creating s. 679.804, F.S.; providing when financing statements effective under prior law in a different jurisdiction remain effective; creating s. 679.805, F.S.; requiring the recording of a financing statement in lieu of a continuation statement under certain conditions; providing for the continuation of the effectiveness of a financing statement filed before the effective date of the act under certain conditions; creating s.

679.806, F.S.; providing requirements for the amendment of financing statements filed before the effective date of the act; providing requirements for financing statements prior to amendment; creating s. 679.807, F.S.; providing person entitled to file initial financing statement or continuation statement; creating s. 679.808, F.S.; providing priority of conflicting claims to collateral; amending s. 680.1031, F.S.; conforming a cross-reference; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Paragraphs (ooo) through (aaaa) of subsection (1) of section 679.1021, Florida Statutes, are redesignated as paragraphs (ppp) through (bbbb), respectively, a new paragraph (ooo) is added to that subsection, and present paragraphs (g), (j), (xx), and (qqq) of subsection (1) of that section are amended to read:

679.1021 Definitions and index of definitions.—

(1) In this chapter, the term:

(g) "Authenticate" means:

1. To sign; or

2. ~~To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part,~~ With the present intent ~~of the authenticating person~~ to ~~identify the person and~~ adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(xx) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(ooo) "Public organic record" means a record that is available to the public for inspection and that is:

1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;

2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

3. A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the

legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

(rrr) ~~(qqq)~~ "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by ~~and as to which~~ the state or the United States ~~must maintain a public record showing the organization to have been organized~~. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

Section 2. Section 679.1051, Florida Statutes, is amended to read:

679.1051 Control of electronic chattel paper.—

(1) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(2) A system satisfies subsection (1), and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(a) ~~(1)~~ A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (d), (e), and (f) ~~subsections (4), (5), and (6)~~, unalterable;

(b) ~~(2)~~ The authoritative copy identifies the secured party

as the assignee of the record or records;

(c) ~~(3)~~ The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(d) ~~(4)~~ Copies or amendments ~~revisions~~ that add or change an identified assignee of the authoritative copy can be made only with the consent ~~participation~~ of the secured party;

(e) ~~(5)~~ Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) ~~(6)~~ Any amendment ~~revision~~ of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized ~~revision~~.

Section 3. Subsection (6) of section 679.3071, Florida Statutes, is amended to read:

679.3071 Location of debtor.—

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(a) In the state that the law of the United States designates, if the law designates a state of location;

(b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(c) In the District of Columbia, if neither paragraph (a) nor paragraph (b) applies.

Section 4. Paragraph (c) of subsection (1) of section

679.3111, Florida Statutes, is amended to read:

679.3111 Perfection of security interests in property subject to certain statutes, regulations, and treaties.—

(1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(c) A ~~certificate-of-title~~ statute of another jurisdiction which provides for a security interest to be indicated on a ~~the~~ certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

Section 5. Subsections (8) and (9) are added to section 679.3161, Florida Statutes, to read:

679.3161 Effect ~~Continued perfection~~ of ~~security interest following~~ change in governing law.—

(8) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change of the debtor's location pursuant to the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(b) If a security interest that is perfected by a financing statement that is effective under paragraph (a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become

ineffective under the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within 4 months after the new debtor becomes bound under s. 679.2031(4), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

(b) A security interest that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the 4-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 6. Subsections (2) and (4) of section 679.3171, Florida Statutes, are amended to read:

679.3171 Interests that take priority over or take free of security interest or agricultural lien.—

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security ~~certificate~~ takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of collateral ~~accounts, electronic chattel paper, electronic documents, general intangibles, or investment property~~ other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

Section 7. Section 679.326, Florida Statutes, is amended to read:

679.326 Priority of security interests created by new debtor.—

(1) Subject to subsection (2), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and ~~which is~~ perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of s. 679.508 or ss. 679.508 and 679.3161(9)(a) ~~is effective solely under s. 679.508 in collateral in which a new debtor has or acquires rights~~ is

subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~that is effective solely under s. 679.508~~.

(2) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (1) ~~that are effective solely under s. 679.508~~. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Section 8. Subsection (5) of section 679.4061, Florida Statutes, is amended to read:

679.4061 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.—

(5) Subsection (4) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610 or an acceptance of collateral under s. 679.620.

Section 9. Subsection (2) of section 679.4081, Florida Statutes, is amended to read:

679.4081 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.—

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or

promissory note, other than a sale pursuant to a disposition under s. 679.610 or an acceptance of collateral under s. 679.620.

Section 10. Subsection (3) of section 679.5021, Florida Statutes, is amended to read:

679.5021 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.—

(3) A record of a mortgage satisfying the requirements of chapter 697 is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(a) The record of a mortgage indicates the goods or accounts that it covers;

(b) The goods are or are to become fixtures related to the real property described in the record of a mortgage or the collateral is related to the real property described in the mortgage and is as-extracted collateral or timber to be cut;

(c) The record of a mortgage satisfies ~~complies with~~ the requirements for a financing statement in this section, although:

1. The record of a mortgage need not indicate ~~other than an indication~~ that it is to be filed in the real property records; and

2. The record of a mortgage sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom s.

679.5031(1)(d) or (e) applies; and

(d) The record of a mortgage is recorded as required by chapter 697.

Section 11. Subsections (1) and (2) of section 679.5031, Florida Statutes, are amended, and subsections (6), (7), and (8) are added to that section, to read:

679.5031 Name of debtor and secured party.—

(1) A financing statement sufficiently provides the name of the debtor:

(a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name ~~of the debtor indicated~~ on the public organic record most recently filed with or issued or enacted by ~~of~~ the registered organization's ~~debtor's~~ jurisdiction of organization that purports to state, amend, or restate the registered organization's name ~~which shows the debtor to have been organized~~;

(b) Subject to subsection (6), if the collateral is being administered by the personal representative of a decedent ~~debtor is a decedent's estate~~, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative ~~debtor is an estate~~;

(c) If the collateral ~~debtor~~ is held in a trust that is not a registered organization ~~or a trustee acting with respect to property held in trust~~, only if the financing statement:

1. Provides, as the name of the debtor:

a. If the organic record of the trust specifies a name~~, if any, specified~~ for the trust, the ~~in its organic documents or, if no~~ name so ~~is~~ specified; or

b. If the organic record of the trust does not specify a name for the trust, ~~provides~~ the name of the settlor or testator ~~and additional information sufficient to distinguish a debtor from other trusts having one or more of the same settlors~~; and

2. In a separate part of the financing statement:

a. If the name is provided in accordance with sub-subparagraph 1.a., indicates~~, in the debtor's name or otherwise,~~ that the collateral ~~debtor~~ is held in a trust ~~or is a trustee acting with respect to property held in trust~~; or

b. If the name is provided in accordance with sub-subparagraph 1.b., provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(d) Subject to subsection (7), if the debtor is an individual to whom this state has issued a driver license that has not expired or to whom the agency of this state that issues driver licenses has issued, in lieu of a driver license, a personal identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver license or personal identification card;

(e) If the debtor is an individual to whom paragraph (d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal

name of the debtor; and

(f)~~(d)~~ In other cases:

1. If the debtor has a name, only if it provides the ~~individual or~~ organizational name of the debtor; and

2. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) A trade name or other name of the debtor; or

(b) Unless required under subparagraph (1)(f)2. ~~(1)(d)2.~~, names of partners, members, associates, or other persons comprising the debtor.

(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent under paragraph (1)(b).

(7) If this state has issued to an individual more than one driver license or, if none, more than one identification card, of a kind described in paragraph (1)(d), the driver license or identification card, as applicable, that was issued most recently is the one to which paragraph (1)(d) refers.

(8) As used in this section, the term "name of the settlor or testator" means:

(a) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered

organization's jurisdiction of organization; or

(b) In other cases, the name of the settlor or testator indicated in the trust's organic record.

Section 12. Subsection (3) of section 679.5071, Florida Statutes, is amended to read:

679.5071 Effect of certain events on effectiveness of financing statement.—

(3) If the ~~a debtor so changes its~~ name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under s. 679.5031(1) so that the financing statement becomes seriously misleading under the standard set forth in s. 679.5061:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within 4 months after, the filed financing statement becomes seriously misleading ~~change~~; and

(b) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing statement becomes seriously misleading ~~change~~, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within 4 months after that event ~~the change~~.

Section 13. Subsection (6) of section 679.515, Florida Statutes, is amended to read:

679.515 Duration and effectiveness of financing statement; effect of lapsed financing statement.—

(6) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

Section 14. Subsection (2) of section 679.516, Florida Statutes, is amended to read:

679.516 What constitutes filing; effectiveness of filing.—

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) The record is not communicated by a method or medium of communication authorized by the filing office;

(b) An amount equal to or greater than the applicable processing fee is not tendered;

(c) The filing office is unable to index the record because:

1. In the case of an initial financing statement, the record does not provide an organization's name or, if an individual, the individual's last name and first name;

2. In the case of an amendment or information ~~correction~~ statement, the record:

a. Does not correctly identify the initial financing statement as required by s. 679.512 or s. 679.518, as applicable; or

b. Identifies an initial financing statement the effectiveness of which has lapsed under s. 679.515;

3. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname ~~last name~~ and first personal name; or

4. In the case of a record filed or recorded in the filing

office described in s. 679.5011(1)(a), the record does not provide a sufficient description of the real property to which it relates;

(d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide an organization's name or, if an individual, the individual's last name and first name and mailing address for the secured party of record;

(e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

1. Provide a mailing address for the debtor; or

2. Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~

~~3. If the financing statement indicates that the debtor is an organization, provide:~~

~~a. A type of organization for the debtor;~~

~~b. A jurisdiction of organization for the debtor; or~~

~~c. An organizational identification number for the debtor or indicate that the debtor has none;~~

(f) In the case of an assignment reflected in an initial financing statement under s. 679.514(1) or an amendment filed under s. 679.514(2), the record does not provide an organization's name or, if an individual, the individual's last name and first name and mailing address for the assignee;

(g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by s. 679.515(4);

(h) In the case of an initial financing statement or an

amendment, which amendment requires the inclusion of a collateral statement but the record does not provide any, the record does not provide a statement of collateral; or

(i) The record does not include the notation required by s. 201.22 indicating that the excise tax required by chapter 201 had been paid or is not required.

Section 15. Section 679.518, Florida Statutes, is amended to read:

679.518 Claim concerning inaccurate or wrongfully filed record.—

(1) A person may file in the filing office an information ~~a correction~~ statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) An information ~~A correction~~ statement under subsection (1) must:

(a) Identify the record to which it relates by the file number assigned to the initial financing statement, the debtor, and the secured party of record to which the record relates;

(b) Indicate that it is an information ~~a correction~~ statement; and

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing

statement to which the record relates and believes that the person that filed the record was not entitled to do so under s. 679.509(3).

(4) An information statement under subsection (3) must:

(a) Identify the record to which it relates by file number assigned to the initial financing statement to which the record relates;

(b) Indicate that it is an information statement; and

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(5)~~(3)~~ The filing of an information ~~a correction~~ statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 16. Subsection (2) of section 679.607, Florida Statutes, is amended to read:

679.607 Collection and enforcement by secured party.—

(2) If necessary to enable a secured party to exercise under paragraph (1)(c) the right of a debtor to enforce a mortgage nonjudicially outside this state, the secured party may record in the office in which a record of the mortgage is recorded:

(a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(b) The secured party's sworn affidavit in recordable form stating that:

1. A default has occurred with respect to the obligation secured by the mortgage; and

2. The secured party is entitled to enforce the mortgage nonjudicially outside this state.

Section 17. Part VIII of chapter 679, Florida Statutes, consisting of sections 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, Florida Statutes, is created to read:

679.801 Saving clause.—

(1) Except as otherwise provided in this part, this part applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(2) The amendments to this chapter by this act do not affect an action, case, or proceeding commenced before July 1, 2013.

679.802 Security interest perfected before effective date.—

(1) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this chapter, as amended by this act, on July 1, 2013, if the applicable requirements for attachment and perfection under this chapter, as amended by this act, are satisfied without further action.

(2) Except as otherwise provided in s. 679.804, if a security interest is a perfected security interest immediately before July 1, 2013, but the applicable requirements for perfection under this chapter, as amended by this act, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for

perfection under this chapter, as amended by this act, are satisfied no later than July 1, 2014.

679.803 Security interest unperfected before effective date.—A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) Without further action, on July 1, 2013, if the applicable requirements for perfection under this chapter, as amended by this act, are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

679.804 Effectiveness of action taken before effective date.—

(1) The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter, as amended by this act.

(2) The amendments to this chapter by this act do not render ineffective an effective financing statement that was filed before July 1, 2013, and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before July 1, 2013. However, except as otherwise provided in subsections (3) and (4) and s. 679.805, the financing statement ceases to be effective:

(a) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(b) If the financing statement is filed in another

jurisdiction, at the earlier of:

1. The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

2. By June 30, 2018.

(3) The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, on the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this chapter, as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(4) Subparagraph (2)(b)2., applies to a financing statement that was filed before July 1, 2013, against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before July 1, 2013, only to the extent that this chapter, as amended by this act, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(5) A financing statement that includes a financing statement filed before July 1, 2013, or a continuation statement filed on or after July 1, 2013, is effective only to the extent that it satisfies the requirements of part V, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates

that the collateral is being administered by a personal representative within the meaning of s. 679.5031(1)(b), as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of s. 679.5031(1)(c), as amended by this act.

679.805 When initial financing statement suffices to continue effectiveness of financing statement.—

(1) The filing of an initial financing statement in the office specified in s. 679.5011 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(a) The filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter, as amended by this act;

(b) The financing statement filed before July 1, 2013, was filed in an office in another state; and

(c) The initial financing statement satisfies subsection (3).

(2) The filing of an initial financing statement under subsection (1) continues the effectiveness of the financing statement filed before July 1, 2013, if:

(a) The initial financing statement is filed before July 1, 2013, for the period provided in s. 679.515, as it existed before its amendment by this act, with respect to an initial financing statement; and

(b) The initial financing statement is filed on or after July 1, 2013, for the period provided in s. 679.515, as amended by this act, with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1), an initial financing statement must:

(a) Satisfy the requirements of part IV, as amended by this act, for an initial financing statement;

(b) Identify the financing statement filed before July 1, 2013, by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) Indicate that the financing statement filed before July 1, 2013, remains effective.

679.806 Amendment of financing statement filed before July 1, 2013.—

(1) On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a financing statement only filed before July 1, 2013, in accordance with the law of the jurisdiction governing perfection as provided in this chapter, as amended by this act. However, the effectiveness of a financing statement filed before July 1, 2013, also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(2) Except as otherwise provided in subsection (3), if the law of this state governs perfection of a security interest, the information in a financing statement filed before July 1, 2013, may be amended after July 1, 2013, only if:

(a) The financing statement filed before July 1, 2013, and an amendment are filed in the office specified in s. 679.5011;

(b) An amendment is filed in the office specified in s. 679.5011 concurrently with, or after the filing in that office of, an initial financing statement that satisfies s. 679.805(3); or

(c) An initial financing statement that provides the information as amended and satisfies s. 679.805(3) is filed in the office specified in s. 679.5011.

(3) If the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed before July 1, 2013, may be continued only under s. 679.804(3) and (5) or s. 679.805.

(4) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed in this state before July 1, 2013, may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the financing statement filed before July 1, 2013, is filed, unless an initial financing statement that satisfies s. 679.805(3) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter, as amended by this act, as the office in which to file a financing statement.

679.807 Person entitled to file initial financing statement or continuation statement.—A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(a) To continue the effectiveness of a financing statement filed before July 1, 2013; or

(b) To perfect or continue the perfection of a security interest.

679.808 Priority.—This part and the amendments to this chapter made by this act determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before July 1, 2013, determines priority.

Section 18. Paragraph (m) of subsection (3) of section 680.1031, Florida Statutes, is amended to read:

680.1031 Definitions and index of definitions.—

(3) The following definitions in other chapters of this code apply to this chapter:

(m) "Pursuant to a commitment," s. 679.1021(1)(ppp) ~~679.1021(1)(ooo)~~.

Section 19. The Division of Statutory Revision is directed to replace the phrase "this act" wherever it occurs in sections 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, Florida Statutes, with the assigned chapter number of this act.

Section 20. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2012
Meeting Date

Topic UCC Bill

Bill Number 1090 *(if applicable)*

Name Kim Siomkos

Amendment Barcode *(if applicable)*

Job Title Asst. VP of Gov. Relations

Address 1001 Thomasville Rd suite 201
Street
Tallahassee FL 32302
City *State* *Zip*

Phone 561 317 4704

E-mail ksiomkos@Florida.bankers.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/12
Meeting Date

Topic Uniform Commercial Code

Bill Number SB 1096 *(if applicable)*

Name Greg Black

Amendment Barcode *(if applicable)*

Job Title

Address 215 S. Monroe Street, Ste 505
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 205-9000

E-mail greg.black@metzlaw.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Business Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

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 Commerce and Tourism Committee

BILL:	SB 1090
INTRODUCER:	Senator Richter
SUBJECT:	Uniform Commercial Code
DATE:	January 22, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Favorable**
2.	Matiyow	Burgess	BI	**Favorable**
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 1090 adopts the 2010 amendment to Article 9 of the Uniform Commercial Code (UCC).The bill provides the following changes to Article 9: revises statute as it relates to governing the name of a debtor for purposes of filing a financing statement; modifies definitions; revises s. 679.301, F.S., relating to the location of debtors; modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction; provides rules for transition to the proposed version of Article 9; and makes numerous stylistic and grammatical changes.

This bill amends the following sections: 679.1021, 679.1051, 679.3071, 679.3111, 679.3161, 679.3171, 679.326, 679.4061, 679.4081, 679.5021, 679.5031, 679.5071, 679.515, 679.516, 679.518, 679.607, 680.1031, F.S.

This bill creates: part VIII of ch. 679, F.S. consisting of ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807. and 679.808, F.S.

II. Present Situation:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. "Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and

law professors, who have been appointed by state governments, as well as the District of Columbia, Puerto Rico and the U.S Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."[1] The term "uniform" refers to how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that are uniform to one another.

Participation in the conference is not limited to lawyers since "stakeholder" meetings are held, where the opinions of all groups concerned with a particular area can be heard.[2] Every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida's assessment for 2009-2010 is $96,700.[3]

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a "business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation."[4] In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories, except Puerto Rico, where it is currently being considered.[5] In 2010, the commission drafted and adopted amendments to Article 9.

The 2010 Amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.[6]

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor.[7] A security interest is a "property interest created by agreement or by operation of law to secure performance of an obligation" (i.e. payment of a debt).[8] An individual or entity files a financial statement to notify third parties — typically prospective buyers and lenders — of a secured party's security interest in goods or real property. Financing statements are indexed under the name of the debtor;

[1] Information provided at: http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=9 (last visited January 17, 2012).
[2] *2008 Commission Annual Report*, p.10, available online: http://www.nccusl.org/nccusl/docs/AnnReport_08_web.pdf (last visited January 17, 2012).
[3] *2009 Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws,* (January 2010) (report prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.).
[4] Black's Law Dictionary (9th ed. 2009).
[5] Article is codified in Florida law in ch. 679, F.S. It was adopted in 2001 by ch. 2001-198 L.O.F.
[6] Information provided at: http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments (last visited January 17, 2012) (pending legislation in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).
[7] *See Matter of Glasco, Inc.*, 642 F.2d 793, 795 (5th Cir. 1981).
[8] Black's Law Dictionary (9th ed. 2009).

therefore, an individual looking for a specific financing statement will search for it under the debtor's name.

Section 679.5031(1), F.S., explains what constitutes the debtor's name for purposes of a financing statement where the debtor is a registered organization,[9] a decedent's estate, or a trust or trustee acting with regard to property held in trust. Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting with regard to property held in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized.[10] While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed.

Perfection of Security Interests

"Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it."[11] Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction.[12] Generally, a security interest perfected according to another jurisdiction's or state's law is not automatically "unperfected." Current law provides that a security interest perfected by filing continues for 4 months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral, unless and until the secured party perfects pursuant to the law of the new jurisdiction.

[9] Current law provides that a registered organization is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." *See.* S. 679.1021(1)(qqq), F.S.
[10] Section 679.518, F.S.
[11] *Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union*, 738 So. 2d 456, 458 (Fla. 1st DCA 1999).
[12] Section 679.3161, F.S.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. "Chattel paper" is a record or records that show both a monetary obligation and a security interest in specific goods.[13] "Electronic chattel paper" is "chattel paper evidenced by record or records consisting of information stored in an electronic medium."[14] Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 679.1021, F.S., to revise the definitions of "authenticate" and "certificate of title," as well as insert a new definition for "public organic record."

The definition for "authenticate" will now mean to sign or, "with the present intent, to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process."

"Certificate of title" is also amended to specify that the "term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest at issue to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral."

Lastly, this section defines a "public organic record" as follows: a record that is available to the public for inspection that is as follows: a record consisting of the record initially filed with or issued by a state or the United States (U.S.) to form or organize an organization and any record filed with or issued by the state or the United States. that amends or restates the initial record; an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or a record consisting of legislation enacted by the Legislature of a state or U.S. Congress that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

Section 2 amends s. 679.1051, F.S., to specify that a secured party has control of electronic chattel paper if a system employed for evidencing the transfer or interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

Additionally, copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party. Also, all references to "revisions" are replaced with the term "amendments."

[13] Section 679.1021(1)(k), F.S.
[14] Section 679.1021(1)(ee), F.S.
[15] See s. 679.1051, F.S.

Section 3 amends s. 679.3071, F.S., to specify that an organization may designate its state of location by designating its main office, home office, or other comparable office.

Section 4 amends s. 679.3111, F.S., by clarifying the requirement of a certificate of title under current law when the statute of a particular jurisdiction requires such a document as a condition to filing.

Section 5 amends s. 679.3161, F.S., by revising the law as it relates to the effect of a change in governing law to the collateral of a security interest within 4 months after a debtor changes its location to another jurisdiction.

As such, a financing statement filed before the change of the debtor's location pursuant to the law of the jurisdiction designated is effective to perfect a security interest in the collateral if the financing statement would have been effective had the debtor not changed its location.
In such cases, if a security interest that is perfected becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated or the 4 month period, then it remains perfected. However, if the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Additionally, if a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated and the new debtor is located in another jurisdiction, then the financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires right within 4 months after the new debtor becomes bound. This rule is subject to the condition that the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

Similarly, a security interest for a new debtor that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the 4 month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated remains perfected. Conversely, a security interest that is perfected by the financing statement, but that does not become perfected under the law of the other jurisdiction before the earlier time or event, becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 6 amends s. 679.3171, F.S., by referring to accounts, electronic chattel paper, electronic documents, general intangibles, or investment property as collateral. As such, a licensee of a general intangible or a buyer, but not a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certified security takes free of a security interest, if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

Section 7 amends s. 679.326, F.S., to provide that a security interest that is created by a new debtor in collateral for which the new debtor has or acquires rights and is perfected by a filed financing statement that would be ineffective to perfect the security interest but for the

application of some other specified statute found in this chapter is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

Section 8 amends s. 679.4061, F.S., to provide that the limitations reflected in subparagraph (4) do not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610, F.S., or an acceptance of collateral under s. 679.620, F.S.

Section 9 amends s. 679.4081, F.S., to provide that restrictions on assignments of promissory notes concerning health-care insurance receivable apply only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610, F.S., or an acceptance of collateral, under s. 679.620, F.S.

Section 10 amends 679.5021, F.S., to specify that the record of a mortgage satisfies the requirements for a financing statement, although it need not indicate that it is to be filed in the real property records, and provides the individual name of the debtor or the surname and first personal name of the debtor.

Section 11 amends s. 679.5031, F.S., to provide that a financing statement sufficiently provides the name of the debtor when the debtor is a registered organization or the collateral is held in a trust that is a registered organization only if the financing statement provides the registered organization's name on the public organic record most recently filed with, issued, or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name.

Similarly, if the collateral is being administered by the personal representative of a decedent, the financing statement is sufficient if it provides, as the name of the debtor, the name of the decedent, and in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative.

In contrast, if the collateral is held in a trust that is not a registered organization, a financing statement will sufficiently provide the name of the debtor if the financing statement provides for the name of the trust as reflected in the organic record or, if the name is not specified, then the name of the settlor or testator. Additionally, a document will also be considered sufficient if in a separate part of the financing statement the name is provided indicating that that the collateral is held in trust or provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlor or the same testator, which indicates that their collateral is held in a trust.

Additionally, a financing statement will sufficiently provide the name of the debtor if the debtor is an individual to whom this state has issued a driver license or personal identification card that has not expired and that name matches the one reflected in the financing statement. Also, if the individual does not have a driver license or personal identification card, then the financing statement will be sufficient if it provides the individual name of the debtor or the surname and first personal name of the debtor and, in the case of an organization, the organization's name. Likewise, if the debtor does not have a name, then a financing statement will sufficiently provide the name of the debtor if it provides the names of the partners, members, associates, or other

persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

Finally, the name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent. Also, if the state has issued to an individual more than one driver license or personal identification card, then the one most recently issued is the one to be used.
As used in this section the term "name of settlor" means a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organizational or, in other cases, the name of the settler or testator indicated in the trust's organic record.

Section 12 amends s. 679.5071, F.S., to provide that if the name in a filed financing statement provided for a debtor becomes insufficient as the name of the debtor, then the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within 4 months after, the filed financing statement becomes seriously misleading. Similarly, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing statement becomes seriously misleading, unless an amendment which renders the financing statement not seriously misleading is filed within 4 months after that event.

Section 13 amends s. 679.515, F.S., to provide that if a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

Section 14 amends s. 679.516, F.S., to replace the term "correction statement" with "information statement." Furthermore, filing does not occur with respect to a record that a filing office refuses to accept because, in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not provide a mailing address for the debtor or indicate whether the name provided as the name of the debtor is the name of an individual or an organization.

Section 15 amends s. 679.518, F.S., to update references to "information statement," as well as provide that a person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so.

Additionally, an information statement under this section must do the following: identify the record to which it relates by file number assigned to the initial financing; indicate that it is an information statement; and provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the basis for the person's belief that the record was wrongfully filed.

Section 16 amends s. 679.607, F.S., to specify that a secured party's sworn affidavit in recordable form stating that a default has occurred with respect to the obligation secured by the

mortgage, among other things, is required in order to enforce a mortgage nonjudicially outside this state.

Section 17 creates Part VIII of ch. 679, F.S., consisting of ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807. and 679.808, F.S.

Section 678.801, F.S., creates a saving clause stating that, except as otherwise provided in this part, this part applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013. Amendments to this chapter by this act do not affect an action, case, or proceeding commenced before July 1, 2013.

Section 679.802, F.S., provides that a security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this chapter, on July 1, 2013, if the applicable requirements for attachment and perfection under this chapter are satisfied without further action. Note that if the applicable requirements for perfection under this chapter are not satisfied on July 1, 2013, then the security remains perfected thereafter only if the applicable requirements for perfection are satisfied no later than July 1, 2014.

Section 679.803, F.S., specifies that a security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest without further action on July 1, 2013, if the applicable requirements for perfection under this chapter are satisfied or when the applicable requirements for perfection are satisfied, if the requirements are satisfied after that time.

Section 679.804, F.S., provides that the filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter. Amendments to this chapter do not render ineffective an effective financing statement that was filed before July 1, 2013, and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as it existed before July 1, 2013.

However, except as otherwise provided, the financing statement ceases to be effective under the following circumstances: the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or if the financing statement is filed in another jurisdiction, at the earlier of, the time the financing statement would have ceased to be effective under the law of that jurisdiction or by June 30, 2018.

Note that the June 30, 2018, filing date applies to a financing statement that was filed before July 1, 2013, against a transmitting utility that satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before July 1, 2013, to the extent that this chapter provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, on the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the

jurisdiction governing perfection, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

A financing statement that includes a financing statement filed before July 1, 2013, or a continuation statement filed on or after July 1, 2013, is effective only to the extent that it satisfies the requirements of part V, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust, as amended by this act.

Section 679.805, F.S., provides that the filing of an initial financing statement with the Clerk of Court or Florida Secured Transaction Registry continues the effectiveness of a financings statement filed before July 1, 2013, under the following circumstances: the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter; the financing statement filed before July 1, 2013, was filed in an office in another state; and the initial financing statement satisfied certain requirements

To be effective, an initial financing statement must meet the following additional requirements: satisfy the requirements of part IV, as amended by this act, for an initial financing statement; identify the filing statement filed before July 1, 2013, by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and indicate that the financing statement filed before July 1, 2013, remains ineffective..

The filing of an initial financing statement continues the effectiveness of the financing statement filed before July 1, 2013: the initial financing statement is filed before July 1, 2013, for the period provided in the statute, as it existed before its amendment by this act, with respect to an initial financing statement and the initial financing statement is filed on or after July 1, 2013, for the period provided in this act with respect to an initial financing statement.

Section 679.806, F.S., provides that on or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a financing statement only filed before July 1, 2013, in accordance with the law of the jurisdiction governing perfection as provided in this chapter. However, the effectiveness of a financing statement filed before July 1, 2013, also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

Unless as otherwise provided, if the law of this state governs perfection of a security interest, the information in a financing statement filed before July 1, 2013, may be amended after July 1, 2013, only as follows: the financing statement is filed before July 1, 2013, and an amendment is filed with the Clerk of Court or the Florida Secured Transaction Registry; an amendment is filed in that office concurrently with, or after the filing in that office, of an initial financing statement

that satisfies s. 679.805(3), F.S., or an initial financing statement that provides the information as amended and satisfies s. 679.805(3), F.S., is filed in the office.

Lastly, if the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed before July 1, 2013, may be continued only under s. 679.804(3) and (5), F.S., or s. 679.805, F.S. Irrespective of whether or not the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed in this state before July 1, 2013, may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the financing statement filed before July 1, 2013, is filed, unless an initial financing statement that satisfied s. 679.805(3), F.S., has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter as the office in which to file a financing statement.

Section 679.807, F.S., specifies that a person may file an initial financing statement or a continuation statement under this part to continue the effectiveness of a financing statement filed before July 1, 2013, or perfect or continue the perfection of a security interest.

Section 679.808, F.S., states that this part and the amendments to this chapter made by this act determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before July 1, 2013, determines priority.

Section 18 amends s. 680.1031, F.S., to correct a cross-reference.

Section 19 creates an undesignated section directing the Division of Statutory Revision to replace the phrase "this act" wherever it occurs in certain enumerated sections within the assigned chapter number of the act.

Section 20 provides that this act shall take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Richter

37-01231-12 20121152__

A bill to be entitled

An act relating to repeal of a workers' compensation independent actuarial peer review requirement; repealing s. 627.285, F.S., relating to the duty of the Financial Services Commission to contract for a periodic report regarding an actuarial peer review and analysis of the ratemaking process of any licensed rating organization that makes rate filings for workers' compensation insurance; providing an effective date.

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

Section 1. Section 627.285, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

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

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 Banking and Insurance Committee

BILL:	SB 1152
INTRODUCER:	Senator Richter
SUBJECT:	Repeal of Workers' Compensation Actuarial Peer Review Requirement
DATE:	January 13, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Under Section 627.285, F.S. the Financial Services Commission (Commission) is required to contract every other year for an independent actuarial peer review of the ratemaking processes for any licensed rating organization that makes rate filings for workers' compensation insurance. The final report must be submitted to the Commission, the President of the Senate, and the Speaker of the House of Representatives by February 1st.

Senate Bill 1152 repeals s. 627.285, F.S., therefore repealing the requirement of an independent actuarial peer review.

This bill repeals the following sections of the Florida Statutes: 627.285

II. Present Situation:

Under s. 627.285, F.S., the Financial Services Commission must contract every other year for an independent actuarial peer review of the ratemaking processes of any licensed rating organization that makes rate filings for workers' compensation insurance. The Commission oversees the Office of Insurance Regulation (OIR) and through the OIR publishes Request for Proposals (REPs) and executes contracts every other year for consultant actuarial services to perform the required independent peer reviews. The independent peer reviews must be submitted to the Commission, the President of the Senate, and the Speaker of the House of Representatives by February 1st.[1] A total of four reports have been submitted since the enactment of the statute in

[1] Section 627.285, F.S.

2003 and a fifth is due on February 1, 2012.[2] The costs of the independent actuarial peer reviews are paid from the Workers' Compensation Administration Trust Fund and have ranged in costs from $104,000 for the 2004 report to $35,000 for the 2010 report.[3]

Section 627.285, F.S., only applies to the National Council on Compensation Insurance (NCCI) since it is the sole licensed rating organization responsible for making workers' compensation rate filings on behalf of Florida insurers. The NCCI independently conducts actuarial analyses and presents its recommendations on its rate filing to the OIR. The OIR then undertakes an extensive actuarial review of the filing before it is approved or denied by the OIR. Since the OIR performs an extensive actuarial review of NCCI's rate filing, s. 627.285, F.S., serves to add an additional independent actuarial review on top of the OIR's review.

III. Effect of Proposed Changes:

The bill would repeal s. 627.285, F.S., thereby repealing the requirement of an independent actuarial review in addition to the OIR's review of the NCCI ratemaking processes. The OIR suggests that the requirement of an additional independent actuarial review does not serve to enhance the process of actuarial reviews conducted by the OIR. The OIR indicates that the past independent reviews have mainly served to validate the actuarial reviews conducted by the OIR, because any issues raised or proposed solutions discussed in the independent reviews were items already identified by the OIR.[4] The repeal of s. 627.285, F.S., would allow the OIR to save the resources currently required to complete and review the RFPs.[5]

The repeal would take effect on July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[2] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[3] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[4] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[5] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The actuarial consulting firms that otherwise would be hired to conduct the independent actuarial peer review would lose these contracts.

C. Government Sector Impact:

The repeal of s. 627.285, F.S., would save the Workers' Compensation Administration Trust Fund approximately $35,000 to $104,000 in actuarial consulting fees for the independent reviews.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Hays

20-01365-12 20121822__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to repeal the Sarbanes-Oxley Act of 2002.

WHEREAS, the Sarbanes-Oxley Act was enacted on July 30, 2002, in Pub. L. No. 107-204, and

WHEREAS, the stated purpose of the act is "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws ...," and

WHEREAS, this federal legislation was passed with the best of corrective intentions after the discovery of corporate fraud and accounting scandals that cost investors and retirees billions of dollars, and

WHEREAS, the Sarbanes-Oxley Act, in spite of the good intentions that motivated its passage, has created an extremely complex maze of federal regulations that are costly and damaging to public companies and diminish the companies' ability to compete against foreign financial entities that are not subject to its regulations, and

WHEREAS, the costs that businesses must bear to comply with the extensive provisions of the Sarbanes-Oxley Act are unnecessary and crippling, disproportionately affecting smaller businesses, and

WHEREAS, financial market scholars have observed that the Sarbanes-Oxley Act has produced the unfortunate consequence of discouraging American businesses from listing with New York stock exchanges and listing instead in England where the markets and stock exchanges are less heavily regulated, and

20-01365-12 20121822__

WHEREAS, the Sarbanes-Oxley Act is a very costly example of Federal Government intrusion that imposes unnecessary regulatory costs on American businesses and interferes with basic free market principles, and

WHEREAS, instead of preventing fraud and ensuring transparency, the extensive regulations created by the Sarbanes-Oxley Act have thwarted the creation of new public companies, driven business away from domestic stock markets, and cost the industrial sector billions of dollars, NOW, THEREFORE,

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

That the Congress of the United States is urged to repeal the Sarbanes-Oxley Act of 2002 to remove the damaging obstacles that the act has created for American public companies and replace it with reasonable non-intrusive measures to protect investors.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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 Banking and Insurance Committee

BILL:	SM 1822
INTRODUCER:	Senator Hays
SUBJECT:	Sarbanes Oxley Act
DATE:	January 23, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Senate Memorial 1822 urges the United States Congress to repeal the Sarbanes-Oxley Act of 2002, and replace it with "reasonable non-intrusive measures to protect investors."

II. Present Situation:

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act is designed to prevent accounting scandals such as those that accompanied the failures of Enron and WorldCom. The act applies to companies required to file reports with the Securities and Exchange Committee. The act amended Federal securities laws, primarily increasing requirements related to corporate governance, auditing, and financial reporting of public companies. The major provisions of the Act include:

- Section 101: Creates the Public Company Accounting Oversight Board, which regulates independent auditors.
- Section 201: Prohibits registered accounting firms from providing certain non-audit services[1] to a public company if the same firm audits the company's financial statements.
- Section 301: Requires company audit committees to perform the appointment, compensation, and oversight of the company's registered accounting firm and are also responsible for resolving disagreements between the registered accounting firm and company management regarding financial reporting. Audit committee members must be independent.

[1] Examples include bookkeeping, appraisal or valuation services, internal audit outsourcing services, and management functions. *Sarbanes-Oxley Act – Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, (GAO-06-361) United States Government Accountability Office, Page 11.

- Section 302: Requires the Chief Executive Officer and Chief Financial Officer to certify they have reviewed annual and quarterly reports, that such reports do not contain untrue statements or omissions of material facts, and that the financial information is fairly presented.
- Section 404: Requires company management, in each annual report filed with the SEC, to state management's responsibility for maintaining adequate internal control structure and procedures for financial reporting. Management must also assess the effectiveness of such measures. The registered accounting firm must attest to and report on management's assessment of its internal control structure for financial reporting.
- Section 407: Requires public companies to disclose in periodic reports to the SEC whether the audit committee includes a financial expert.

The positive and negative effects of Sarbanes-Oxley have been widely debated. For example, a 2006 Government Accounting Office report[2] found that smaller public companies[3] incur higher compliance costs as a percentage of revenues than large public companies, particularly with respect to internal control reporting provisions and related audit fees.

III. Effect of Proposed Changes:

Resolution - Senate Memorial 1822 urges the United States Congress to repeal the Sarbanes-Oxley Act of 2002, and replace it with "reasonable non-intrusive measures to protect investors."

Rationales for Resolution – The memorial states that although Sarbanes-Oxley act was passed with "good intentions" to protect investors after the discovery of corporate accounting scandals, the act has damaged public companies and their ability to compete with foreign corporations because of its complex, costly, and damaging regulations. The costs of compliance with the act are unnecessary and crippling and disproportionally negatively affect smaller businesses. Financial market scholars also state that the act discourages American businesses from listing on the New York Stock Exchange and instead leads them to list on the London Stock Exchange because the latter is less heavily regulated. The act amounts to a "very costly intrusion" of the Federal government that imposes unnecessary regulatory costs on business and disrupts the free market. The Sarbanes-Oxley Act fails to achieve its purposes of reducing fraud and increasing transparency. Instead, it has "thwarted the creation of new public companies, driven business away from domestic stock markets, and cost the industrial sector billions of dollars."

Circulation – Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each legislature of the United States, and each member of the Florida delegation to the United States Congress.

The memorial is not subject to approval or veto by the Governor. The presiding officers of each house sign the memorial.

[2] *Sarbanes-Oxley Act – Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*, United States Government Accountability Office, (GAO-06-361).
[3] Defined as those with $700 million or less in market capitalization.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The positive and negative effects of Sarbanes-Oxley have been widely debated. Proponents of the Sarbanes-Oxley Act argue that it has had a positive impact on investor protection and confidence and improved the accuracy and transparency of financial statements and reports issued by publicly traded corporations. However, opponents of the legislation argue that the burdens and costs it places on businesses, including small businesses, outweigh any asserted benefits.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Richter

37-01370A-12 20121778__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

WHEREAS, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, and

WHEREAS, the stated purposes of the act are "To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices ...," and

WHEREAS, the act's almost 2,400 pages of federal legislation increases the size of the Federal Government by creating 13 new regulatory agencies requiring 2,600 new positions while abolishing only one agency, and

WHEREAS, the Congressional Budget Office predicts that the cost for companies to implement the act over the next 5 years will be approximately $2.9 billion, and other groups estimate that the broader economic costs of the act could approach $1 trillion, and

WHEREAS, the extensive regulations imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act will severely damage the ability of American companies to compete internationally with foreign companies or even create American jobs, and

WHEREAS, the Dodd-Frank Wall Street Reform and Consumer Protection Act is an inadequate response to the financial

37-01370A-12 20121778__

devastation that began in 2008, in part because it has given unfair advantages to the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"), institutions that were substantial contributors to the financial crisis, and

WHEREAS, the Dodd-Frank Wall Street Reform and Consumer Protection Act was championed as creating the most significant financial regulatory reform since the Great Depression, but, in contrast, it has become a radical expansion of federal regulation, vests unprecedented power in the hands of unelected bureaucrats, increases the likelihood that there will be more taxpayer bailouts, has not strengthened the economy or brought stability to the troubled housing market, and does nothing to address the most elemental causes that created the financial crisis of 2008, NOW, THEREFORE,

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

That the Congress of the United States is urged to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic Senate Memorial

Bill Number 1778 *(if applicable)*

Name Alice Vichers

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 556-3121

E-mail alice@fcan.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Consumer Action Network

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

26 JAN 2012
Meeting Date

Topic DODD-FRANK Repeal

Bill Number 1778 *(if applicable)*

Name CHARLES Milsted

Amendment Barcode *(if applicable)*

Job Title ASSOCIATE STATE DIRECTOR

Address 200 West College Avenue
Street

Phone 850-577-5190

Tallahassee, FL 32301
City *State* *Zip*

E-mail CMilsted@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/12
Meeting Date

Topic Dodd-Frank Memorial

Bill Number 1778 *(if applicable)*

Name Anthony DiMarco

Amendment Barcode _____ *(if applicable)*

Job Title EVP

Address 1001 Thomasville Road
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 224-2465

E-mail adimarco@floridabankers.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

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 Banking and Insurance Committee

BILL:	SM 1778
INTRODUCER:	Senator Richter
SUBJECT:	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
DATE:	January 23, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Favorable**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the United States Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each Legislature of the United States, and each member of the Florida delegation to the United States Congress.

II. Present Situation:

In 2007, U.S. financial conditions deteriorated, leading to the near collapse of the U.S. financial system in September 2008. Some major financial institutions, insurers, government-sponsored enterprises, and investment banks either failed or required significant federal support to continue operating.

Congress reacted to the crisis by enacting the most comprehensive financial reform since the 1930s. On July 21, 2010, the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) into law. This act will provide sweeping changes to the current system of regulating consumer financial products and services. The provisions of this act are intended to strengthen oversight of insured depository institutions and nonbank financial companies and to consolidate consumer protection responsibilities that had been fragmented across multiple agencies. The Dodd-Frank Act also authorized the creation of new offices and agencies to implement the reforms.

The private and public sector costs of implementing these reforms have been widely debated. In 2011, the federal General Accounting Office issued a report[1] that estimates the costs to implement the federal act. The amount of new funding the agencies reported as associated with implementing the Dodd-Frank Act varied significantly across 11 agencies.[2] For example, new funding resources related to Dodd- Frank responsibilities during the years 2011-2012 ranged from a low of $0 for Federal Trade Commission (FTC) to a high of around $329 million for the Consumer Financial Protection Bureau (CFPB). As of January 9, 2012, 3,514 pages of Dodd-Frank Act-related regulatory proposals have been initiated and 2,683 pages of final regulations and guidance documents have been adopted.[3]

III. Effect of Proposed Changes:

This Senate Memorial urges the United States Congress to repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each legislature of the United States, and each member of the Florida delegation to the United States Congress.

The memorial is not subject to approval or veto by the Governor. The presiding officers of each house sign the memorial.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[1] General Accounting Office, Dodd Frank Act, Eleven Agencies' Estimates of Resources for Implementing Regulatory Reform, GAO-11-808T, Jul 14, 2011.

[2] The GAO selected these agencies because the Dodd-Frank Act assigned them new responsibilities or created the agency. These agencies are: Commodity Futures Trading Commission (CFTC), Bureau of Consumer Financial Protection (also known as the Consumer , Financial Protection Bureau, or CFPB), Federal Deposit Insurance Corporation (FDIC), Federal Housing Financing Agency (FHFA), Board of Governors of the Federal Reserve System (Federal Reserve), Federal Trade Commission (FTC), Financial Stability Oversight Council (FSOC), Office of the Comptroller of the Currency (OCC), Office of Financial Research (OFR), Securities and Exchange Commission (SEC), and Department of the Treasury (Treasury).

[3] American Bankers Association website. (http://regreformtracker.aba.com/2011/08/abas-keating-urges-regulatory-relief-in.html) Last visited on January 23, 2012.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

443100

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 627.7832, Florida Statutes, is created to read:

627.7832 Claims payment.—A title insurer has the right to cure each claim made. However, if an insurer does not cure a claim within 90 days, the insurer must tender full policy limits or pay up to an additional 25 percent above the initial amount insured in order to reimburse the policyholder for any initial attorney fees, moving expenses, property taxes, architect fees,

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engineering fees, permitting fees, or mortgage interest paid up until the time that the claim is cured. Payment of the additional 25 percent applies only if the insurer fails to establish the title as initially insured. This section applies to all title insurance policies issued on or after July 1, 2012.

Section 2. Subsection (1) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made a determination of insurability based upon the evaluation of a reasonable title search which begins with the original issuance of title ~~or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in accordance with sound underwriting practices~~.

Section 2. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to title insurance claims; creating s.


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627.7832, F.S.; providing that after a specified time, a title insurer must pay the full policy limits on a claim or pay a specified amount above the amount insured to reimburse certain fees and expenses of the insured until the claim is cured; providing for applicability; amending s. 627.7845, F.S.; providing that a title search begins with the original issuance of title; providing an effective date.

233862

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 12 - 18
and insert:
627.7832 Claims payment.—
(1) A title insurer has the right to cure each claim made. However, after 90 days without a cure the insurer must tender payment of full policy limits to the insured or pay up to an additional 25 percent above the initial amount insured to reimburse the insured for the payment of any attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees, or mortgage interest until the cure is

233862

finalized.

(2) The additional 25 percent applies only if the insurer's failure to establish title directly impacts the payments listed in subsection (1).

(3) If a complete loss of title occurs, full policy limits must be paid regardless of market values.

This section does not apply to additional policy limits issued pursuant to s. 627.7844.

Section 2. Section 627.7844, Florida Statutes, is created to read:

627.7844 Supplemental coverage.—

(1) If the current owner of real property borrows money secured by an interest in such real property and a loan title insurance policy is issued at original title insurance rates established pursuant to s. 627.782, less any agreed rebates in connection therewith, the title agency, title insurer, or attorney-agent providing the loan title insurance policy must simultaneously issue an owner's title insurance policy in the amount of the loan title insurance policy, or such greater amount as may be requested by the property owner.

(2)(a) If the property owner provides a copy of one or more owner's title insurance policies currently insuring the owner's interest in the real property, the coverage of the new owner's policy to be issued shall be supplemental to the existing owners policy, and the policy limits of the new owner's policy must be fully available if the aggregate insured losses suffered by the insured exceed the amount insured collectively by the prior policy. Actual payment or recovery from the prior insurer is not

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a condition precedent for recovery under the new owner's policy.

(b) This supplemental coverage may be accomplished through an endorsement of the existing owner's policy or the issuance of a new owner's policy containing language establishing coverage as being supplemental to the prior policies.

(c) The new owner's and loan policies shall reflect policy exceptions and limitations based on the current state of title to the property, and may include exceptions that did not appear in the prior owner's policy.

(3) The premium for the simultaneous issuance of the new owner's policy must be the minimum simultaneous issue rate established pursuant to s. 627.782.

(4) The owner of the real property shall waive in writing the right to purchase any additional owner's coverage.

Section 3. Subsection (1) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made a determination of insurability based upon the evaluation of a reasonable title search beginning with a root of title, as defined in s. 712.01(2) ~~or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in~~

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~~accordance with sound underwriting practices~~.

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

And the title is amended as follows:

Delete lines 4 - 6

and insert:

a title insurer must pay the claim or pay an additional percentage above the initial amount insured to reimburse the policyholder for certain expenses until the claim is cured; providing conditions for certain payments; providing an exception for additional policy limits; creating s. 627.7844, F.S.; providing conditions and amounts for the simultaneous issue of an owner's title insurance policy in additional to the loan title insurance policy; providing criteria for the supplemental coverage; establishing the premium for such coverage and providing for a waiver of coverage; amending s. 627.7845, F.S.; specifying that a title insurer's determination of insurability must be based on the evaluation of a reasonable title search beginning with a root of title; providing an effective date.

By Senator Bennett

21-00708-12 2012826__

A bill to be entitled

An act relating to title insurance claims; creating s. 627.7832, F.S.; providing that after a specified time, a title insurer must pay the claim or cover the insured's costs until the claim is cured; providing applicability; providing an effective date.

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

Section 1. Section 627.7832, Florida Statutes, is created to read:

627.7832 Claims payment.—A title insurer has the right to cure each claim made. However, after 90 days without a cure the insurer must tender payment of full policy limits to the insured or cover all additional costs incurred by the insured, including attorney fees and costs, until the cure is finalized. This section applies to all title claims filed on or after July 1, 2012.

Section 2. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

APPEARANCE RECORD

1-26-12 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic TITLE INSURANCE Bill Number 826 *(if applicable)*

Name NORWOOD GAY Amendment Barcode _____ *(if applicable)*

Job Title CHIEF LEGAL OFCR

Address 545 CORPORATE CENTRE BLVD *Street* Phone 800-336-3863

ORLANDO FL 32822 E-mail RNGAY@ATFUND.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing ATTORNEYS' TITLE FUND SVCS

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 (10/20/11)

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 Banking and Insurance Committee

BILL: CS/SB 826

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Title Insurance Claims

DATE: January 26, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The CS requires title insurance companies to cover additional costs paid by the insured while a challenge to title in being cured. The additional coverage is only applied if the failure to establish title directly impacts the costs paid by the insured. In the event of a complete loss of title the CS requires insurers to pay full policy limits regardless of market value. Additionally, the CS requires insurers to issue supplemental policies to owners of real property whenever a new "loan policy" is issued. Finally, the CS requires all title searches to begin from the "root of title" pursuant to s. 712.01(2), F.S.

This bill creates the following sections of the Florida Statutes: 627.7832, 627.7844.
This bill amends the following section of the Florida Statutes: 627.7845

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer[2] that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is lending money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

Regulation

In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3] and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4]

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.[5] Title insurers may deviate from the prescribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.[6] In Florida, title insurers can only transact title insurance and cannot transact any other type of insurance.[7]

Challenges

There are no set timeframes in statute as to when disputes to a title of real property must be cured by a title insurance company. The insurance company's primary objective in a dispute is to

[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.
[2] 627.7711(3), F.S.
[3] Section 627.777, F.S.
[4] Section 627.782, F.S.
[5] Section 627.782, F.S.
[6] Section 627.783, F.S.
[7] Section 627.786, F.S.

validate the policy as issued. If a challenge to title is brought, the title insurance company can settle with the challenging parties, challenge the dispute in court or tender partial or full policy limits for any damages occurred to the insured from the partial or total loss of title. Often disputes to title of real property can be settled between the parties involved without the involvement of the courts, thus cutting down on the time it takes for a challenge to title to be cured.

Loss of Title

When a complete loss of title occurs the insurer will tender full policy limits if at the time of loss the market value of the real property is at or above the policy limits originally insured. Consequently, if at the time of loss the market value of the real property is below the value initially insured, the insurer will only pay the insured the market value of the real property and not the limits initially insured.

Searches

Florida law does not require how far back a title search must go. Often new policies are issued based on the results of the previous title search performed. While s. 712.01(2), F.S. does not impose a timeframe it does define the "root of title" being the last previous owner to have owned the real property for 30 years or more.

III. Effect of Proposed Changes:

The CS requires title insurers to pay full policy limits within 90 days after a challenge to title is filed or cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include; attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees and or mortgage interest paid up until the claim is cured. The CS states the additional coverage only applies if the failure to establish title directly impacts the costs paid by the insured. Additional, the CS requires title insurers must pay full policy limits regardless of market value whenever a complete loss of title occurs. The CS requires insurers to issue supplemental policies to owners of real property whenever a new "loan policy" is issued and allows owners to waive in writing the new loan coverage. Finally, the CS requires all title searches to begin from the "root of title" pursuant to s. 712.01(2), F.S.
This Act applies to all title insurance policies issued after July 1, 2012

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Title insurance companies would be subject to additional costs when trying to cure a challenge to title.

Owners of real property must decline in writing any new supplemental policies issue.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on January 26, 2012.

Section 1 – Creates s. 627.7832, F.S., which requires title insurers to cover an additional 25 percent of policy limits for costs paid by the insured while the dispute to title is being cured. Costs include; attorney fees, moving expenses, property taxes, architect fees, engineering fees, permitting fees and or mortgage interest paid up until the claim is cured. The additional coverage only applied if the failure to establish title directly impacts the costs paid by the insured. In the event of complete loss of title the insurer shall pay full policy limits regardless of market value.

Sections 2 - Creates s. 627.7844, F.S., which requires insurers to issue supplemental policies to owners of real property whenever a new "loan policy" is issued. Furthermore, owners of the real property may waive in writing the new loan coverage policies.

Section 3 – Amends 627.7845, F.S., which requires all title searches to begin from the "root of title" pursuant to s. 712.01(2), F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

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

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of

any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. ~~Service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from this definition and are exempt from regulation under the Florida Insurance Code.~~ The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall either:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle; however, the payment of vehicle protection expenses at a preestablished flat amount of $5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy; or

(c)1. For the payment for paintless dent-removal services provided by a company whose primary business is providing such services.

2. "Paintless dent-removal" means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.

Section 2. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended, and paragraphs (c), (d), and (e) are added to that subsection, to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the

agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

(c) If the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to the service agreement holder.

(d) The salesperson, agent, or service agreement company shall maintain a copy of one of the following documents, as

applicable, demonstrating that the refund owed pursuant to paragraph (c) has been refunded:

1. A copy of the front and back of the cancelled check for the applicable refund amount owed to the service agreement holder;

2. A copy of the front of the check for the applicable refund amount owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

3. A copy of the front of the check issued by the service agreement company to the salesperson or agent in the amount of the service agreement company's portion of the refund owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

4. A copy of a completed buyer's order demonstrating that the applicable refund amount owed to the service agreement holder was credited toward the purchase or lease of another vehicle;

5. Any document received from or sent to a lender, finance company, or creditor demonstrating that a loan or amount financed by the agreement holder was decreased by the amount of the applicable refund amount owed to the service agreement holder; or

6. Any other evidence approved by the office in a written communication to a person licensed pursuant to this part demonstrating that the applicable refund amount due to the service agreement holder was properly made.

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A salesperson or agent effectuating a refund shall maintain a copy of the documentation required by this paragraph and shall provide a copy to the service agreement company within 45 days after a request is made by the department or the office to either the service agreement company or the salesperson.

(e) If the office finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the documentation required by paragraph (d), the office shall notify the department of its finding.

Section 3. Section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

~~(1)~~ Motor vehicle service agreement companies licensed under this part may be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as apply ~~applies~~ to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year. ~~The commission may by rule establish provisions whereby a company may be exempted from examination.~~

~~(2) The office shall determine whether to conduct an examination of a company by considering:~~

~~(a) The amount of time that the company has been~~

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~~continuously licensed and operating under the same management and control.~~

~~(b) The company's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the company.~~

~~(d) The financial condition of the company, demonstrated by the financial reports submitted pursuant to s. 634.137.~~

Section 4. Section 634.2855, Florida Statutes, is created to read:

634.2855 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 5. Subsection (5) of section 634.312, Florida

Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(5) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement. A home warranty association may effectuate a refund through the issuing sales representative.

Section 6. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

~~(1)~~ Home warranty associations licensed under this part may be subject to periodic examinations by the office, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code. The office is not required to conduct periodic examinations pursuant to this section, but may examine a home warranty company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of

examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(2) The office shall determine whether to conduct an examination of a home warranty association by considering:~~

~~(a) The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~(b) The association's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the association.~~

~~(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

Section 7. Section 634.3385, Florida Statutes, is created to read:

634.3385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to

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chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 8. Section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

(2) Refunds owed pursuant to this section may be made by cash, check, store credit, gift card, or other similar means. Upon request of the service warranty holder, the refund shall be remitted by check.

(3) ~~(2)~~ By July 1, 2011, each service warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may

comply with this requirement by including such disclosure in its service warranty contract form or in a separate written notice provided to the consumer at the time of sale.

Section 9. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

~~(1)(a)~~ Service warranty associations licensed under this part may be subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service warranty company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year.

~~(b) The office shall determine whether to conduct an examination of a service warranty association by considering:~~

~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~2. The association's history of compliance with applicable law.~~

~~3. The number of consumer complaints against the association.~~

~~4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

~~(2) The rate charged a service warranty association by the~~

~~office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.~~

~~(3) On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.~~

~~(4) The office is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition.~~ If the office examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 10. Section 634.4385, Florida Statutes, is created to read:

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the

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office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section remaining at the end of any fiscal year shall be available for carrying out the duties and responsibilities of the department or the office.

Section 11. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to warranty associations; amending s. 634.011, F.S.; revising the definition of the term "motor vehicle service agreement"; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a

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salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services or the Office of Insurance Regulation; requiring the office to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; authorizing rather than requiring the office to examine service agreement companies; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as motor vehicle service agreement companies; providing requirements for the deposit of the money; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; authorizing rather than requiring the office to

examine home warranty associations; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as home warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; authorizing rather than requiring the office to examine service warranty associations; limiting the examination period to the most recent 5 years; limiting the costs of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association for examinations; removing the provision authorizing the

448 office to waive the examination requirement upon
449 receipt and review of the Form 10-K; creating s.
450 634.4385, F.S.; authorizing a governmental entity,
451 public agency, institution, person, firm, or legal
452 entity to provide money to the department to pursue
453 unauthorized entities operating as service warranty
454 associations; providing that funds remaining at the
455 end of any fiscal year shall be available for carrying
456 out duties and responsibilities of the department or
457 the office; providing an effective date.

By Senator Oelrich

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A bill to be entitled

An act relating to warranty associations; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services; requiring the Office of Financial Regulation to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; providing an exception to the requirement that motor vehicle service agreement companies undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine service agreement companies; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities

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operating as motor vehicle service agreement companies; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; providing an exception to the requirement that home warranty associations undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine home warranty associations; limiting the examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities operating as home warranty associations; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; providing an exception to the requirement that service warranty associations undergo periodic examinations; authorizing rather than requiring the Office of Financial Regulation to examine service warranty associations; limiting the

examination period to the most recent 5 years; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association for examinations; removing the provision authorizing the Office of Financial Regulation to waive the examination requirement upon receipt and review of the Form 10-K; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide property or money to the Department of Financial Services to pursue unauthorized entities operating as service warranty associations; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended, and paragraphs (c), (d), and (e) are added to that subsection, to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

(c) If the service agreement company effectuates refunds through the issuing salesperson or agent, the service agreement company must send the unearned pro rata premium refund due, less any unearned pro rata commission, to the salesperson or agent effectuating the refund. Upon receipt, the salesperson or agent must refund the unearned pro rata premium, including any unearned pro rata commission, and the sales tax refund owed to

the service agreement holder.

(d) The salesperson, agent, or service agreement company shall maintain a copy of one of the following documents, as applicable, demonstrating that the refund owed pursuant to paragraph (c) has been refunded:

1. A copy of the front and back of the cancelled check for the applicable refund amount owed to the service agreement holder;

2. A copy of the front of the check for the applicable refund amount owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

3. A copy of the front of the check issued by the service agreement company to the salesperson or agent in the amount of the service agreement company's portion of the refund owed to the service agreement holder and a copy of the statement from the bank account on which the check was drawn showing that the check was cashed;

4. A copy of a completed buyer's order demonstrating that the applicable refund amount owed to the service agreement holder was credited toward the purchase or lease of another vehicle;

5. Any document received from or sent to a lender, finance company, or creditor demonstrating that a loan or amount financed by the agreement holder was decreased by the amount of the applicable refund amount owed to the service agreement holder; or

6. Any other evidence approved by the office in a written communication to a person licensed pursuant to this part

demonstrating that the applicable refund amount due to the service agreement holder was properly made.

A salesperson or agent effectuating a refund shall maintain a copy of the documentation required by this paragraph, and shall provide a copy to the service agreement company within 45 days after a request is made by the department.

(e) If the office finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the documentation required by paragraph (d), the office shall notify the department of its finding.

Section 2. Section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

~~(1)~~ Motor vehicle service agreement companies licensed under this part may be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. ~~The commission may by rule establish provisions whereby a company may be exempted from examination.~~

~~(2) The office shall determine whether to conduct an examination of a company by considering:~~

~~(a) The amount of time that the company has been continuously licensed and operating under the same management and control.~~

~~(b) The company's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the company.~~

~~(d) The financial condition of the company, demonstrated by the financial reports submitted pursuant to s. 634.137.~~

Section 3. Section 634.2855, Florida Statutes, is created to read:

634.2855 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in accordance with s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 4. Subsection (5) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(5) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be

based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement. A home warranty association may effectuate a refund through the issuing sales representative.

Section 5. Section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

~~(1)~~ Home warranty associations licensed under this part may be subject to periodic examinations by the office, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years.

~~(2) The office shall determine whether to conduct an examination of a home warranty association by considering:~~

~~(a) The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~(b) The association's history of compliance with applicable law.~~

~~(c) The number of consumer complaints against the association.~~

~~(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

Section 6. Section 634.3385, Florida Statutes, is created to read:

634.3385 Unauthorized entities, gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in accordance with s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 7. Section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

(2) Refunds owed pursuant to this section may be made by cash, check, store credit, gift card, or other similar means.

(3)~~(2)~~ By July 1, 2011, each service warranty contract sold

in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may comply with this requirement by including such disclosure in its service warranty contract form or in a separate written notice provided to the consumer at the time of sale.

Section 8. Section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

~~(1)(a)~~ Service warranty associations licensed under this part may be subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624, with the exception of ss. 624.316(2)(e) and 624.3161(3), which do not apply to examinations conducted pursuant to this section. The office is not required to conduct periodic examinations pursuant to this section, but may examine a service agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years.

~~(b) The office shall determine whether to conduct an examination of a service warranty association by considering:~~

~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~

~~2. The association's history of compliance with applicable law.~~

~~3. The number of consumer complaints against the association.~~

~~4. The financial condition of the association, demonstrated~~

~~by the financial reports submitted pursuant to s. 634.313.~~

~~(2) The rate charged a service warranty association by the office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.~~

~~(3) On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of $2,000 to be deposited into the Insurance Regulatory Trust Fund.~~

~~(4) The office is not required to examine an association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition.~~ If the office examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 9. Section 634.4385, Florida Statutes, is created to read:

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide property or money to the department in

accordance with the provisions of s. 626.9894 to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds or property to the office to administer this section.

Section 10. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan 26 / 2012
Meeting Date

Topic _____ Bill Number 1262 *(if applicable)*

Name Tim Meenan Amendment Barcode _____ *(if applicable)*

Job Title President Richter fan club

Address 204 S. Monroe St. Phone 850 681-6710
Street

Tallahassee FC
City *State* *Zip*

E-mail Tim@blankfan.com

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

Representing Florida Service Agreement Association

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-12
Meeting Date

Topic Auto warranties

Bill Number 1262 *(if applicable)*

Name TED SMITH

Amendment Barcode *(if applicable)*

Job Title President

Address 400 N. Meridian ST
Street

Phone

TALLA. FL 32301
City *State* *Zip*

E-mail teds@flada.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Fl. Automobile Dealers 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.

S-001 (10/20/11)

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 Banking and Insurance Committee

BILL:	CS/SB 1262
INTRODUCER:	Banking and Insurance Committee and Senator Oelrich
SUBJECT:	Warranty Associations
DATE:	January 25, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Fav/CS**
2.			CM	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill provides criteria for motor vehicle service agreement companies to effectuate refunds through the issuing salesperson or agent. The bill authorizes home and service warranty associations to effectuate refunds through the issuing sales representative. The bill authorizes rather than requires the examination of warranty associations. Additionally, the bill creates provisions authorizing the donation or grant of money to the Department of Financial Services (DFS) to pursue unauthorized warranty associations.

This bill substantially amends the following sections of the Florida Statutes: 634.011, 634.121, 634.141, 634.312, 634.314, 634.414, and 634.416.

This bill creates the following sections of the Florida Statutes: 634.2855, 634.3385, and 634.4385.

II. Present Situation:

Motor vehicle service agreement companies, home warranty associations, and service warranty associations are governed under ch. 634, F.S. The Office of Insurance Regulation (OIR) is responsible for regulating warranty associations within Florida.

Warranty Agreements

Motor Vehicle Service Agreement: Motor vehicle service agreements are defined as indemnifying the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle. Included in the definition are agreements that provide for coverage issued in conjunction with an additive product applied to the motor vehicle, payment of vehicle protection expenses, and payment for paintless dent-removal services. Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.[1]

Home Warranty: Any organization, other than an authorized insurer, that issues home warranties is a home warranty association. Home warranties are agreements whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance, or necessitated by the failure of an inspection to detect the likelihood of any such loss.[2]

Service Warranty: A service warranty is a maintenance service contract equal to or greater than 1 year in length or an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[3] Under s. 634.401, F.S., indemnify means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

Agreement Cancellation

Motor Vehicle Service Agreement: Any motor vehicle service agreement is cancelable by the purchaser (agreement holder) within 60 days after purchase. The purchaser is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.[4] An administrative fee of not more than 5 percent of the gross premium paid by the agreement holder may be assessed. Once a motor vehicle service agreement has been in effect for 60 days it may not be canceled by the insurer or service agreement company unless:

[1] Section 634.011(8), F.S.
[2] Section 634.301(2), F.S.
[3] Section 634.401(13), F.S.
[4] Section 634.121(3)(a), F.S.

1. there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2. the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3. the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
4. for nonpayment of premium by the agreement holder.[5]

If the insurer or service agreement company cancels the service agreement, the refund to the agreement holder must not be less than 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the agreement holder, the insurer or service agreement company must return directly to the holder not less than 90 percent of the unearned pro rata premium minus any claims paid on the agreement.[6] A full refund to the agreement holder on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law the company may effectuate refunds through the issuing salesperson or agent.[7]

Home Warranty: Under s. 634.312, F.S., any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid minus any claims paid on the agreement. An administrative fee not to exceed 5 percent of the gross premium paid by the warranty agreement holder may be charged. If canceled after 10 days by the warranty holder, the return of premium shall be based upon 90 percent of unearned pro rata premium minus any claims that have been paid. If canceled by the home warranty association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, minus any claims paid.[8] Current law does not explicitly authorize a home warranty association to effectuate refunds through the issuing salesperson or agent.

Service Warranty: If a service warranty is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium minus any claims that have been paid, or the cost of repairs made on behalf of the warranty holder. If the association cancels the agreement the return of premium shall be based upon 100 percent of unearned pro rata premium minus any claims paid or the cost of repairs made.[9] Current law does not explicitly authorize a service warranty association to effectuate refunds through the issuing salesperson or agent.

Examination of Companies

The OIR's financial examination of motor vehicle service agreement companies, home warranty associations, and service warranty associations is subject to the same procedures as required under part II of ch. 624. The OIR may examine the companies as often as may be warranted for

[5] Section 634.121(3)(b), F.S.
[6] Section 634.121(3)(b)(4), F.S.
[7] Section 634.121(3)(b)(4), F.S.
[8] Section 634.312(5), F.S.
[9] Section 634.414(1), F.S.

the protection of policyholders and the public interest, but must examine each company not less frequently than once every 5 years.[10] Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company or association. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist with the costs paid for by the companies.[11]

Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of $2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.[12] On or before May 1 of each year, a service warranty association may submit to the OIR a Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. The OIR may waive the examination requirement for service warranty associations upon receipt and review of the Form 10-K and deposit of the $2,000 filing into the Insurance Regulatory Trust Fund. According to the OIR currently there are approximately 15 entities with exemption requests.[13]

The OIR is not required to examine a service warranty association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement, but may if it has reason to believe that the association is noncompliant or is otherwise in an unsound financial condition. If the OIR examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.[14]

Gifts and Grants to Combat Unauthorized Entities

Under s. 626.9894, F.S., the Department of Financial Services (DFS) is authorized to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. All rights to the gifts and grants are immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. The moneys deposited into the Insurance Regulatory Trust Fund shall be separately accounted for and may be appropriated by the Legislature for the purpose of enabling the division to carry out its responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.[15]

III. Effect of Proposed Changes:

Motor Vehicle Service Agreement

The provision excluding service agreements sold to persons other than consumers and that cover motor vehicles used for commercial purposes is deleted by the bill. Therefore, motor vehicle service agreement coverage for commercial vehicles having a gross weight rating of less than

[10] Section 624.316(2)(a), F.S.
[11] Section 624.316(2)(e), F.S.
[12] The Office of Insurance Regulation, Rule 69O-200.014, FAC.
[13] The Office of Insurance Regulation Staff Analysis, January 10, 2012.
[14] Section 634.416, F.S.
[15] Section 626.9894, F.S.

10,000 pounds will be required to be offered through a regulated company. Vehicles over 10,000 pounds will continue to not be covered.[16] This assures that small business owners get the same consumer protection that private motor vehicle owners receive.

Agreement Cancellation

Under the bill if a motor vehicle service agreement company effectuates refunds through the issuing salesperson or agent, the company must send to the salesperson or agent effectuating the refund the unearned pro rata premium refund due less any unearned pro rata commission. The salesperson or agent must then refund the unearned pro rata premium including any unearned pro rata commission and the sales tax to the service agreement holder. The bill requires the salesperson, agent, or company maintain a copy of certain specified documents demonstrating the refund to the service agreement holder occurred. The salesperson or agent effectuating the refund shall provide a copy of the required documentation to the company within 45 days after a request is made by the DFS or the OIR. If the OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the required documentation the OIR shall notify the DFS.

The bill creates the option to effectuate a refund through the issuing sales representatives for home warranty associations or service warranty associations, but does not provide detail or require certain documentation be retained regarding the effectuation of the refund. However, according to the OIR there are no procedures in place for the sales representatives or agents of home or service warranty associations to effectuate refunds.[17] The bill provides that refunds for service warranties may be made by cash, check, store credit, gift card, or other similar means. The bill provides that upon the request of the service warranty holder the refund must be remitted by check.

Examination of Companies

The bill provides that the OIR is not required to conduct periodic examinations of motor vehicle service agreement companies, home warranty associations, or service warranty associations but may at the OIR's discretion. An examination may only cover a period of the most recent 5 years. The bill provides that the costs of an examination conducted by an independent examiner is limited to no more than 10 percent of the companies' prior year reported net income. The criteria provided for the OIR to consider in determining whether to conduct an examination of a company or association is eliminated. The bill deletes authorization for the creation of the exemption processes and fees for motor vehicle service agreement companies.
For service warranty associations, the bill deletes language specific to the rate charged for service warranty providers and the filing fee of $2,000 for the Form 10-K filed with the United States Securities and Exchange Commission. The bill maintains that if the OIR examines a service warranty association that has less than $20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

[16] Section 634.011(6)((a)(1), F.S.
[17] The Office of Insurance Regulation Staff Analysis, January 10, 2012.

Gifts and Grants to Combat Unauthorized Entities

The bill creates new provisions that allow a governmental unit, public agency, institution, person, firm, or legal entity to provide money, and not property, to the DFS to enable the DFS to pursue unauthorized entities operating in violation of provisions relating to warranty associations. The DFS may transfer the funds to the OIR to pursue unauthorized entities. The bill requires all donations to the DFS to be deposited into the Insurance Regulatory Trust Fund (Fund) and separately accounted for. The bill allows money deposited into the Fund to be appropriated by the Legislature pursuant to ch. 216, F.S., for the purpose of enabling the DFS or the OIR to pursue unauthorized warranty entities. The bill provides that any balance of moneys deposited into the Fund for the purpose of pursuing unauthorized warranty entities and remaining at the end of any fiscal year shall be available for carrying out the duties of the DFS or the OIR.

The bill has an effective date of July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The OIR will no longer conduct regularly scheduled examinations of warranty associations, therefore the warranty associations will save costs associated with preparing for and undergoing the examinations. The warranty associations will also save on the costs of an independent examiner, since the fees are capped at 10 percent of their prior year net income. Entities that currently apply for exemption will no longer have to pay the $2,000 filing fee.

C. Government Sector Impact:

The Department of Financial Services will receive grants and donations under the newly created provisions for pursuing unauthorized warranty associations, however this revenue is considered as non-recurring since it is not guaranteed.[18] The exemption fee of $2,000 required for the exemption from examination will no longer be collected or deposited into the Insurance Regulatory Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance Committee on January 26, 2012:
The committee substitute retains many of the same provisions of the bill as filed and makes the following major changes:

- Deletes the provision in current law that provides service agreements sold to persons other than consumers, and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarifies the provisions in the bill authorizing donations to the Department of Financial Services (DFS) for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Caps the costs associated with the Office of Insurance Regulation's (OIR) use of independent examiners.
- Makes technical changes to correct drafting errors.

B. Amendments:

None.

[18] The Department of Financial Services Staff Analysis and Fiscal Impact Statement, December 29, 2011.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget, *Chair*
Rules, *Vice Chair*
Agriculture
Banking and Insurance
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Education Pre-K - 12
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:
Legislative Budget Commission, *Chair*

SENATOR JD ALEXANDER
17th District

January 25, 2012

Senator Garrett S. Richter, Chair
Committee on Banking & Insurance
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, tomorrow, January 26, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

JD Alexander
Senator, District 17

Xc: Steve Burgess

REPLY TO:
❒ 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
❒ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

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

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Banking and Insurance Committee 1:30 - 3:30 pm 412kb **Judge:**

Started: 1/26/2012 1:36:19 PM
Ends: 1/26/2012 3:08:44 PM **Length: 01:32:26**

1:36:29 PM	Meeting called to order by Chair Richter
1:36:49 PM	Roll call
1:37:45 PM	Tab 4 - SB 1404 by Sen. Altman
1:38:13 PM	Delete all amendment (577578 by Sen. Negron
1:38:40 PM	Explanation of amendment by Sen. Altman
1:39:36 PM	Without objection amend. adopted
1:40:01 PM	Motion for CS by Sen. Margolia
1:40:13 PM	Roll call on bill --passed
1:40:36 PM	Tab 5 - SB 1406 by Sen. Altman
1:40:58 PM	delete all amend. by Sen. Negron (424926)--adopted
1:41:58 PM	Sen. Hays--motion for CS
1:42:07 PM	Roll call --passed
1:42:44 PM	CS/SB 752 -- presented by Senator Negron
1:43:12 PM	Explanation of bill by Sen. Negron
1:44:15 PM	Roll call -- passed
1:44:54 PM	Tab 1 - SB 1208 by BI
1:46:00 PM	Explanation of bill by Staff Director Steve Burgess
1:49:07 PM	Harry Carson, Licensed Private Investigator
1:52:14 PM	Sen. Margolis has question for Mr. Carson
1:53:15 PM	Senator Fasano has question
1:54:23 PM	Sen. Sobel has question
1:57:16 PM	Tom Weiskotten, owner/private investigator
2:02:28 PM	Ashley Mayer, Director, Leg.Policy Affairs
2:03:31 PM	Roll call on SB 1208 --passed
2:04:14 PM	SB 1230 by BI Committee
2:04:34 PM	Explanation of bill by Staff Director Steve Burgess
2:05:23 PM	Roll call on SB 1230 -- passed
2:05:48 PM	SB 1232 by Banking and Insurance Committee
2:06:08 PM	Explanation of bill by Steve Burgess
2:06:58 PM	Roll call on SB 1232 --passed
2:07:43 PM	Tab 9 - SB 1822 by Senator Hays
2:08:38 PM	Explanation of bill by Senator Hays
2:09:38 PM	Comments by Senator Sobel---opposition of bill
2:11:09 PM	Senator Fasano --comments on SM 1822--against the bill
2:12:36 PM	Sen. Hays closes on bill
2:13:38 PM	Roll call on SM 1822 --
2:14:38 PM	Tab 12 - SB 1262 by Senator Oelrich
2:17:45 PM	Explanation of amendment (157488) by Sen. Oelrich -- w/o objection - passed
2:18:44 PM	Motion for CS--Sen. Hays
2:18:57 PM	Roll call --passed
2:19:55 PM	Tab 7 - SB 1090 by Senator Richter - Uniform Commercial Code
2:20:27 PM	Explanation of bill by Senator Richter
2:21:31 PM	Roll call on SB 1090 --passed
2:22:32 PM	Sen. Gatez recognized Sen. Richter for Tab 8, SB 1152
2:23:09 PM	Question by Senator Margolis
2:23:43 PM	Roll call on Tab 8, SB 1152 -- passed
2:24:33 PM	Tab 10--SM 1778 by Sen. Richter
2:25:33 PM	Senator Richter explains the bill
2:31:29 PM	Senator Fasano with question
2:32:45 PM	Comments by Senator Margolis
2:35:19 PM	Alice Vickers, attorney, representing FL Consumer Action Network
2:40:34 PM	Anthony Demarko - FL Bankers Association -- support of bill

2:42:26 PM Sen. Sobel speaks in opposition to bill
2:43:33 PM Sen. Hays speaks in support of bill
2:44:09 PM Senator Bennett speaks in support of bill
2:45:42 PM Senator Richter closes on bill
2:48:31 PM Roll call on SM 1778 - passed
2:49:35 PM Tab 11 - SB 826- Title Insurance Claims
2:50:41 PM Take up Amendment (233862) by Senator Bennett (delete all)
2:53:50 PM Explanation of Amendment 233862 by Sen. Bennett
2:55:08 PM Without objection the amendment was adopted
2:56:09 PM Norwood Gay, Chief Legal Officer, Attorneys' Title Fund Sevices
2:59:15 PM Senator Smith recognized for question
3:02:49 PM Sen. Sobel recognized for a question
3:05:46 PM Sen. Margolis recognized for comment
3:06:48 PM Motion for CS -- Sen. Gatez
3:07:48 PM Roll call -- passed
3:08:06 PM Sen. Negron -- request for late vote