

SB 832 by Flores (CO-INTRODUCERS) Diaz de la Portilla; (Similar to H 0783) Financing of Motor Vehicles

238370 D S RCS BI, Ring Delete everything after 03/05 04:08 PM

SB 1012 by Richter; (Similar to CS/H 0673) Financial Institutions

221894 A S RCS BI, Richter Delete L.406 - 412: 03/05 04:08 PM
628728 A S RCS BI, Richter Delete L.544: 03/05 04:08 PM
357424 A S RCS BI, Richter Delete L.610: 03/05 04:08 PM

SB 758 by Lee; (Similar to H 0805) Title Insurer Reserves

201870 A S RCS BI, Lee Delete L.64 - 87: 03/05 04:08 PM

SB 1006 by Hays; (Similar to CS/H 0413) Consumer Collection Practices

SB 1002 by Hays; (Similar to CS/H 0415) Public Records/Office of Financial Regulation

218668 A S RCS BI, Hays Delete L.141: 03/05 04:08 PM

SPB 7062 by BI; Citizens Property Insurance Corporation Coverage

186484 A S FAV BI, Montford Delete L.56 - 89. 03/05 04:49 PM
364132 A S FAV BI, Hays Delete L.90 - 93: 03/05 04:49 PM
962288 A S FAV BI, Hays btw L.397 - 398: 03/05 04:49 PM
439764 A S FAV BI, Simmons Delete L.406 - 471. 03/05 04:49 PM
812680 A S WD BI, Margolis Delete L.510 - 515: 03/05 04:49 PM
268180 A S FAV BI, Hays Delete L.525 - 536: 03/05 04:49 PM
556552 A S FAV BI, Hays btw L.684 - 685: 03/05 04:49 PM
312886 T S FAV BI, Simmons In title, delete L.2 - 03/05 04:49 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Simmons, Chair
Senator Clemens, Vice Chair

MEETING DATE: Wednesday, March 5, 2014

TIME: 1:30 —3:30 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negron, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 832 Flores (Similar H 783)	Financing of Motor Vehicles; Prohibiting a finance company that is affiliated with or controlled by, or that has a contractual relationship to represent, a manufacturer or wholesale distributor from adopting or implementing a policy or business practice that results in specified actions relating to certain finance obligations arising from the retail sale or lease of a motor vehicle that includes a specified third party automotive related product, etc. BI 03/05/2014 Fav/CS JU CJ	Fav/CS Yeas 11 Nays 0
2	SB 1012 Richter (Similar H 673, Compare CS/H 675, Link S 1278)	Financial Institutions; Revising provisions relating to prohibited acts and practices by a financial institution; authorizing the circuit court to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders of a financial institution and the public's interest in the safety and soundness of the financial institution system; providing notice requirements and procedures that allow a financial institution to protect trade secrets included in documents submitted to the Office of Financial Regulation; prohibiting certain financial institutions from using a name that may mislead consumers, etc. BI 03/05/2014 Fav/CS ACJ AP	Fav/CS Yeas 11 Nays 0
3	SB 758 Lee (Similar H 805)	Title Insurer Reserves; Specifying that a title insurer is liable for all of its unpaid losses and claims; specifying the reserves certain title insurers must set aside after a certain date; specifying how such reserves will be released; specifying which state law governs the amount of the reserve when a title insurer transfers its domicile to this state, etc. BI 03/05/2014 Fav/CS CM	Fav/CS Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, March 5, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1006 Hays (Similar CS/H 413, Compare CS/H 415, Link S 1002)	Consumer Collection Practices; Removing provisions relating to the revocation or suspension of a professional license which allow the Office of Financial Regulation to reject an applicant for registration; authorizing the office to conduct examinations and investigations; requiring registrants to report, within a specified time period, a conviction of, or plea of nolo contendere to, a crime or an administrative enforcement action, etc. BI 03/05/2014 Favorable CJ AP	Favorable Yeas 11 Nays 0
5	SB 1002 Hays (Similar CS/H 415, Compare CS/H 413, Link S 1006)	Public Records/Office of Financial Regulation; Providing a public records exemption for information held by the Office of Financial Regulation pursuant to an investigation or examination of consumer collection agencies; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 03/05/2014 Fav/CS GO RC	Fav/CS Yeas 11 Nays 0
Consideration of proposed committee bill:			
6	SPB 7062	Citizens Property Insurance Corporation Coverage; Revising the applicability of the limitations on public adjuster charges for claims based on events that are the subject of a declaration of a state of emergency; requiring the corporation to cease offering new commercial residential policies providing multiperil coverage after a certain date and providing that the corporation continue offering commercial residential wind-only policies; requiring the corporation to annually provide certain estimates for the next 12-month period to the Legislature and the Financial Services Commission, etc.	Temporarily Postponed
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 832

INTRODUCER: Banking and Insurance Committee, Senators Flores and Diaz de la Portilla

SUBJECT: Financing of Motor Vehicles

DATE: March 6, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	CJ	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 832 prohibits a finance company that is owned, affiliated, or contracts with an automobile manufacturer from denying, charging a fee or applying less favorable financing terms, on a motor vehicle contract, solely because that contract includes a competing third party automotive-related product that is of similar nature, scope and quality to an automotive-related product offered by the finance company or its affiliates. The CS exempts any violations of the bill from the criminal penalties in ch. 545, F.S.

II. Present Situation:

Motor Vehicle Service Agreement

Motor vehicle service agreements indemnify 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.¹ Such products can include:

- *Mechanical and Electrical coverage* – This product covers the cost of replacement and repair, beyond the manufactures warranty, for limited mechanical and electrical components of an automobile. Such coverage is often limited to time of ownership and mileage of the automobile.

¹ s. 634.011(8), F.S.

- *Tire & Wheel replacement coverage* – This product covers the cost of replacement or repair to a damaged wheel or tire. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Paint-less dent removal* – This product removes 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. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Lost key replacement* – This product covers the cost of replacing a lost smart key with a new key that has been programmed by the manufacturer. The costs of replacing today's smart keys can range from \$200 to over \$400 for a new key that has been programmed by the manufacturer.²
- *Anti-theft deterrent etch coverage* – This is a vehicle protection product³ where the Vehicle Identification Number (VIN) is etched into the glass of an automobile making those parts easier to identify after a theft.
- *Vehicle theft recovery coverage* – This is a vehicle protection product⁴ where a device is installed in the automobile that allows a vehicle monitoring service to locate the automobile through the use of global positioning satellites (GPS) in the event of a theft.

Other automotive-related products offered by automobile dealers not regulated under ch. 634, F.S., can include:

- *Basic Maintenance coverage* – This product covers the labor cost of servicing an automobile, as well as any costs for replacing parts and fluids based on normal use of the vehicle. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Appearance protection* – This product is a film or spray applied to an automobile to help protect against damage from the elements as well as dents and scratches that can occur through normal use of the automobile.
- *Auto detailing service* – This product is for periodic interior and exterior car cleaning service. Such coverage is often limited to number of cleanings per a given month or year.

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.⁵

Any motor vehicle service agreement can be canceled by the owner within 60 days after purchase. The owner is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.⁶ An administrative fee of not more than 5 percent of the gross premium paid by the owner 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: there has been a material misrepresentation or fraud at the time of sale of the service agreement, the owner has failed to maintain the motor vehicle as prescribed by the manufacturer, the odometer has been tampered with or disabled and the owner has failed to repair the

² <http://money.msn.com/saving-money-tips/post.aspx?post=e297a885-9af3-4274-8228-89b9c7eb0680> (Last viewed 3/3/14).

³ s. 634.011(8)(b)1.b.

⁴ Id.

⁵ s. 634.011(8), F.S.

⁶ s. 634.121(3)(a), F.S.

odometer, or for nonpayment of premium by the owner.⁷ If the insurer or service agreement company cancels the service agreement, the refund to the owner 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 owner, the insurer or service agreement company must return directly to the owner not less than 90 percent of the unearned pro rata premium minus any claims paid on the agreement.⁸ A full refund to the owner 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.⁹

The Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) may, within their respective regulatory jurisdictions, examine and investigate every person involved in the business of motor vehicle service agreements in this state to determine whether such person is engaged in any unfair method of competition or in any unfair or deceptive acts or practices that are prohibited by s. 634.282, F.S.¹⁰

The OIR conducts financial examinations of motor vehicle service agreement companies utilizing part II of ch. 634, F.S. The OIR may examine the companies as often as may be warranted for the protection of policyholders and the public interest, but must examine each company once every 5 years.¹¹ Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company. 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.¹² 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.¹³

Guaranteed Asset Protection (GAP)

A Guaranteed Asset Protection (GAP) product is a form of debt cancellation product. These products are generally sold in conjunction with an automobile loan and state that the lending institution for the loan will waive the difference between the value of the vehicle and the outstanding balance of the loan or lease, if the loan or lease balance is greater than the vehicle value. The product is not an insurance product regulated under the Florida Insurance Code.¹⁴

⁷ s. 634.121(3)(b), F.S.

⁸ s. 634.121(3)(b)(4), F.S.

⁹ Id.

¹⁰ s. 634.283, F.S.

¹¹ s. 634.141, F.S.

¹² s. 624.316(2)(e), F.S.

¹³ The Office of Insurance Regulation, Rule 69O-200.014, FAC.

¹⁴ s. 520.02(7), F.S.

Under current law,¹⁵ a motor vehicle retail installment seller,¹⁶ a sales finance company,¹⁷ a retail lessor,¹⁸ and any assignee of such an entity may offer, for a fee or otherwise, optional guaranteed asset protection products. The purchase of a guaranteed asset protection product may not be required as a condition for making the loan. In order to offer any guaranteed asset protection product those authorized to do so must comply with the following:

- The cost of any guaranteed asset protection product, with respect to any loan covered by the guaranteed asset protection product, may not exceed the amount of the indebtedness.
- Any contract or agreement pertaining to a guaranteed asset protection product shall be governed by s. 520.07, F.S.
- A guaranteed asset protection product is considered an obligation of any person that purchases or otherwise acquires the loan contract covering such product.
- An entity providing guaranteed asset protection products shall provide readily understandable disclosures that explain in detail eligibility requirements, conditions, refunds, and exclusions. The disclosures must provide that the purchase of the product is optional. The disclosures must be in plain language and of a typeface and size that are easy to read.
- An entity must provide a copy of the executed guaranteed asset protection product contract to the buyer. The entity bears the burden of proving the contract was provided to the buyer.
- An entity may not offer a contract for a guaranteed asset protection product that contains terms giving the entity the right to unilaterally modify the contract unless:
 - The modification is favorable to the buyer and is made without additional charge to the buyer; or
 - The buyer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes in effect.

If a contract for a guaranteed asset protection product is canceled, the issuer shall refund to the buyer any unearned fees paid for the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the issuer of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An issuer may offer a buyer a contract that does not provide for a refund only if the issuer also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund.

III. Effect of Proposed Changes:

Section 1 of the bill defines:

- “Affiliated finance company” as a finance company which is affiliated with or controlled by a manufacturer or wholesale distributor through common ownership, officers, directors, or management; or has a contractual agreement with a manufacturer or wholesale distributor to finance, via sale or lease, motor vehicles produced or distributed by such manufacturer or wholesale distributor.
- “Automotive related product” as a motor vehicle service agreement, as defined in s. 634.011, F.S., or a guaranteed asset protection product, as defined in s. 520.02, F.S., or other non-

¹⁵ s. 520.07(11), F.S.

¹⁶ s. 520.02, F.S.

¹⁷ Id.

¹⁸ s. 521.003, F.S.

tangible ancillary product that is purchased or otherwise provided as part of the sale or lease of a motor vehicle by a dealer.

- “Third party provider” as a provider of an automotive related product that is not an affiliated finance company, manufacturer, or wholesale distributor.
- “Vehicle contract” as a conditional sales contract, retail installment sales contract, chattel mortgage, lease agreement, promissory note, or any other financial obligation arising from the retail sale or lease of a motor vehicle.

The bill also revises the definitions of:

- “Person” to include a limited liability company.
- “Dealer” to mean franchised motor vehicle dealer, as defined in s. 320.27(1)(c)1, F.S.
- “Finance company” to mean a person engaged in the business of financing the sale or lease of motor vehicles, or engaged in the business of purchasing or acquiring vehicle contracts.

Section 2 of the bill provides that an affiliated finance company may not, solely because the vehicle contract contains a third party’s automotive related product:

- Refuse to purchase or accept the assignment of the vehicle contract from a dealer;
- Charge a dealer an additional fee or surcharge for the purchase of, or acceptance of the assignment of, the vehicle contract; or
- Offer to purchase or accept assignment of the vehicle contract from a dealer on less favorable terms than a vehicle contract that contains otherwise substantially similar credit risk, duration, and other terms.

The prohibitions of the bill only apply to third party automotive-related products that are of similar nature, scope, and quality to an automotive-related product offered by the affiliated finance company or a wholesaler or manufacturer that is affiliated with the finance company.

When determining similar nature, scope, and quality of a competing third party product, the affiliated finance company may review the financial capacity of the third party provider’s ability to meet all its obligations, inclusive of any contractual liability insurance policies, and the third party provider’s history of compliance with any applicable state and federal regulations.

Violations are exempt from the criminal penalties in ch. 545, F.S.

The effective date of the bill is July 1, 2014.

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 bill would require an affiliated finance company to finance on equally favorable terms competing automotive related products that are determined to be of similar nature, scope, and quality to their own products. The bill only applies to an affiliated finance company as defined in the bill and does not apply to other automobile lenders or finance companies.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill amends section 545.01 of the Florida Statutes.

This bill creates section 545.045 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Committee on Banking and Insurance March 5th 2014:

- Adds a new definition for “affiliated finance company” and “third party provider.”
- When determining similar nature, scope, and quality, the CS allows the affiliated finance company to review the financial capacity of the third party provider’s ability to meet all its obligations, as well as the third party provider’s history of compliance with any applicable state and federal regulations.
- The CS exempts violations from the criminal penalties in ch. 545, F.S.

B. Amendments:

None.

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



238370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 545.01, Florida Statutes, is reordered
and amended to read:

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

(1) "Affiliated finance company" means a finance company
which:

(a) Is affiliated with or controlled by a manufacturer or



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11 wholesale distributor through common ownership, officers,
12 directors, or management; or

13 (b) Has a contractual agreement with a manufacturer or
14 wholesale distributor to finance, via sale or lease, motor
15 vehicles produced or distributed by such manufacturer or
16 wholesale distributor.

17 (2) "Automotive related product" means a motor vehicle
18 service agreement, as defined in s. 634.011, or a guaranteed
19 asset protection product, as defined in s. 520.02, or other non-
20 tangible ancillary product that is purchased or otherwise
21 provided as part of the sale or lease of a motor vehicle by a
22 dealer.

23 (6)(1) The term "Person" as used in this chapter means an
24 any individual, firm, corporation, partnership, limited
25 liability company, association, trustee, receiver, or assignee
26 for the benefit of creditors.

27 (7)(2) The terms "Sell," "sold," "buy," or and "purchase,"
28 includes as used in this chapter, include an exchange, barter,
29 gift, or and offer to contract to sell or buy.

30 (5)(3) The term "Manufacturer" means a any person engaged,
31 directly or indirectly, in the manufacture of motor vehicles.

32 (10)(4) The term "Wholesale distributor" means a any person
33 engaged, directly or indirectly, in the sale or distribution of
34 motor vehicles to agents or to dealers.

35 (3)(5) The term "Dealer" means a franchised motor vehicle
36 dealer, as defined in s. 320.27(1)(c)1. any person who is
37 engaged in, or who intends to engage in the business of selling
38 motor vehicles at retail in this state. The term "dealer" shall
39 also include "retail agent."



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40 (4) ~~(6)~~ The term "Finance company" means a ~~any~~ person
41 engaged in the business of financing the sale ~~or lease~~ of motor
42 vehicles, or engaged in the business of purchasing or acquiring
43 vehicle contracts ~~conditional bills of sale, or promissory~~
44 notes, ~~either secured by vendor's lien or chattel mortgages, or~~
45 arising from the sale of motor vehicles in this state.

46 (8) "Third party provider" means a provider of an
47 automotive related product that is not an affiliated finance
48 company, manufacturer, or wholesale distributor.

49 (9) "Vehicle contract" means a conditional sales contract,
50 retail installment sales contract, chattel mortgage, lease
51 agreement, promissory note, or any other financial obligation
52 arising from the retail sale or lease of a motor vehicle.

53 Section 2. Section 545.045, Florida Statutes, is created to
54 read:

55 545.045 Purchase or assignment of third-party financing.-

56 (1) When a vehicle contract contains a third party
57 provider's automotive related product that is of similar nature,
58 scope, and quality to an automotive related product offered for
59 sale by an affiliated finance company or its related
60 manufacturer or wholesale distributor, that affiliated finance
61 company may not, solely because the vehicle contract contains a
62 third party's automotive related product:

63 (a) Refuse to purchase or accept the assignment of the
64 vehicle contract from a dealer;

65 (b) Charge a dealer an additional fee or surcharge for the
66 purchase of, or acceptance of the assignment of, the vehicle
67 contract; or

68 (c) Offer to purchase or accept assignment of the vehicle



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69 contract from a dealer on less favorable terms than a vehicle
70 contract that contains otherwise substantially similar credit
71 risk, duration, and other terms.

72 (2) Factors in determining whether an automotive related
73 product is similar in nature, scope, and quality include, but
74 are not limited to, the financial capacity of the third party
75 provider to meet all its obligations, inclusive of any
76 contractual liability insurance policies, and the third party
77 provider's history of compliance with any applicable state and
78 federal regulations.

79 (3) A violation of this section does not constitute a
80 criminal offense pursuant to s. 545.12.

81 Section 3. This act shall take effect July 1, 2014.

82

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

84 And the title is amended as follows:

85 Delete everything before the enacting clause
86 and insert:

87 A bill to be entitled
88 An act relating to the financing of motor vehicles;
89 amending s. 545.01, F.S.; revising definitions;
90 defining terms; creating s. 545.045, F.S.; prohibiting
91 a finance company that is affiliated with or
92 controlled by, or that has a contractual relationship
93 with, a manufacturer or wholesale distributor from
94 taking specified actions relating to certain finance
95 obligations arising from the retail sale or lease of a
96 motor vehicle that includes a third party's automotive
97 related product; providing an effective date.

By Senator Flores

37-00759A-14

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1 A bill to be entitled
 2 An act relating to the financing of motor vehicles;
 3 reordering and amending s. 545.01, F.S.; defining
 4 terms; creating s. 545.045, F.S.; prohibiting a
 5 finance company that is affiliated with or controlled
 6 by, or that has a contractual relationship to
 7 represent, a manufacturer or wholesale distributor
 8 from adopting or implementing a policy or business
 9 practice that results in specified actions relating to
 10 certain finance obligations arising from the retail
 11 sale or lease of a motor vehicle that includes a
 12 specified third party automotive related product;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 545.01, Florida Statutes, is reordered
 18 and amended to read:

19 545.01 Definitions.—As used in this chapter, the term:
 20 (1) "Automotive-related product" means a motor vehicle
 21 service agreement, as defined in s. 634.011, a guaranteed asset
 22 protection product, as defined in s. 520.02, or another
 23 ancillary product that is purchased or otherwise provided as
 24 part of the sale or lease of a motor vehicle by a dealer.

25 ~~(5)(1) The term "Person" as used in this chapter means an~~
 26 ~~any individual, firm, corporation, partnership, limited~~
 27 ~~liability company, association, trustee, receiver, or assignee~~
 28 ~~for the benefit of creditors.~~

29 ~~(6)(2) The terms "Sell," "sold," "buy," or and—"purchase,"~~

Page 1 of 3

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

37-00759A-14

2014832__

30 ~~includes as used in this chapter, include an~~ exchange, barter,
 31 gift, ~~or and~~ offer to contract to sell or buy.

32 ~~(4)(3) The term "Manufacturer" means a any person engaged,~~
 33 directly or indirectly, in the manufacture of motor vehicles.

34 ~~(8)(4) The term "Wholesale distributor" means a any person~~
 35 engaged, directly or indirectly, in the sale or distribution of
 36 motor vehicles to agents or to dealers.

37 ~~(2)(5) The term "Dealer" means a franchised motor vehicle~~
 38 ~~dealer, as defined in s. 320.27. any person who is engaged in,~~
 39 ~~or who intends to engage in the business of selling motor~~
 40 ~~vehicles at retail in this state. The term "dealer" shall also~~
 41 ~~include "retail agent."~~

42 ~~(3)(6) The term "Finance company" means a any person~~
 43 engaged in the business of financing the sale or lease of motor
 44 vehicles, or engaged in the business of purchasing or acquiring
 45 vehicle contracts conditional bills of sale, or promissory
 46 notes, either secured by vender's lien or chattel mortgages, or
 47 arising from the sale of motor vehieles in this state.

48 (7) "Vehicle contract" means a conditional sales contract,
 49 retail installment sales contract, chattel mortgage, lease
 50 agreement, promissory note, or any other financial obligation
 51 arising from the retail sale or lease of a motor vehicle.

52 Section 2. Section 545.045, Florida Statutes, is created to
 53 read:

54 545.045 Purchase or assignment of third-party financing.—

55 (1) A finance company that is affiliated with or controlled
 56 by a manufacturer or wholesale distributor through common
 57 ownership, officers, directors, or management, or that has a
 58 contractual agreement to represent a manufacturer or wholesale

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

37-00759A-14

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59 distributor with respect to financing the sale or lease of motor
60 vehicles, may not adopt or implement a policy or business
61 practice that results in:

62 (a) A refusal to purchase or accept the assignment of a
63 vehicle contract from a dealer because the vehicle contract
64 includes a third party automotive related product;

65 (b) A charge to a dealer of an additional fee or surcharge
66 for the purchase, or acceptance of the assignment, of a vehicle
67 contract from a dealer because the vehicle contract includes a
68 third party automotive related product; or

69 (c) An offer to purchase or accept assignment of a vehicle
70 contract from a dealer on less favorable terms than a vehicle
71 contract that contains otherwise substantially similar credit
72 risk, duration, and other terms, because the vehicle contract
73 includes a third party automotive related product.

74 (2) This section applies only if the third party automotive
75 related product contained in the vehicle contract is of
76 substantially similar or superior kind and quality to an
77 automotive related product offered by the finance company or the
78 manufacturer or wholesale distributor that is affiliated with or
79 controls the finance company or with which the finance company
80 has a contractual agreement.

81 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14

Meeting Date

Topic Auto

Bill Number SB 832
(if applicable)

Name Ron Book

Amendment Barcode _____
(if applicable)

Job Title _____

Address 104 West Jefferson St

Phone 850-224-3427

TLH 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing AUTONATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14

Meeting Date

Topic Motor Vehicle Finance

Bill Number SB 832
(if applicable)

Name Laura Dooley

Amendment Barcode _____
(if applicable)

Job Title Director, State Affairs

Address 803 7th St, NW Suite 300

Phone 202.326.5543

Street

Washington, DC

20001

City

State

Zip

E-mail ldooley@autoalliance.org

Speaking: For Against Information

Representing Alliance of Automobile Manufacturers

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)

3/5/14
Meeting Date

Topic _____

Bill Number SB 832
(if applicable)

Name Alex Kurkin

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 18851 NE 29 Ave # 303
Street
Aventura FL 33180
City *State* *Zip*

Phone 305-929-8500

E-mail akurkin@

KB-Attorney.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

3-5-14

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

Meeting Date

Topic Financing Auto products

Bill Number SB 832
(if applicable)

Name Ted Smith

Amendment Barcode _____
(if applicable)

Job Title President

Address 460 N. meridian St
Street

Phone _____

Tall FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1012

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Financial Institutions

DATE: March 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1012 amends provisions of the Financial Institutions Codes (codes). The Office of Financial Regulation (OFR) regulates state-chartered banks, trust companies, credit unions, and other financial institutions pursuant to the codes. The OFR ensures that Florida-chartered financial institutions comply with state and federal requirements for safety and soundness. This bill provides the following changes to the codes:

- Updates provisions of the Florida Control of Money Laundering in Financial Institutions Act to codify the requirements of the Federal USA PATRIOT Act and the Office of Foreign Asset Control.
- Clarifies permissible activities for out of state trust companies and business trusts.
- Expands the scope of persons subject to prohibited acts and practices to include affiliates and related interests.
- Authorizes the OFR to issue immediate cease and desist orders for persons using misleading banking-related names to perpetrate fraud on Florida consumers.
- Expands competitive equality for Florida-chartered financial institutions by clarifying that the par value requirement only applies to the settlement of checks between financial institutions, and provides that such institutions may charge fees to cash checks.
- Expands competitive equality to Florida-chartered credit unions by authorizing employee benefit plans and specified types of insurance coverage that is consistent with regulations governing federal credit unions.

II. Present Situation:

The “dual banking system” refers to the parallel state and federal banking systems that co-exist in the United States. The federal system is based on a federal bank charter, powers defined under federal law, the National Bank Act,¹ operation under federal regulations, and oversight by the primary federal regulator, the Office of the Comptroller of the Currency (OCC) within the U.S. Department of the Treasury. The state system is characterized by state chartering, bank powers established under state law, and operation under state standards, including oversight by state supervisors. The primary federal regulator for state banks that are members of the Federal Reserve is the Federal Reserve. The primary federal regulator for non-members is the Federal Deposit Insurance Corporation.

National banks are subject to state laws concerning their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.² However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to national banks is subject to the preemption doctrine. By operation of the U.S. Supremacy Clause of the U.S. Constitution, federal regulation of a particular subject preempts state regulation related to the same subject. For instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance preempted a Florida statute that prohibited such sales.³ The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for “conflict preemption” articulated in the *Barnett Bank* decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise of the national bank’s powers.

Federal Oversight

The Federal Deposit Insurance Corporation (FDIC) insures deposits in banks and thrift institutions for at least \$250,000 and identifies, monitors, and addresses risks to deposit insurance funds. The FDIC Rules and Regulations require an annual, comprehensive on-site examination of every insured state nonmember bank at least once during each 12-month period, with exceptions.

Anti-Money Laundering and Terrorist Financing Provisions

The Financial Crimes Enforcement Network (FinCEN) within the U.S. Department of the Treasury is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes. It exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001⁴ and other legislation, which is known as the “Bank

¹ The National Bank Act of 1964 (12 U.S.C. s. 24) gives enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking” to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided “No national bank shall be subject to any visitatorial powers except as authorized by Federal law.” *Id.* at s. 484(a).

² *National Bank v. Commonwealth*, 76 U.S. 353 (1869).

³ *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et. al.*, 517 U.S. 25 (1999).

⁴ The official title of the USA PATRIOT Act is “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.” Pub. Law No. 107-56, H.R. 3162, 107th Cong. (October 26, 2001).

Secrecy Act" (BSA). The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations. These regulations include requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of anti-money laundering (AML) programs, maintaining certain records, and the filing of reports.

The Office of Foreign Assets Control (OFAC) within the U.S. Department of the Treasury administers and enforces economic and trade sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. Prohibited transactions can include trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute.⁵

State Oversight

The Office of Financial Regulation (OFR) ensures Florida-chartered financial institutions comply with state and federal requirements for safety and soundness. The codes define the term, "financial institution," to include banks, trust business, credit unions, international banks, savings banks and other entities.⁶

Enforcement Authority

Section 655.041, F.S., allows the OFR to initiate administrative proceedings to impose a fine against persons that have violated the financial institutions codes, a cease and desist order of the OFR, or any written agreement with the OFR. Section 655.041, F.S., provides that a person must receive written notice of a violation and be offered a reasonable period to cure the violation before the accrual of any fines or the initiation of any administrative proceedings to impose a fine.

Lending Limits and Related Interests

According to OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure equitable access to banking services.⁷ The lending limits apply to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. If the state lending limits are lower than those provided by Regulation O for state banks that are members of the Federal Reserve System, Regulation O provides that the state lending limits control.

Florida-chartered banks are also subject to lending limits. Generally, a bank may extend unsecured credit to any person up to 15 percent of its capital accounts, and up to 25 percent of its capital accounts for secured credit. For the latter, the codes specify that the 25 percent limitation must include the borrower's "related interests."⁸ If the bank's total extension of credit to any person (including his or her related interests) exceeds 15 percent of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance. Banks are prohibited from extending credit of more than \$25,000 to any of its executive officers and directors (and

⁵ See <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1> (last visited February 26, 2014).

⁶ Section 655.005, F.S.

⁷ 12 C.F.R. 32.1(b).

⁸ Section 658.48(1)(a), F.S.

their related interests), unless the majority of the board of directors have approved the loan in advance.

Currently, s. 655.005(1)(t), F.S., defines “related interest” as:

[W]ith respect to any person, the person’s spouse, partner, sibling, parent, child, or other individual residing in the same household as the person. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

- Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;
- Controls in any manner the election of a majority of the directors of the organization; or
- Has the power to exercise a controlling influence over the management or policies of the organization.

The 2011 Legislature amended the definition of “related interest.”⁹ Prior to 2011, the term, “related interest,” was defined within the context of credit unions’ loan powers and lending limits for state banks, and was limited to only any partnership, corporation, or other business organization controlled by a person. Because of the 2011 legislation, “related interest” was moved to s. 655.005(1)(t), F.S., as a general definition and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System.¹⁰ Regulation O provides that a principal shareholder is a person with 10 percent or more of a bank’s voting securities, and accounts for shares owned by that person’s “immediate family.” However, Regulation O only considers an individual’s spouse, minor children, and the individual’s children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

Settlement of Checks and Par Value

Section 655.85, F.S., requires banks to settle checks “at par,” or at face value. This means that if a person presented a check made out to her or him for \$500 to any bank in Florida, the bank is required to provide \$500 in funds. In the past several years, this provision has generated significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved federal preemption and applicability of the fee limitations to bank-to-bank transactions or to the cashing of personal checks.

Vida Baptista (“Baptista”), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While a Chase account holder wrote the check, Baptista was not a Chase account holder, and was charged a \$6 fee by Chase to cash the check immediately. Baptista brought a

⁹ Ch. 2011-194, Laws of Fla.

¹⁰ 12 C.F.R. s. 215.

class action lawsuit against Chase in federal court, asserting the fee violated s. 655.85, F.S. The federal court held that s. 655.85, F.S., applied to fees on personal checks presented by the payee in person. However, in applying the Barnett Bank/Dodd-Frank preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.¹¹

Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC and was charged a \$5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal found that a statute was not preempted. The court held that a North Carolina state-chartered bank was not permitted to charge check-cashing fees under the statute. Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.¹² In an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S., was preempted by federal law.¹³

On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both Baptista cases.¹⁴ Following the 11th Circuit Court of Appeal's decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to both national banks and out-of-state state-chartered banks. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks. These decisions do not affect the statute's prohibition on Florida-chartered banks to charge check-cashing fees, because banks must follow the laws and regulations of their chartering authority.

Competitive Equality

States have enacted competitive equality or parity statutes to address the competitive advantages granted to national banks through their "incidental banking powers" under the federal National Bank Act. In Florida, if a state law places a Florida institution at a competitive disadvantage with a national institution, the OFR may grant a Florida institution the authority to make any loan or investment or exercise any power that they could make or exercise if they were a federally chartered financial institution, and provides the entitled the same privileges and protections granted to a federally chartered or regulated institution.¹⁵ In addition, the office or commission must consider the importance of maintaining a competitive dual system of financial institutions, and whether issuing such an order or rule is in the public interest.¹⁶

¹¹ *Vida Baptista v. JPMorgan Chase Bank*, 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista's petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.*, 132 S.Ct. 253 (2011).

¹² *Vida Baptista v. PNC, N.A.*, 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), *cert. denied*, 133 S.Ct. 895 (2013).

¹³ *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).

¹⁴ *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).

¹⁵ See Section 655.061, F.S.

¹⁶ The OFR's orders of general application are publicly available on its agency website.

<https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx> (last accessed February 28, 2014).

III. Effect of Proposed Changes:

Settlement of Checks and Par Value (Sections 11 and 12)

The bill provides that financial institutions must settle checks between institutions at par. The bill clarifies that banks are not prohibited from charging fees to cash checks presented by payees in person, thereby providing consistency with the federal decisions discussed in the Present Situation above. The bill provides a statement of legislative intent indicating that the changes clarify the relevant portions of the codes relating to the fees imposed by financial institutions.

Enforcement Authority

Related Interests (Section 1)—The bill amends the definition of “related interest” under s. 655.005, F.S. The bill removes a person’s partner, sibling, or other individual residing in the same household as the person from the definition. The revised definition provides that the term “related interest” applies to an individual, company, partnership, corporation, or other business organization that engages in a common business enterprise with that person.

Prohibited Acts (Section 2)—The bill expands the scope of prohibited acts and practices to include affiliates and related interests. The codes define “affiliate” as “a holding company of a financial institution established pursuant to state or federal law, a subsidiary or service corporation of such holding company, or a subsidiary or a service corporation of a financial institution.”

Administrative Authority and Fines (Section 6)—The bill revises the OFR’s authority by providing that a violation of any rules adopted under the codes is also grounds for the OFR to impose administrative fines. The bill provides that a violation of any OFR order is a basis for administrative fines. Under current law, the OFR may initiate a proceeding if a person has violated the codes, a cease and desist order, or a written agreement with the OFR. The bill expands the scope of the section to apply to affiliates and persons regulated by the OFR, pursuant to s. 655.0391, F.S. The bill provides that if there is a violation of an OFR order or written agreement, fines begin accruing immediately upon the service of a complaint. Such fines will continue until the violation is corrected.

Injunctions (Section 3)—The bill provides that a violation of a “formal enforcement action” would allow the circuit court to have jurisdiction to hear the complaint. The bill defines a “formal enforcement action.” The bill provides that the circuit court has jurisdiction to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders or the public’s interest in the safety and soundness of the financial institution system. Currently, the codes authorize the OFR to pursue injunctive relief in circuit court whenever a “threatened and impending” violation of the codes “will cause substantial injury to a state financial institution or its depositors, members, creditors, or stockholders.”

Approval of Directors and Executive Officers (Sections 5 and 16)—The bill prohibits a director or executive officer of a state financial institution or affiliate from concurrently serving as a director or officer in a nonaffiliated financial institution or affiliate in the same geographical area or the same major business market area, unless this prohibition is waived by the OFR. The OFR

may waive this prohibition if the person can demonstrate that the proposed concurrent service does not present a conflict of interest and neither institution is disadvantaged in the common market area. The bill provides that an individual may not serve as a director, officer, or committee member of a credit union if he or she had defaulted on a debt or obligation to a financial institution that resulted in a material loss to the financial institution and allows for exceptions with the prior approval of OFR. The same criteria already applies to individuals serving at other financial institutions.

Unauthorized Banking (Section 14)—The bill expands the list of terms, names, words, symbols, etc., that are limited for use by a financial institution authorized to do business in Florida. The bill prohibits a financial institution, affiliate, subsidiary, or service corporation from conducting business in Florida using a name, trademark, Internet address or logo that may mislead consumers or cause confusion as to the identification of the proper legal business or the nature of the institution's business. The bill enhances the OFR's enforcement authority by authorizing the OFR to seek a circuit court order for the annulment or dissolution of a corporation found violating any provision of this section, and to issue and serve an emergency cease and desist order. The bill provides that the OFR is not required to determine the consequences that a violation of this section may cause. Currently, the codes prohibit any person, other than an authorized state or federal financial institution, from engaging in the business of soliciting or receiving funds for deposit, issuing certificates of deposit, or paying checks; a violation of this provision is a third-degree felony.

Examinations, Records, and Reports

Examinations (Sections 7, 8, and 23)—The bill clarifies that the OFR is required to conduct an examination of each state financial institution at least once every 18 months. Beginning July 1, 2014, the bill provides that during each 36-month period, the OFR is required to conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information. Under current law, the OFR may accept an examination made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination with the federal agency.

The bill also provides that any information provided to the OFR by any person pursuant to an investigation or other supervisory activity of the OFR is not considered a waiver of any privilege or other legal proceeding in which the office is not a party. The bill removes the requirement that credit unions and mutual associations must keep records of their members at their principal office for transacting business. The bill clarifies who has the right to copy membership and shareholder records.

Trade Secrets (Section 9)—Currently, the codes do not provide a public records exemption for trade secret documents held by the OFR. Senate Bill 1278, if enacted, creates a public records exemption for certain examination documents containing proprietary business information that is a trade secret. The bill specifies requirements for submission of a document or other information to the OFR in order for a person to claim that the information is a trade secret. The failure to file a notice of trade secret with the OFR constitutes a waiver of any claim by such person that the information is a trade secret. The requirements include labeling each page or portion as a trade

secret and separating the trade secret documents from the non-trade secret material. The bill requires the submitting party to include an affidavit certifying certain information as to the trade secret status of the documents. If the OFR receives a public records request for information that is marked and certified as confidential, the OFR must immediately notify the person that certified the information as a trade secret. The bill requires the OFR to inform such person that, in order to avoid disclosure of the trade secret; the person must file an action in circuit court within 30 days seeking declaratory judgment that the document contains trade secrets and an order barring disclosure. The owner of the information is required to provide written notice to the OFR that the action was filed and the OFR may not release the documents pending the outcome of legal action. The failure to file an action within 30 days constitutes a waiver of any claim of confidentiality. The bill allows the OFR to disclose a trade secret to an employee or officer of another governmental agency whose use of the trade secret is within the scope of their employment.

Florida Control of Money Laundering and Terrorist Financing (Sections 4, 10, 19, 20, 22, 25, 27, 28, 30, and 31)

The bill updates current recordkeeping and reporting provisions to conform to the USA PATRIOT Act and the Office of Foreign Asset Control (OFAC) requirements. The bill requires each financial institution to designate and retain a BSA/AML compliance officer and provides that the board of directors is responsible for establishing the institution's BSA/AML and OFAC policies and compliance. The bill defines the term, "suspicious activity," and requires a financial institution to maintain specified records and report financial transactions that the institution reasonably believes is suspicious activity. The bill provides that a suspicious activity report is entitled to the same confidentiality provided under 31 C.F.R. s. 1020.320.

Out of State Trust, Business Trust, and Trust Business (Sections 13 and 18)

The bill provides that the codes do not prohibit a financial institution or business trust that has its principal place of business outside of Florida from filing suit in Florida to collect any debt or foreclose on any security interest in collateral securing a debt. The intent of this language is to clarify permissible activities for out of state trust companies and business trusts. The bill provides that an out-of-state business trust that own pools of mortgages and is pursuing foreclosure actions is not considered engaging in trust business in Florida.

The bill revises the definition of "trust business" to include a business that receives compensation that is not deemed de minimis by the OFR. The OFR indicates that it routinely receives inquiries on behalf of individuals engaging in estate planning activities that involves the use of trusts, which provide for the appointment of trustees that are not family members and are not otherwise subject to a structure of regulatory oversight. These trusts often provide for de minimis compensation and expense reimbursement. Further, the individuals are not engaging in business as professional fiduciaries.

Credit Unions and Competitive Equality (Sections 15 and 17)

The bill revises the application process and approval criteria for new branch applications and relocations by state-chartered credit unions and codifies a 2008 Order of General Application

(OGA) issued by the OFR, which allows a state credit union to maintain branches without requiring prior OFR examination and approval if certain conditions are met. Currently, s. 657.008, F.S., allows Florida credit unions to establish or relocate branch offices only if the credit union is operating in a safe and sound manner, its board has determined that such branches is reasonably necessary to furnish service to its members, and the credit union has provided 30 days' prior written notification to the OFR. Thus, Florida credit unions that do not meet this criterion cannot establish or relocate branch offices, even if the establishment or relocation of a branch would be in the best interests of the credit union and its members. This has placed Florida credit unions at a competitive disadvantage with their federally chartered counterparts, who are permitted under the Federal Credit Union Act and the National Credit Union Administration's (NCUA) regulations to establish or relocate branches if its directors determine that such action would be in the best interest of the federal credit union's members.

The bill authorizes state credit unions to establish employee, officer, and director benefit plans, insurance, and investments consistent with NCUA rules for federal credit unions, which would codify the 2011 OGA currently in place to address competitive equality issue regarding state credit union's ability to offer products that are permissible for a federal credit union.

Loans of \$50,000 or Less (Sections 21, 22, 26, and 29)

Current law caps the interest rate on such loans issued by state-chartered banks at 18 percent per year. The law allows two additional charges with exceptions. National banks are not subject to such lending restrictions, which raises a competitive equality issue for Florida-chartered banks. The bill repeals section 658.49, F.S., and makes technical and conforming changes.

Annual Assessments for International Offices (Section 24)

The bill repeals the \$2,000 annual assessment imposed on each international representative office, international administrative office, and international trust company office.

Effective Date (Section 32)

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill repeals the \$2,000 annual assessment imposed on each international representative office, international administrative office and international trust company.

B. Private Sector Impact:

The bill codifies current federal credit union regulations relating to branches, and employee benefit plans, which would place state credit unions at parity with federal credit unions.

The bill clarifies that institutions may charge customers a fee to cash checks. This will provide consistency with the federal laws permitting national banks and out-of-state state-chartered banks operating in Florida to charge check-cashing fees, and will place Florida-chartered banks at parity with national and other state-chartered banks.

C. Government Sector Impact:

According to the OFR, the fiscal impact of repealing the \$2,000 annual assessment fee for each international representative office, international administrative office or international trust company office is \$18,000 on annual basis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.0322, 655.034, 655.037, 655.0385, 655.041, 655.045, 655.057, 655.50, 655.85, 655.921, 655.922, 657.008, 657.028, 657.041, 658.12, 658.21, 658.235, 663.02, 663.09, 663.12, 663.306, 665.013, 665.033, 665.034, 667.003, 667.006, and 667.008.

This bill creates section 655.091 of the Florida Statutes.

This bill repeals section 658.49 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 5, 2014:
CS/SB 1012 provides technical, clarifying changes.

- B. **Amendments:**

None.

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



221894

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 406 - 412
and insert:
examination of the institution with the federal agency. However,
at least once during each 36-month period beginning July 1,
2014, the office shall conduct an examination of each state
financial institution in a manner that allows the preparation of
a complete examination report not subject to the right of a
federal or other non-Florida entity to limit access to the



221894

11 information contained therein. The office may furnish a copy of
12 all examinations or

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

15 And the title is amended as follows:

16 Delete lines 28 - 29

17 and insert:

18 requiring the office to conduct an examination of a
19 financial institution



628728

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 544
and insert:
investigation, examination, or other supervisory



357424

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 610
and insert:
Department of Financial Services, the submitting party shall
include an affidavit

By Senator Richter

23-00424C-14

20141012__

1 A bill to be entitled
 2 An act relating to financial institutions; amending s.
 3 655.005, F.S.; revising the definition of "related
 4 interest"; amending s. 655.0322, F.S.; revising
 5 provisions relating to prohibited acts and practices
 6 by a financial institution; applying certain
 7 provisions to affiliates; amending s. 655.034, F.S.;
 8 authorizing the circuit court to issue an injunction
 9 in order to protect the interests of the depositors,
 10 members, creditors, or stockholders of a financial
 11 institution and the public's interest in the safety
 12 and soundness of the financial institution system;
 13 defining "formal enforcement action"; amending s.
 14 655.037, F.S.; conforming a cross-reference; amending
 15 s. 655.0385, F.S.; prohibiting a director or executive
 16 officer from concurrently serving as a director or
 17 officer in a financial institution or affiliate in the
 18 same geographical area or the same major business
 19 market area unless waived by the Office of Financial
 20 Regulation; amending s. 655.041, F.S.; revising
 21 provisions relating to administrative fines;
 22 clarifying that the office may initiate administrative
 23 proceedings for violations of rules; providing that
 24 fines for violations begin accruing immediately upon
 25 the service of a complaint; applying certain
 26 provisions to affiliates; revising the applications
 27 for imposing a fine; amending s. 655.045, F.S.;
 28 authorizing the office to conduct a joint or
 29 concurrent examination of a financial institution

Page 1 of 53

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

23-00424C-14

20141012__

30 within a specified period; amending s. 655.057, F.S.;
 31 conforming a cross-reference; providing that specified
 32 records are not considered a waiver of privileges or
 33 legal rights in certain proceedings; clarifying who
 34 has a right to copy member or shareholder records;
 35 creating s. 655.0591, F.S.; providing notice
 36 requirements and procedures that allow a financial
 37 institution to protect trade secrets included in
 38 documents submitted to the office; amending s. 655.50,
 39 F.S.; amending provisions relating to the control of
 40 money laundering to also include terrorist financing;
 41 adding and revising definitions; requiring a financial
 42 institution to have a BSA/AML compliance officer;
 43 updating cross-references; amending s. 655.85, F.S.;
 44 clarifying that an institution may impose a fee for
 45 the settlement of a check under certain circumstances;
 46 providing legislative intent; amending s. 655.921,
 47 F.S.; revising provisions relating to business
 48 transactions by an out-of-state financial institution;
 49 providing that such institution may file suit to
 50 collect a security interest in collateral; amending s.
 51 655.922, F.S.; revising provisions relating to the
 52 name of a financial institution; prohibiting certain
 53 financial institutions from using a name that may
 54 mislead consumers; authorizing the office to seek
 55 court orders to annul or dissolve a business entity
 56 for certain violations and to issue emergency cease
 57 and desist orders; amending s. 657.008, F.S.;
 58 requiring certain credit unions seeking to establish a

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59 branch office to submit an application to the office
 60 for examination and approval; providing the criteria
 61 for the examination; amending s. 657.028, F.S.;

62 revising provisions relating to prohibited activities
 63 of directors, officers, committee members, employees,
 64 and agents of credit unions; requiring the name and
 65 address of the credit manager to be submitted to the
 66 office; amending s. 657.041, F.S.; authorizing a
 67 credit union to pay health and accident insurance
 68 premiums and to fund employee benefit plans under
 69 certain circumstances; amending s. 658.12, F.S.;

70 revising the definition of "trust business"; amending
 71 ss. 658.21 and 658.235, F.S.; conforming cross-
 72 references; repealing s. 658.49, F.S., relating to
 73 requirements for bank loans up to \$50,000; amending
 74 ss. 663.02 and 663.09, F.S.; conforming provisions to
 75 changes made by the act; amending s. 663.12, F.S.;

76 deleting an annual assessment imposed on certain
 77 international offices; amending s. 663.306, F.S.;

78 conforming provisions to changes made by the act;
 79 amending ss. 665.013, 665.033, 665.034, 667.003,
 80 667.006, and 667.008, F.S.; conforming cross-
 81 references; providing an effective date.

82
 83 Be It Enacted by the Legislature of the State of Florida:

84
 85 Section 1. Paragraph (t) of subsection (1) of section
 86 655.005, Florida Statutes, is amended to read:
 87 655.005 Definitions.—

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88 (1) As used in the financial institutions codes, unless the
 89 context otherwise requires, the term:

90 (t) "Related interest" means, with respect to a any
 91 person:

92 1. The person's spouse, ~~partner, sibling, parent,~~ child, or
 93 other dependent individual residing in the same household as the
 94 person; ~~With respect to any person, the term means~~

95 2. A company, partnership, corporation, or other business
 96 organization controlled by the person. A person has control if
 97 the person:

98 a.1. Owns, controls, or has the power to vote 25 percent or
 99 more of any class of voting securities of the organization;

100 b.2. Controls in any manner the election of a majority of
 101 the directors of the organization; or

102 c.3. Has the power to exercise a controlling influence over
 103 the management or policies of the organization; ~~or~~

104 3. An individual, company, partnership, corporation, or
 105 other business organization that engages in a common business
 106 enterprise with that person. A common business enterprise exists
 107 if:

108 a. The expected source for repayment of a loan or extension
 109 of credit is the same for each borrower and neither borrower has
 110 another source of income from which the loan, together with the
 111 borrower's other obligations, may be fully repaid. An employer
 112 will not be treated as a source of repayment under this
 113 paragraph because of wages and salaries paid to an employee,
 114 unless the standards of sub-subparagraph b. are met;

115 b. Loans or extensions of credit are made:

116 (I) To borrowers who are directly or indirectly related

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117 through common control, including where one borrower is directly
 118 or indirectly controlled by another borrower; and

119 (II) Substantial financial interdependence exists between
 120 or among the borrowers. Substantial financial interdependence
 121 exists if 50 percent or more of one borrower's gross receipts or
 122 gross expenditures on an annual basis are derived from
 123 transactions with the other borrower. Gross receipts and
 124 expenditures include gross revenues and expenses, intercompany
 125 loans, dividends, capital contributions, and similar receipts or
 126 payments;

127 c. Separate persons borrow from a financial institution to
 128 acquire a business enterprise such that those borrowers will own
 129 more than 50 percent of the voting securities or voting
 130 interests of the enterprise, in which case a common enterprise
 131 is deemed to exist between the borrowers for purposes of
 132 combining the acquisition loans; or

133 d. The office determines, based upon an evaluation of the
 134 facts and circumstances of particular transactions, that a
 135 common enterprise exists.

136 Section 2. Section 655.0322, Florida Statutes, is amended
 137 to read:

138 655.0322 Prohibited acts and practices; criminal
 139 penalties.-

140 (1) As used in this section, the term "financial
 141 institution" means a financial institution as defined in s.
 142 ~~655.005 s. 655.50 which includes a state trust company, state or~~
 143 ~~national bank, state or federal association, state or federal~~
 144 ~~savings bank, state or federal credit union, Edge Act or~~
 145 ~~agreement corporation, international bank agency, international~~

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146 ~~branch, representative office or administrative office~~ or other
 147 business entity as defined by the commission by rule, whether
 148 organized under the laws of this state, the laws of another
 149 state, or the laws of the United States, which ~~institution~~ is
 150 located in this state.

151 (2) ~~A~~ It is unlawful for any financial institution-
 152 affiliated party ~~may not~~ to ask for, or willfully and knowingly
 153 receive or consent to receive for himself or herself or any
 154 related interest, a ~~any~~ commission, emolument, gratuity, money,
 155 property, or thing of value for:

156 (a) Procuring, or endeavoring to procure, for any person a
 157 loan or extension of credit from such financial institution,
 158 affiliate, subsidiary, or service corporation; or

159 (b) Procuring, or endeavoring to procure, the purchase or
 160 discount of any note, draft, check, bill of exchange, or other
 161 obligation by such financial institution, affiliate, subsidiary,
 162 or service corporation.

163 Any person who violates this subsection commits ~~is guilty of~~ a
 164 felony of the third degree, punishable as provided in s.
 165 775.082, s. 775.083, or s. 775.084.

166 (3) ~~A~~ It is unlawful for any financial institution-
 167 affiliated party ~~may not~~ to:

168 (a) Knowingly receive or possess ~~himself or herself~~ of any
 169 of such financial institution's ~~its~~ property other ~~otherwise~~
 170 than in payment of a just demand, or ~~and~~, with intent to deceive
 171 or defraud, to omit to make or cause to be made a full and true
 172 entry thereof in the financial institution's ~~its~~ books and
 173 accounts, or concur in omitting to make any material entry
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175 thereof;

176 (b) Embezzle, abstract, or misapply any money, property, or
 177 thing of value of ~~such the~~ financial institution, affiliate,
 178 subsidiary, or service corporation with intent to deceive or
 179 defraud ~~the such~~ financial institution, affiliate, subsidiary,
 180 or service corporation;

181 (c) Knowingly make, draw, issue, put forth, or assign any
 182 certificate of deposit, draft, order, bill of exchange,
 183 acceptance, note, debenture, bond or other obligation, mortgage,
 184 judgment, or decree without authority from the board of
 185 directors of such financial institution;

186 (d) Make a ~~any~~ false entry in any book, report, or
 187 statement of such financial institution, affiliate, subsidiary,
 188 or service corporation with intent to deceive or defraud the
 189 ~~such~~ financial institution, affiliate, subsidiary, or service
 190 corporation, or another person, firm, or corporation, or with
 191 intent to deceive the office, any other appropriate federal or
 192 state regulatory agency, or an ~~any~~ authorized representative
 193 appointed to examine the affairs of the such financial
 194 institution, affiliate, subsidiary, or service corporation; or

195 (e) Deliver or disclose to the office or ~~any of~~ its
 196 employees an application, ~~any~~ examination report, report of
 197 condition, report of income and dividends, internal audit,
 198 account, statement, or other document known by him or her to be
 199 fraudulent or false as to any material matter.

200

201 Any person who violates this subsection commits ~~is guilty of~~ a
 202 felony of the third degree, punishable as provided in s.

203 775.082, s. 775.083, or s. 775.084.

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204 (4) A ~~It is unlawful for any~~ financial institution-
 205 affiliated party may not ~~to~~ knowingly place among the assets of
 206 such financial institution, affiliate, subsidiary, or service
 207 corporation any note, obligation, or security ~~that which~~ the
 208 financial institution, affiliate, subsidiary, or service
 209 corporation does not own or ~~that, which~~ to the party's
 210 ~~individual's~~ knowledge, is fraudulent or otherwise worthless or
 211 for the financial institution-affiliated party ~~any such~~
 212 ~~individual~~ to represent to the office that any note, obligation,
 213 or security carried as an asset of such financial institution,
 214 affiliate, subsidiary, or service corporation is the property of
 215 the financial institution, affiliate, subsidiary, or service
 216 corporation and is genuine if it is known to such party
 217 ~~individual~~ that such representation is false or that the such
 218 note, obligation, or security is fraudulent or otherwise
 219 worthless. Any person who violates this subsection commits ~~is~~
 220 ~~guilty of~~ a felony of the third degree, punishable as provided
 221 in s. 775.082, s. 775.083, or s. 775.084.

222 (5) Any person who willfully makes a ~~any~~ false statement or
 223 report, or willfully overvalues any land, property, or security,
 224 for the purposes of influencing in any way the action of a ~~any~~
 225 financial institution, affiliate, subsidiary, or service
 226 corporation or any other entity authorized by law to extend
 227 credit, upon an ~~any~~ application, advance, discount, purchase,
 228 purchase agreement, repurchase agreement, commitment, or loan,
 229 or any change or extension of ~~any of~~ the same, by renewal,
 230 deferment of action or otherwise, or the acceptance, release, or
 231 substitution of security therefor, commits ~~is guilty of~~ a felony
 232 of the second degree, punishable as provided in s. 775.082, s.

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233 775.083, or s. 775.084.

234 (6) Any person who knowingly executes, or attempts to
 235 execute, a scheme or artifice to defraud a financial
 236 institution, affiliate, subsidiary, or service corporation or
 237 any other entity authorized by law to extend credit, or to
 238 obtain ~~any~~ of the moneys, funds, credits, assets, securities, or
 239 other property owned by, or under the custody or control of, a
 240 financial institution, affiliate, subsidiary, service
 241 corporation, or ~~any~~ other entity authorized by law to extend
 242 credit, by means of false or fraudulent pretenses,
 243 representations, or promises, commits is guilty of a felony of
 244 the second degree, punishable as provided in s. 775.082, s.
 245 775.083, or s. 775.084.

246 Section 3. Section 655.034, Florida Statutes, is amended to
 247 read:

248 655.034 Injunctions.—

249 (1) If the office determines that ~~whenever~~ a violation of
 250 the financial institutions codes or a violation of a formal
 251 enforcement action has occurred or is threatened or impending
 252 and such violation will cause substantial injury to a state
 253 financial institution or to the depositors, members, creditors,
 254 or stockholders thereof, the circuit court has jurisdiction to
 255 hear a ~~any~~ complaint filed by the office and, upon proper
 256 showing, to issue an injunction restraining such violation or
 257 granting other ~~such~~ appropriate relief. Upon proper showing, the
 258 circuit court may also issue an injunction restraining any
 259 conduct or other act in order to protect the interests of
 260 depositors, members, creditors, or stockholders of a financial
 261 institution or the interests of the public in the safety and

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262 soundness of the financial institution system in this state and
 263 the proper conduct of fiduciary functions.

264 (2) As used in this section, the term "formal enforcement
 265 action" means:

266 (a) With respect to a financial institution, a supervisory
 267 action subject to enforcement pursuant to s. 655.033, s.
 268 655.037, or s. 655.041 which directs the financial institution
 269 to take corrective action to address violations of law or safety
 270 and soundness deficiencies.

271 (b) With respect to a person or entity that is not a
 272 financial institution, an order issued by the office pursuant
 273 the financial institutions codes which is directed to such
 274 person or entity.

275 Section 4. Subsection (1) of section 655.037, Florida
 276 Statutes, is amended to read:

277 655.037 Removal of a financial institution-affiliated party
 278 by the office.—

279 (1) The office may issue and serve upon any financial
 280 institution-affiliated party and upon the ~~state~~ financial
 281 institution, subsidiary, or service corporation involved, a
 282 complaint stating charges if ~~whenever~~ the office has reason to
 283 believe that the financial institution-affiliated party is
 284 engaging or has engaged in conduct that is:

- 285 (a) An unsafe or unsound practice;
- 286 (b) A prohibited act or practice;
- 287 (c) A willful violation of any law relating to financial
- 288 institutions;
- 289 (d) A violation of any other law involving fraud or moral
- 290 turpitude which constitutes a felony;

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291 (e) A violation of s. 655.50, relating to the ~~Florida~~
 292 control of money laundering and terrorist financing in Financial
 293 ~~Institutions Act~~; chapter 896, relating to offenses related to
 294 financial transactions; or ~~any~~ similar state or federal law;

295 (f) A willful violation of any rule of the commission;

296 (g) A willful violation of any order of the office;

297 (h) A willful breach of any written agreement with the
 298 office; or

299 (i) An act of commission or omission or a practice which is
 300 a breach of trust or a breach of fiduciary duty.

301 Section 5. Present subsections (4) and (5) of section
 302 655.0385, Florida Statutes, are redesignated as subsections (5)
 303 and (6), respectively, and a new subsection (4) is added to that
 304 section, to read:

305 655.0385 Disapproval of directors and executive officers.—

306 (4) A director or executive officer of a state financial
 307 institution or affiliate may not concurrently serve as a
 308 director, or be employed as an officer, of a nonaffiliated
 309 financial institution or affiliate whose principal place of
 310 business is located in the same metropolitan statistical area in
 311 this state. A person affected by this prohibition may provide
 312 written notice to the office of the proposed appointment or
 313 employment. Such notice may provide information that such
 314 concurrent service does not present a conflict of interest and
 315 that neither institution is competitively disadvantaged in the
 316 common market area. The office may waive this prohibition if the
 317 information provided demonstrates that the individual's proposed
 318 concurrent service does not present a conflict of interest and
 319 neither institution is competitively disadvantaged in the common

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320 market area. A person who violates this subsection is subject to
 321 suspension, removal, or prohibition under s. 655.037.

322 Section 6. Section 655.041, Florida Statutes, is amended to
 323 read:

324 655.041 Administrative fines; enforcement.—

325 (1) The office may, by complaint, initiate a proceeding
 326 pursuant to chapter 120 to impose an administrative fine against
 327 any person found to have violated a ~~any~~ provision of the
 328 financial institutions codes ~~or the rules adopted thereunder, an~~
 329 ~~or a cease and desist~~ order of the office, or a ~~any~~ written
 330 agreement with the office. Such ~~no such~~ proceeding ~~may not shall~~
 331 be initiated and no fine shall accrue pursuant to this section
 332 until after such person has been notified in writing of the
 333 nature of the violation and ~~has been~~ afforded a reasonable
 334 period of time, as set forth in the notice, to correct the
 335 violation and has failed to do so. If the office provided such
 336 notice, a fine for a violation of an office order or written
 337 agreement begins to accrue immediately upon service of the
 338 complaint and continues to accrue until the violation is
 339 corrected.

340 (2) ~~Any~~ Such fine may not exceed \$2,500 per a day for each
 341 violation except as provided in this section.

342 (a) If the office determines that ~~any~~ such person has
 343 recklessly violated a ~~any~~ provision of the financial
 344 institutions codes, ~~an or a cease and desist~~ order of the
 345 office, or a ~~any~~ written agreement with the office, which
 346 violation results in more than a minimal loss to a financial
 347 institution, affiliate, subsidiary, or service corporation, or
 348 in a pecuniary benefit to such person, the office may impose a

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349 fine of up to not exceeding \$10,000 per a day for each day the
 350 violation continues.

351 (b) If the office determines that ~~any~~ such person has
 352 knowingly violated ~~a any~~ provision of the financial institutions
 353 codes, ~~an or a cease and desist~~ order of the office, or ~~a any~~
 354 written agreement with the office, which violation results in
 355 more than a minimal loss to a financial institution, affiliate,
 356 subsidiary, or service corporation, or in a pecuniary benefit to
 357 such a person, the office may impose a fine of up to not
 358 ~~exceeding~~ the lesser of \$500,000 per day or 1 percent of the
 359 total assets in the case of a financial institution, or \$50,000
 360 per day in any other case for each day the violation continues.

361 (c) The office may by complaint impose an administrative
 362 fine of up to, not exceeding \$10,000 per a day on a, upon any
 363 financial institution-affiliated party, on and upon a state
 364 financial institution, subsidiary, service corporation, or
 365 affiliate, or on a person subject to supervision by the office
 366 pursuant to s. 655.0391 which ~~who~~ refuses to permit an examiner
 367 to examine a state financial institution, subsidiary, or service
 368 corporation; ~~who refuses~~ to permit an examiner to review the
 369 books and records of an affiliate or a contracting service
 370 entity subject to supervision by the office pursuant to s.
 371 655.0391; ~~or who refuses~~ to give an examiner any information
 372 required in the course of ~~an any~~ examination or review of the
 373 books and records.

374 (3) ~~An Any~~ administrative fine levied by the office may be
 375 enforced by the office ~~by appropriate proceedings~~ in the circuit
 376 court of the county in which such person resides or in which the
 377 principal office of a state financial institution, affiliate,

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378 subsidiary, service corporation, or contracting service entity
 379 is located or does business in the state. In any administrative
 380 or judicial proceeding arising under this section, a party may
 381 elect to correct the violation asserted by the office and, upon
 382 doing so, any fine ceases to accrue; however, an election to
 383 correct the violation does not render an any administrative or
 384 judicial proceeding moot.

385 Section 7. Section 655.045, Florida Statutes, is amended to
 386 read:

387 655.045 Examinations, reports, and internal audits;
 388 penalty.—

389 (1) The office shall conduct an examination of the
 390 condition of each state financial institution at least every 18
 391 months during each 18-month period. The office may conduct more
 392 frequent examinations based upon the risk profile of the
 393 financial institution, prior examination results, or significant
 394 changes in the institution or its operations. The office may use
 395 continuous, phase, or other flexible scheduling examination
 396 methods for very large or complex state financial institutions
 397 and financial institutions owned or controlled by a multi-
 398 financial institution holding company. The office shall consider
 399 examination guidelines from federal regulatory agencies in order
 400 to facilitate, coordinate, and standardize examination
 401 processes.

402 (a) ~~With respect to, and examination of, the condition of a~~
 403 ~~state institution,~~ The office may accept an examination of a
 404 state financial institution made by an appropriate federal
 405 regulatory agency; ~~or may conduct make~~ a joint or concurrent
 406 examination of the institution with the federal agency. However,

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407 beginning July 1, 2014, the office shall conduct such joint or
 408 concurrent examinations at least once every 36 months in a
 409 manner that allows the preparation of a complete examination
 410 report not subject to the right of a federal or other non-
 411 Florida entity to limit access to the information contained in
 412 the report. The office may furnish a copy of all examinations or
 413 reviews made of financial institutions or their affiliates to
 414 the state or federal agencies participating in the examination,
 415 investigation, or review, or as otherwise authorized under ~~by~~ s.
 416 655.057.

417 (b) If, as a part of an examination or investigation of a
 418 state financial institution, subsidiary, or service corporation,
 419 the office has reason to believe that the conduct or business
 420 operations of an affiliate may have a negative impact on the
 421 state financial institution, subsidiary, or service corporation,
 422 the office may conduct such examination or investigation of the
 423 affiliate as the office deems necessary.

424 (c) The office may recover the costs of examination and
 425 supervision of a state financial institution, subsidiary, or
 426 service corporation that is determined by the office to be
 427 engaged in an unsafe or unsound practice. The office may also
 428 recover the costs of a ~~any~~ review conducted pursuant to
 429 paragraph (b) of an ~~any~~ affiliate of a state financial
 430 institution determined by the office to have contributed to an
 431 unsafe or unsound practice at a state financial institution,
 432 subsidiary, or service corporation.

433 (d) As used in ~~For the purposes of~~ this section, the term
 434 "costs" means the salary and travel expenses directly
 435 attributable to the field staff examining the state financial

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436 institution, subsidiary, or service corporation, and the travel
 437 expenses of any supervisory staff required as a result of
 438 examination findings. The mailing of any costs incurred under
 439 this subsection must be postmarked within 30 days after the date
 440 of receipt of a notice stating that such costs are due. The
 441 office may levy a late payment of up to \$100 per day or part
 442 thereof that a payment is overdue, unless excused for good
 443 cause. However, for intentional late payment of costs, the
 444 office may levy an administrative fine of up to \$1,000 per day
 445 for each day the payment is overdue.

446 (e) The office may require an audit of a state financial
 447 institution, subsidiary, or service corporation by an
 448 independent certified public accountant, or other person
 449 approved by the office, if the office, after conducting an
 450 examination of the state financial institution, subsidiary, or
 451 service corporation, or after accepting an examination of the
 452 ~~such~~ state financial institution by an appropriate state or
 453 federal regulatory agency, determines that an audit is necessary
 454 in order to ascertain the condition of the financial
 455 institution, subsidiary, or service corporation. The cost of
 456 such audit shall be paid by the state financial institution,
 457 subsidiary, or state service corporation audited.

458 (2) ~~(a)~~ Each state financial institution, subsidiary, or
 459 service corporation shall submit a report, at least four times
 460 each calendar year, as of such dates as the commission or office
 461 determines. The ~~Such~~ report must include such information as the
 462 commission by rule requires for that type of institution.

463 (a) ~~(b)~~ The office shall levy an administrative fine of up
 464 to \$100 per day for each day the report is past due, unless it

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465 is excused for good cause. ~~However,~~

466 (b) For an intentional late filing of the report ~~required~~
 467 ~~under paragraph (a)~~, the office shall levy an administrative
 468 fine of up to \$1,000 per day for each day the report is past
 469 due.

470 ~~(3)(a)~~ The board of directors of each state financial
 471 institution or, in the case of a credit union, the supervisory
 472 committee or audit committee shall perform or cause to be
 473 performed, within each calendar year, an internal audit of each
 474 state financial institution, subsidiary, or service corporation
 475 and ~~to~~ file a copy of the report and findings of such audit with
 476 the office on a timely basis. The ~~Such~~ internal audit must
 477 include such information as the commission by rule requires for
 478 that type of institution.

479 (a)(b) With the approval of the office, the board of
 480 directors or, in the case of a credit union, the supervisory
 481 committee may elect, in lieu of such periodic audits, to adopt
 482 and implement an adequate continuous audit system and procedure
 483 that includes ~~which must include~~ full, adequate, and continuous
 484 written reports to, and review by, the board of directors or, in
 485 the case of a credit union, the supervisory committee, together
 486 with written statements of the actions taken thereon and reasons
 487 for omissions to take actions, all of which shall be noted in
 488 the minutes and filed among the records of the board of
 489 directors or, in the case of a credit union, the supervisory
 490 committee. If at any time such continuous audit system and
 491 procedure, including the reports and statements, becomes
 492 inadequate, in the judgment of the office, the state financial
 493 institution shall promptly make such changes as may be required

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494 by the office to cause the same to accomplish the purpose of
 495 this section.

496 ~~(b)(e)~~ A ~~Any~~ de novo state financial institution open less
 497 than 4 months is exempt from the audit requirements of this
 498 section.

499 (4) A copy of the report of each examination must be
 500 furnished to the entity examined and, ~~Such report shall be~~
 501 presented to the board of directors at its next regular or
 502 special meeting.

503 Section 8. Paragraph (a) of subsection (3) and subsections
 504 (4) through (6) of section 655.057, Florida Statutes, are
 505 amended to read:

506 655.057 Records; limited restrictions upon public access.—

507 (3) The provisions of this section do not prevent or
 508 restrict:

509 (a) Publishing reports that are required to be submitted to
 510 the office pursuant to s. 655.045(2) ~~(a)~~ or required by
 511 applicable federal statutes or regulations to be published.

512 Any confidential information or records obtained from the office
 513 pursuant to this subsection shall be maintained as confidential
 514 and exempt from the provisions of s. 119.07(1).

515 (4) (a) Orders of courts or of administrative law judges for
 516 the production of confidential records or information must ~~shall~~
 517 provide for inspection in camera by the court or the
 518 administrative law judge, and, After the court or administrative
 519 law judge determines ~~has made a determination~~ that the documents
 520 requested are relevant or would likely lead to the discovery of
 521 admissible evidence and that the information sought is not
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523 otherwise reasonably available from other sources, the said
 524 documents shall be subject to further orders by the court or the
 525 administrative law judge to protect the confidentiality thereof.
 526 Any order directing the release of information is shall be
 527 immediately reviewable, and a petition by the office for review
 528 of such order ~~shall~~ automatically stays stay further proceedings
 529 in the trial court or the administrative hearing until the
 530 disposition of such petition by the reviewing court. If any
 531 other party files such a petition for review, it will operate as
 532 a stay of such proceedings only upon order of the reviewing
 533 court.

534 (b) Confidential records and information furnished pursuant
 535 to a legislative subpoena shall be kept confidential by the
 536 legislative body or committee that which received the records or
 537 information. However, except in a case involving investigation
 538 of charges against a public official subject to impeachment or
 539 removal, ~~and then~~ disclosure of such information shall be only
 540 to the extent necessary as determined by the legislative body or
 541 committee ~~to be necessary~~.

542 (c) Documents, statements, books, records, and any other
 543 information provided to the office by any person pursuant to an
 544 investigation, examination, visitation, or other supervisory
 545 activity by the office are not considered a waiver of any
 546 privilege or other legal right in an administrative or legal
 547 proceeding in which the office is not a party.

548 (5) Every credit union and mutual association shall
 549 maintain, ~~in the principal office where its business is~~
 550 ~~transacted,~~ full and correct records of the names and residences
 551 of all the members of the credit union or mutual association in

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552 the principal office where its business is transacted. Such
 553 records ~~are shall be~~ subject to ~~the~~ inspection ~~by~~ ~~of~~ all ~~the~~
 554 members of the credit union or mutual association, and the
 555 officers authorized to assess taxes under state authority,
 556 during normal business hours ~~of each business day~~. No member or
 557 any other person has the right to copy the membership records
 558 for any purpose other than in the course of business of the
 559 credit union or mutual association, as authorized by the office
 560 or the board of directors of the credit union or mutual
 561 association. A current list of members shall be made available
 562 to the office's examiners for their inspection and, upon the
 563 request of the office, shall be submitted to the office. Except
 564 as otherwise provided in this subsection, the list of the
 565 members of the credit union or mutual association is
 566 confidential and exempt from ~~the provisions of~~ s. 119.07(1).

567 (6) Every bank, trust company, and stock association shall
 568 maintain, in the principal office where its business is
 569 transacted, full and complete records of the names and
 570 residences of all the shareholders of the bank, trust company,
 571 or stock association and the number of shares held by each. Such
 572 records ~~are shall be~~ subject to the inspection of all the
 573 shareholders of the bank, trust company, or stock association,
 574 and the officers authorized to assess taxes under state
 575 authority, during normal business hours ~~of each banking day~~. No
 576 shareholder or any other person has the right to copy the
 577 shareholder records for any purpose other than in the course of
 578 business of the bank, the trust company, or the stock
 579 association, as authorized by the office or the board of
 580 directors of the bank, the trust company, or the stock

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581 association. A current list of shareholders shall be made
 582 available to the office's examiners for their inspection and,
 583 upon the request of the office, shall be submitted to the
 584 office. Except as otherwise provided in this subsection, any
 585 portion of this list which reveals the identities of the
 586 shareholders is confidential and exempt from ~~the provisions of~~
 587 s. 119.07(1).

588 Section 9. Section 655.0591, Florida Statutes, is created
 589 to read:

590 655.0591 Trade secret documents.-

591 (1) If any person who is required to submit documents or
 592 other information to the office pursuant to the financial
 593 institutions codes, or by rule or order of the office or
 594 commission, claims that such submission contains a trade secret,
 595 such person may file with the office a notice of trade secret
 596 when the information is submitted to the office as provided in
 597 this section. Failure to file such notice constitutes a waiver
 598 of any claim by such person that the document or information is
 599 a trade secret. The notice must provide the contact information
 600 of the person claiming ownership of the trade secret. The person
 601 claiming the trade secret is responsible for updating the
 602 contact information with the office.

603 (a) Each page of such document or specific portion of a
 604 document claimed to be a trade secret must be clearly marked
 605 with the words "trade secret."

606 (b) All material identified as a trade secret shall be
 607 segregated from all other material, such as by being sealed in
 608 an envelope clearly marked with the words "trade secret."

609 (c) In submitting a notice of trade secret to the office or

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610 department, the submitting party shall include an affidavit
 611 certifying under oath to the truth of the following statements
 612 concerning all documents or information that are claimed to be
 613 trade secrets:

614 1. [...I consider/my company considers...] this information
 615 a trade secret that has value and provides an advantage or an
 616 opportunity to obtain an advantage over those who do not know or
 617 use it.

618 2. [...I have/my company has...] taken measures to prevent
 619 the disclosure of the information to anyone other than those who
 620 have been selected to have access for limited purposes, and
 621 [...I intend/my company intends...] to continue to take such
 622 measures.

623 3. The information is not, and has not been, reasonably
 624 obtainable without [...my/our...] consent by other persons by
 625 use of legitimate means.

626 4. The information is not publicly available elsewhere.

627 (2) If the office receives a public records request for a
 628 document or information that is marked and certified as a trade
 629 secret, the office shall promptly notify the person that
 630 certified the document as a trade secret. The notice shall be
 631 sent to the address provided with the most recent contact
 632 information provided to the office and must inform such person
 633 that, in order to avoid disclosure of the trade secret, the
 634 person must file an action in circuit court within 30 days after
 635 the date of the notice seeking a declaratory judgment that the
 636 document in question contains trade secrets and an order barring
 637 public disclosure of the document. The owner shall provide
 638 written notice to the office that the action was filed and the

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639 office may not release the documents pending the outcome of
 640 legal action. Failure to file an action within 30 days
 641 constitutes a waiver of any claim of confidentiality, and the
 642 office shall release the document as requested.

643 (3) The office may disclose a trade secret, together with
 644 the claim that it is a trade secret, to an officer or employee
 645 of another governmental agency whose use of the trade secret is
 646 within the scope of his or her employment.

647 Section 10. Section 655.50, Florida Statutes, is reordered
 648 and amended to read:

649 655.50 Florida Control of Money Laundering and Terrorist
 650 Financing in Financial Institutions Act; reports of transactions
 651 involving currency or monetary instruments; when required;
 652 purpose; definitions; penalties.-

653 (1) This section may be cited as the "Florida Control of
 654 Money Laundering and Terrorist Financing in Financial
 655 Institutions Act."

656 (2) ~~It is~~ The purpose of this section is to require the
 657 submission to the office of certain reports and the maintenance
 658 of certain records of customers, accounts, and transactions
 659 involving currency or monetary instruments or suspicious
 660 activities if when such reports and records deter using the use
 661 of financial institutions to conceal, move, or provide the
 662 proceeds obtained from or intended for of criminal or terrorist
 663 activities and if such reports and records activity and have a
 664 high degree of usefulness in criminal, tax, or regulatory
 665 investigations or proceedings.

666 (3) As used in this section, the term:

667 (a) "BSA/AML compliance officer" means the financial

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668 institution's officer responsible for the development and
 669 implementation of the financial institution's policies and
 670 procedures for complying with the requirements of this section
 671 relating to anti-money laundering (AML), and the requirements of
 672 the Bank Secrecy Act of 1970 (BSA), Pub. L. No. 91-508, as
 673 amended, the USA Patriot Act of 2001, Pub. L. No. 107-56, as
 674 amended, and federal and state rules and regulations adopted
 675 thereunder, and 31 C.F.R. parts 500-598, relating to the
 676 regulations of the Office of Foreign Assets Control (OFAC) of
 677 the United States Department of the Treasury.

678 (b) ~~(a)~~ "Currency" means currency and coin of the United
 679 States or of any other country.

680 (c) ~~(b)~~ "Financial institution" means a financial
 681 institution, as defined in 31 U.S.C. s. 5312, as amended,
 682 including a credit card bank, located in this state.

683 (d) ~~(e)~~ "Financial transaction" means a transaction
 684 involving the movement of funds by wire, electronic funds
 685 transfer, or any other means, or involving one or more monetary
 686 instruments, which in any way or degree affects commerce, or a
 687 transaction involving the use of a financial institution that
 688 which is engaged in, or the activities of which affect, commerce
 689 in any way or degree.

690 (e) ~~(d)~~ "Monetary instruments" means coin or currency of the
 691 United States or of any other country, travelers' checks,
 692 personal checks, bank checks, money orders, stored value cards,
 693 prepaid cards, investment securities or in bearer form or
 694 otherwise in such form that title thereto passes upon delivery,
 695 and negotiable instruments in bearer form or otherwise in such
 696 form that title thereto passes upon delivery, or similar

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697 devices.

698 (i)(e) "Transaction" means a purchase, sale, loan, pledge,
699 gift, transfer, delivery, or other disposition, and with respect
700 to a financial institution includes a deposit, withdrawal,
701 transfer between accounts, exchange of currency, loan, extension
702 of credit, purchase or sale of any stock, bond, certificate of
703 deposit, or other monetary instrument, or any other payment,
704 transfer, or delivery by, through, or to a financial
705 institution, by whatever means effected.

706 (f) "Report" means a report of each deposit, withdrawal,
707 exchange of currency, or other payments or transfer, by,
708 through, or to that financial institution, which that involves a
709 transaction required or authorized to be reported by this
710 section, and includes the electronic submission of such
711 information in the manner provided ~~for~~ by rule of the
712 commission.

713 (g) "Specified unlawful activity" means any "racketeering
714 activity" as defined in s. 895.02.

715 (h) "Suspicious activity" means any transaction reportable
716 as required and described under 31 C.F.R. s. 1020.320.

717 (4) A financial institution shall designate and retain a
718 BSA/AML compliance officer. The board of directors of a
719 financial institution must ensure that the designated compliance
720 officer is properly qualified and has sufficient authority and
721 resources to administer an effective BSA/AML compliance program.
722 The board is ultimately responsible for establishing the
723 institution's BSA/AML policies and overall BSA/AML compliance. A
724 change in the BSA/AML compliance officer must be reported to the
725 office.

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726 (5)(4)(a) ~~A~~ Every financial institution shall keep a record
727 of each financial transaction occurring in this state known to
728 it which involves to involve currency or other monetary
729 instrument, as the commission prescribes by rule, ~~has of~~ a value
730 greater than in excess of \$10,000, and involves to involve the
731 proceeds of specified unlawful activity, or is to be designed to
732 evade the reporting requirements of this section, chapter 896,
733 or ~~any~~ similar state or federal law, or which the financial
734 institution reasonably believes is suspicious activity. Each
735 financial institution and shall maintain appropriate procedures
736 to ensure compliance with this section, chapter 896, and ~~any~~
737 other similar state or federal law. Any report of suspicious
738 activity made pursuant to this subsection is entitled to the
739 same confidentiality provided under 31 C.F.R. s. 1020.320,
740 whether the report or information pertaining to or identifying
741 the report is in the possession or control of the office or the
742 reporting institution.

743 (a)(b) Multiple financial transactions shall be treated as
744 a single transaction if the financial institution has knowledge
745 that they are made by or on behalf of any person and result in
746 ~~either~~ cash in or cash out totaling more than \$10,000 during any
747 business day, as defined in s. 655.89(1).

748 (b)(e) ~~A~~ Any financial institution may keep a record of any
749 financial transaction occurring in this state, regardless of the
750 value, if it suspects that the transaction involves to involve
751 the proceeds of specified unlawful activity.

752 (c)(d) A financial institution, or officer, employee, or
753 agent thereof, which that files a report in good faith pursuant
754 to this subsection section is not liable to any person for loss

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755 or damage caused in whole or in part by the making, filing, or
756 governmental use of the report, or any information contained
757 therein.

758 ~~(d)(5)~~ (a) Each financial institution shall file a report
759 ~~with the office~~ of the records record required under this
760 subsection with the office paragraphs (4) (a) and (b) and any
761 record maintained pursuant to paragraph (4) (c). Each report
762 shall record filed pursuant to subsection (4) must be filed at
763 such time and must contain such information as the commission
764 requires by rule.

765 ~~(e)(b)~~ The timely filing of the reports report required by
766 31 U.S.C. s. 5313 and 31 C.F.R. part 1020 with the appropriate
767 federal agency is deemed compliance with the reporting
768 requirements of this subsection unless the reports are not
769 regularly and comprehensively transmitted by the federal agency
770 to the office.

771 (6) Each financial institution shall maintain a record of
772 each qualified business customer that is designation of a person
773 granted an exemption under the authority of 31 U.S.C. s. 5313,
774 including any name, address, and taxpayer identification number
775 of the exempt customer person, as well as the name and address
776 of the financial institution and the signature of the financial
777 institution official designating the exempt customer person.
778 Such record of exemptions shall be made available to the office
779 for inspection and copying and ~~shall be~~ submitted to the office
780 within 15 days after request.

781 (7) All reports and records filed with the office pursuant
782 to this section are confidential and exempt from s. 119.07(1).
783 However, the office shall provide any report filed pursuant to

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784 this section, or information contained therein, to federal,
785 state, and local law enforcement and prosecutorial agencies, and
786 any federal or state agency responsible for the regulation or
787 supervision of financial institutions.

788 (8) ~~(a)~~ Each financial institution shall maintain:

789 (a) For a minimum of 5 calendar years Full and complete
790 records of all financial transactions, including all records
791 required by 31 C.F.R. parts 500-598 and 1010 for a minimum of 5
792 calendar years parts 103.33 and 103.34.

793 ~~(b) The financial institution shall retain~~ A copy of all
794 reports filed with the office under subsection (5) (4) for a
795 minimum of 5 calendar years after submission of the report.

796 ~~(c) The financial institution shall retain~~ A copy of all
797 records of exemption for each qualified business customer
798 ~~designation of exempt person~~ made pursuant to subsection (6) for
799 a minimum of 5 calendar years after termination of exempt status
800 of such customer.

801 (9) The office, in addition to any other power conferred
802 upon it to enforce and administer this chapter and the financial
803 institutions codes, ~~the office~~ may:

804 (a) Bring an action in any court of competent jurisdiction
805 to enforce or administer this section. In such action, the
806 office may seek an award of any civil penalty authorized by law
807 and any other appropriate relief at law or equity.

808 (b) Pursuant to s. 655.033, issue and serve upon a person
809 an order requiring such person to cease and desist and take
810 corrective action if whenever the office finds that such person
811 is violating, has violated, or is about to violate any provision
812 of this section, chapter 896, or ~~any~~ similar state or federal

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813 law; any rule or order adopted under this section, chapter 896,
814 or ~~any~~ similar state or federal law; or any written agreement
815 related to this section, chapter 896, or ~~any~~ similar state or
816 federal law and entered into with the office.

817 (c) Pursuant to s. 655.037, issue and serve upon any person
818 an order of removal ~~if whenever~~ the office finds that such
819 person is violating, has violated, or is about to violate any
820 provision of this section, chapter 896, or ~~any~~ similar state or
821 federal law; any rule or order adopted under this section,
822 chapter 896, or ~~any~~ similar state or federal law; or any written
823 agreement related to this section, chapter 896, or ~~any~~ similar
824 state or federal law and entered into with the office.

825 (d) Impose and collect an administrative fine against any
826 person found to have violated any provision of this section,
827 chapter 896, or ~~any~~ similar state or federal law; any rule or
828 order adopted under this section, chapter 896, or ~~any~~ similar
829 state or federal law; or any written agreement related to this
830 section, chapter 896, or ~~any~~ similar state or federal law and
831 entered into with the office, in an amount up to not exceeding
832 \$10,000 ~~per a~~ day for each willful violation or \$500 per a day
833 for each negligent violation.

834 (10) (a) Except as provided in paragraph (b), a person who
835 willfully violates ~~any provision of~~ this section commits is
836 ~~guilty of~~ a misdemeanor of the first degree, punishable as
837 provided in s. 775.082 or s. 775.083.

838 (b) A person who willfully violates or knowingly causes
839 another to violate ~~any provision of~~ this section, when the
840 violation involves:

841 1. Financial transactions totaling or exceeding \$300 but

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842 less than \$20,000 in any 12-month period, commits is guilty of a
843 felony of the third degree, punishable as provided in s. 775.082
844 or s. 775.083; ~~or~~

845 2. Financial transactions totaling or exceeding \$20,000 but
846 less than \$100,000 in any 12-month period, commits is guilty of
847 a felony of the second degree, punishable as provided in s.
848 775.082 or s. 775.083; or

849 3. Financial transactions totaling or exceeding \$100,000 in
850 any 12-month period, commits is guilty of a felony of the first
851 degree, punishable as provided in s. 775.082 or s. 775.083.

852 (c) In addition to the penalties otherwise authorized by
853 ss. 775.082 and 775.083, a person who has been convicted of or
854 who has pleaded guilty or nolo contendere to having violated
855 paragraph (b) may be sentenced to pay a fine of up to not
856 ~~exceeding~~ \$250,000 or twice the value of the financial
857 transaction, whichever is greater, except that on a second or
858 subsequent conviction for or plea of guilty or nolo contendere
859 to a violation of paragraph (b), the fine may be up to \$500,000
860 or quintuple the value of the financial transaction, whichever
861 is greater.

862 (d) A financial institution as defined in s. 655.005 which
863 ~~that~~ willfully violates this section is also liable for a civil
864 penalty of not more than the greater of the value of the
865 financial transaction involved or \$25,000. However, the civil
866 penalty may not exceed \$100,000.

867 (e) A person other than a financial institution as defined
868 in s. 655.005 who violates this section is also liable for a
869 civil penalty of not more than the greater of the value of the
870 financial transaction involved or \$25,000.

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871 (11) In any prosecution brought pursuant to this section,
 872 the common law corpus delicti rule does not apply. The
 873 defendant's confession or admission is admissible during trial
 874 without the state having to prove the corpus delicti if the
 875 court finds in a hearing conducted outside the presence of the
 876 jury that the defendant's confession or admission is
 877 trustworthy. Before the court admits the defendant's confession
 878 or admission, the state must prove by a preponderance of the
 879 evidence that there is sufficient corroborating evidence that
 880 tends to establish the trustworthiness of the statement by the
 881 defendant. Hearsay evidence is admissible during the
 882 presentation of evidence at the hearing. In making its
 883 determination, the court may consider all relevant corroborating
 884 evidence, including the defendant's statements.

885 Section 11. Section 655.85, Florida Statutes, is amended to
 886 read:

887 655.85 Settlement of checks.—~~If a~~ Whenever any check is
 888 forwarded or presented to a financial an institution for
 889 payment, except when presented by the payee in person, the
 890 paying institution or remitting institution shall settle the
 891 amount of the check at par ~~may pay or remit the same~~, at its
 892 option, ~~either~~ in money or in exchange drawn on its reserve
 893 agent or agents in the City of New York or in any reserve city
 894 within the Sixth Federal Reserve District; ~~however, an~~
 895 ~~institution may not settle any check drawn on it otherwise than~~
 896 ~~at par. The term "at par" applies only to the settlement of~~
 897 checks between collecting and paying or remitting institutions
 898 and does not apply to, or prohibit an institution from,
 899 deducting from the face amount of the check drawn on it a fee

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900 for paying the check if the check is presented to the
 901 institution by the payee in person. ~~The provisions of This~~
 902 ~~section does de~~ not apply ~~with respect~~ to the settlement of a
 903 check sent to such institution as a special collection item.

904 Section 12. The Legislature intends that the amendment to
 905 s. 655.85, Florida Statutes, made by this act, clarify the
 906 relevant portions of the financial institutions codes as defined
 907 in s. 655.005, Florida Statutes, relating to fees imposed by a
 908 financial institution for the payment of checks presented in
 909 person without requiring further amendment.

910 Section 13. Section 655.921, Florida Statutes, is amended
 911 to read:

912 655.921 Transaction of business by out-of-state financial
 913 institutions; exempt transactions ~~in the financial institutions~~
 914 ~~codes.~~—

915 (1) ~~Nothing in~~ The financial institutions codes do not
 916 ~~shall be construed to prohibit a financial institution or~~
 917 business trust that has ~~having~~ its principal place of business
 918 outside this state and that does not operate ~~operating~~ branches
 919 in this state from:

920 (a) Contracting in this state with any person to acquire
 921 from such person a part, or the entire, interest in a loan that
 922 such person ~~proposes to make, has heretofore made, or hereafter~~
 923 makes, together with a like interest in any security instrument
 924 covering real or personal property in the state ~~proposed to be~~
 925 ~~given or hereafter or heretofore~~ given to such person to secure
 926 or evidence such loan.

927 (b) Entering into mortgage servicing contracts with persons
 928 authorized to transact business in this state and enforcing in

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929 this state the obligations ~~heretofore or hereafter~~ acquired by
 930 it in the transaction of business outside this state or in the
 931 transaction of any business authorized by this section.

932 (c) Acquiring, holding, leasing, mortgaging, contracting
 933 with respect to, or otherwise protecting, managing, or conveying
 934 property in this state which is ~~has heretofore or may hereafter~~
 935 ~~be~~ assigned, transferred, mortgaged, or conveyed to it as
 936 security for, or in whole or in part in satisfaction of, a loan
 937 or loans made by it or obligations acquired by it in the
 938 transaction of any business authorized by this section.

939 (d) Making loans or committing to make loans to any person
 940 located in this state and soliciting compensating deposit
 941 balances in connection therewith.

942 (e) Filing suit in any court in this state to collect any
 943 debt or foreclose on any security interest in collateral
 944 securing a debt.

945 (2) A ~~No such~~ financial institution or business trust may
 946 not shall be deemed to be transacting business in this state, or
 947 be required to qualify ~~to~~ to do so, solely by reason of the
 948 performance of any of the acts or business authorized in this
 949 section.

950 Section 14. Section 655.922, Florida Statutes, is amended
 951 to read:

952 655.922 Banking business by unauthorized persons; use of
 953 name.—

954 (1) Only ~~No person other than~~ a financial institution
 955 authorized to do business in this state pursuant to the
 956 financial institutions codes of any state or federal law may
 957 ~~shall, in this state,~~ engage in the business of soliciting or

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958 receiving funds for deposit, ~~or of~~ issuing certificates of
 959 deposit, ~~or of~~ paying checks in this state; and only such
 960 financial institution may ~~no person shall~~ establish or maintain
 961 a place of business in this state for any of the functions,
 962 transactions, or purposes identified ~~mentioned~~ in this
 963 subsection. A ~~Any~~ person who violates ~~the provisions of~~ this
 964 subsection commits is guilty of a felony of the third degree,
 965 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 966 This subsection does not prohibit the issuance or sale by a
 967 financial institution of traveler's checks, money orders, or
 968 other instruments for the transmission or payment of money, by
 969 or through employees or agents of the financial institution off
 970 the financial institution's premises.

971 (2) Only ~~No person other than~~ a financial institution
 972 authorized to do business shall, in this state as provided under
 973 subsection (1) may:

974 (a) Transact or solicit business under any name or title
 975 that contains the words "bank," "banc," "banco," "banque,"
 976 "banker," "banking," "trust company," "savings and loan
 977 association," "savings bank," or "credit union," or words of
 978 similar import, in any context or in any manner;

979 (b) Use any name, word, trademark, service mark, trade
 980 name, Internet address, logo, sign, symbol, or device in any
 981 context or in any manner; or

982 (c) Circulate or use any letterhead, billhead, circular,
 983 paper, electronic media, Internet website or posting, or writing
 984 of any kind or otherwise advertise or represent in any manner,
 985

986 which indicates or reasonably implies that the business being

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987 solicited, conducted, or advertised is the kind or character of
 988 business transacted or conducted by a financial institution or
 989 which is likely to lead any person to believe that such business
 990 is that of a financial institution; however, the words "bank,"
 991 "banc," "banco," "banque," "banker," "banking," "trust company,"
 992 "savings and loan association," "savings bank," or "credit
 993 union," or the plural of any thereof, may be used by, and in the
 994 corporate or other name or title of, any company ~~that which~~ is
 995 or becomes a ~~financial institution~~ holding company of a
 996 financial institution pursuant to state or federal law; any
 997 subsidiary of ~~any such financial institution~~ holding company
 998 which includes as a part of its name or title all or any part,
 999 or abbreviations, of the name or title of the ~~financial~~
 1000 ~~institution~~ holding company of which it is a subsidiary; any
 1001 trade organization or association, whether or not incorporated,
 1002 functioning for the purpose of promoting the interests of
 1003 financial institutions or ~~financial institution~~ holding
 1004 companies, the active members of which are financial
 1005 institutions or ~~financial institution~~ holding companies; and any
 1006 international development bank chartered pursuant to part II of
 1007 chapter 663.

1008 (3) ~~A~~ No person may not use the name, trademark, service
 1009 mark, trade name, Internet address, or logo of a any financial
 1010 institution or an affiliate or subsidiary thereof, or use a name
 1011 similar to that of a financial institution or an affiliate or
 1012 subsidiary thereof, to market or solicit business from a
 1013 customer or prospective customer of such institution if:

1014 (a) The solicitation is done without the written consent of
 1015 the financial institution or its affiliate or subsidiary; and

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1016 (b) A reasonable person would believe that the materials
 1017 originated from, are endorsed by, or are connected with the
 1018 financial institution or its affiliates or subsidiaries.
 1019 (4) A financial institution, affiliate, subsidiary, or
 1020 service corporation may not do business, solicit, or advertise
 1021 in this state using a name, trademark, service mark, trade name,
 1022 Internet address, or logo that may mislead consumers or cause
 1023 confusion as to the identification of the proper legal business
 1024 entity or the nature of the financial institution's business.
 1025 ~~(5)(4)~~ Any court, in a proceeding brought by the office, by
 1026 a any financial institution the principal place of business of
 1027 which is in this state, or by any other person residing, or
 1028 whose principal place of business is ~~located,~~ in this state and
 1029 whose interests are substantially affected thereby, may enjoin
 1030 any person from violating any provision of the provisions of
 1031 this section. Except for a financial institution duly chartered
 1032 by the office, the office may also seek an order from the
 1033 circuit court for the annulment or dissolution of a corporation
 1034 or any other business entity found violating any provision of
 1035 this section. For the purposes of this subsection, the interests
 1036 of a trade organization or association are deemed to be
 1037 substantially affected if the interests of ~~any of~~ its members
 1038 are so affected. ~~In addition,~~ The office may also issue and
 1039 serve upon any person who violates any provision of the
 1040 ~~provisions~~ of this section an emergency cease and desist order
 1041 or a complaint seeking a cease and desist order in accordance
 1042 with the procedures and in the manner prescribed by s. 655.033.
 1043 The office is not required to make any finding or determination
 1044 that a violation of this section is likely to result in

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1045 insolvency, substantial dissipation of assets or earnings, or
 1046 substantial prejudice to any person in association with the
 1047 issuance of an emergency cease and desist order.

1048 ~~(6)(5) Nothing in This section does not shall be construed~~
 1049 ~~to prohibit the lawful establishment or operation the lawful~~
 1050 ~~operations of a financial institution, affiliate, subsidiary, or~~
 1051 ~~service corporation or and nothing in this code shall be~~
 1052 ~~construed to prohibit any advertisement or other activity in~~
 1053 ~~this state by any person if such prohibition would contravene~~
 1054 ~~any applicable federal law that which preempts the law of this~~
 1055 ~~state.~~

1056 Section 15. Section 657.008, Florida Statutes, is amended
 1057 to read:

1058 657.008 Place of doing business.—

1059 (1) ~~A Every~~ credit union authorized to transact business
 1060 pursuant to the laws of this state shall have one principal
 1061 place of doing business as designated in its bylaws and where
 1062 legal process may be served. A credit union may change its place
 1063 of business through an amendment to its bylaws.

1064 (2) ~~(a) Following With~~ 30 days' prior written notification
 1065 to the office or within such other time as is approved by the
 1066 office, a credit union operating in a safe and sound manner may
 1067 maintain branches without requiring prior office examination and
 1068 approval at locations other than its main office or relocate
 1069 branches previously established if the maintenance of such
 1070 branches is determined by the board of directors to be
 1071 reasonably necessary to furnish service to its members.

1072 (a) A credit union that requires office examination and
 1073 approval before establishing or relocating a branch must submit

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1074 a written application in such form and supported by such
 1075 information, data, and records as the commission or office may
 1076 require to make all findings necessary for approval. Upon
 1077 receiving the application and a nonrefundable filing fee for the
 1078 establishment of the branch, the office shall consider the
 1079 following in determining whether to reject or approve the
 1080 application:

1081 1. The sufficiency of the net worth of the credit union in
 1082 relation to its deposit liabilities, including the proposed
 1083 branch, and the additional fixed assets, if any, which are
 1084 proposed for the branch and its operations without undue risk to
 1085 the credit union or its depositors;

1086 2. The sufficiency of earnings and earnings prospects of
 1087 the credit union necessary to support the anticipated expenses
 1088 and operating losses of the branch during its formative or
 1089 initial years;

1090 3. The sufficiency and quality of management available to
 1091 operate the branch;

1092 4. The name of the proposed branch in order to determine if
 1093 it reasonably identifies the branch as a branch of the main
 1094 office and is not likely to unduly confuse the public; and

1095 5. The substantial compliance of the applicant with the
 1096 applicable law governing its operations.

1097 (b) If any branch is located outside this state, the cost
 1098 of examining such branch shall be borne by the credit union.
 1099 Such cost includes shall include, but is shall not be limited
 1100 to, examiner travel expense and per diem.

1101 (3) A credit union may share office space with one or more
 1102 credit unions and contract with any person or corporation to

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1103 provide facilities or personnel.

1104 (4) ~~A~~ Any credit union organized under this state or
 1105 federal law, the members of which are presently, or were at the
 1106 time of admission into the credit union, employees of the state
 1107 or a political subdivision or municipality thereof, or members
 1108 of the immediate families of such employees, may apply for space
 1109 in any building owned or leased by the state or respective
 1110 political subdivision or municipality in the community or
 1111 district in which the credit union does business.

1112 (a) The application shall be addressed to the officer
 1113 charged with the allotment of space in such building. If space
 1114 is available, the officer may allot space to the credit union at
 1115 a reasonable charge for rent or services.

1116 (b) If the governing body having jurisdiction over the
 1117 building determines that the services rendered by the credit
 1118 union to the employees of the governing body are equivalent to a
 1119 reasonable charge for rent or services, available space may be
 1120 allotted to the credit union without charge for rent or
 1121 services.

1122 (5) (a) The office may authorize foreign credit unions to
 1123 establish branches in this state ~~Florida~~ if all of the following
 1124 criteria are met:

1125 1. The state in which the foreign credit union's home
 1126 office is located permits Florida credit unions to do business
 1127 in the state under restrictions that are no greater than those
 1128 placed upon a domestic credit union doing business in that
 1129 state. For this purpose, such restrictions must ~~shall~~ include,
 1130 ~~but are not limited to,~~ any fees, bonds, or other charges levied
 1131 on domestic credit unions doing business in that state.

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1132 2. The deposits of such foreign credit union and its
 1133 proposed Florida branch must ~~shall~~ have insurance of accounts
 1134 with the National Credit Union Administration.

1135 3. The credit union's field of membership is so limited as
 1136 to be within that meaning of that term as defined in s. 657.002.

1137 (b) Every foreign credit union operating in this state must
 1138 ~~Florida shall~~ keep the office informed of every location at
 1139 which it is operating.

1140 (c) If the office has reason to believe that a foreign
 1141 credit union is operating a branch in this state in an unsafe
 1142 and unsound manner, it shall have the right to examine such
 1143 branch. If, upon examination, the office finds that such branch
 1144 is operating in an unsafe and unsound manner, it shall require
 1145 the branch office to make appropriate modifications to bring the
 1146 ~~such~~ branch operations into compliance with generally accepted
 1147 credit union operation in this state. The ~~Such~~ foreign credit
 1148 union shall reimburse the office for the full cost of such ~~this~~
 1149 examination. Costs ~~shall~~ include examiner salaries, per diem,
 1150 and travel expenses.

1151 (d) Any foreign credit union operating in this state shall,
 1152 in any connection therewith, be subject to suit in the courts of
 1153 this state, ~~by~~ by this state and by the residents ~~citizens~~ of this
 1154 state.

1155 (6) A credit union may provide, directly or through a
 1156 contract with another company, off-premises armored car services
 1157 to its members. Armored car services do not constitute a branch
 1158 for the purposes of this section.

1159 Section 16. Section 657.028, Florida Statutes, is amended
 1160 to read:

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1161 657.028 Activities of directors, officers, committee
1162 members, employees, and agents.-

1163 (1) An individual may not disburse funds of the credit
1164 union for any extension of credit approved by her or him.

1165 (2) An elected officer, ~~or~~ director, ~~or~~ any committee
1166 member, other than the chief executive officer, may not be
1167 compensated for her or his service as such.

1168 (3) Except with the prior approval of the office, a person
1169 may not serve as an officer, director, or committee member of a
1170 credit union if she or he:

1171 (a) Has been convicted of a felony or of an offense
1172 involving dishonesty, a breach of trust, a violation of this
1173 chapter, or fraud, ~~except with the prior approval of the office;~~

1174 (b) Has been adjudicated bankrupt within the previous 7
1175 years;

1176 (c) Has been removed by any regulatory agency as a
1177 director, officer, committee member, or employee of a any
1178 financial institution, ~~except with the prior approval of the~~
1179 ~~office;~~

1180 (d) Has performed acts of fraud or dishonesty, or has
1181 failed to perform duties, resulting in a loss that which was
1182 subject to a paid claim under a fidelity bond, ~~except with the~~
1183 ~~prior approval of the office; or~~

1184 (e) Has been found guilty of a violation of s. 655.50,
1185 relating to the ~~Florida~~ control of money laundering and
1186 ~~terrorist financing in Financial Institutions Act;~~ chapter 896,
1187 relating to offenses related to financial transactions; or ~~any~~
1188 similar state or federal law; or

1189 (f) Has defaulted on a debt or obligation to a financial

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1190 institution which resulted in a material loss to the financial
1191 institution.

1192 (4) A person may not serve as a director of a credit union
1193 if she or he is an employee of the credit union, other than the
1194 chief executive officer of the credit union.

1195 (5) A director, officer, committee member, ~~officer,~~ agent,
1196 or employee of the credit union may not in any manner, directly
1197 or indirectly, participate in the deliberation upon or the
1198 determination of any question affecting her or his pecuniary
1199 interest or the pecuniary interest of any corporation,
1200 partnership, or association, other than the credit union, in
1201 which she or he or a member of her or his immediate family is
1202 directly or indirectly interested.

1203 (6) Within 30 days after election or appointment, a record
1204 of the names and addresses of the members of the board, members
1205 of committees, ~~and~~ all officers of the credit union, and the
1206 credit manager shall be filed with the office on forms
1207 prescribed by the commission.

1208 Section 17. Section 657.041, Florida Statutes, is amended
1209 to read:

1210 657.041 Insurance; employee benefit plans.-

1211 (1) A credit union may purchase for or make available to
1212 its members credit life insurance, credit disability insurance,
1213 life savings or depositors life insurance, or any other
1214 insurance coverage which may be directly related to the
1215 extension of credit or to the receipt of shares or deposits in
1216 amounts related to the members' respective ages, shares,
1217 deposits, or credit balances, or to any combination thereof.

1218 (2) A credit union may purchase and maintain insurance on

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1219 behalf of any person who is or was a director, officer,
 1220 employee, or agent of the credit union, or who is or was serving
 1221 at the request of the credit union as a director, officer,
 1222 employee, or agent of another corporation, partnership, joint
 1223 venture, trust, or other enterprise, against any liability
 1224 arising out of such person's capacity or status with the credit
 1225 union, whether or not the credit union would have the power to
 1226 indemnify such person against the asserted liability.

1227 (3) With the prior approval of members of a credit union
 1228 and the office, the credit union may pay the premiums for
 1229 reasonable health, accident, and related types of insurance
 1230 protection for members of the credit union's board of directors,
 1231 credit committee, supervisory committee, or other volunteer
 1232 committee established by the board. Any insurance protection
 1233 purchased must cease upon the insured person's leaving office
 1234 without residual benefits other than from pending claims, if
 1235 any, except that the credit union must comply with federal and
 1236 state laws providing departing officials the right to maintain
 1237 health insurance coverage at their own expense. The office shall
 1238 consider the credit union's size and financial condition and the
 1239 duties of the board or other officials in its consideration of
 1240 the request for approval for insurance coverage and may withhold
 1241 approval if the request would create an unsafe or unsound
 1242 practice or condition for the credit union.

1243 (4) With the prior approval of the board of a credit union
 1244 and the office, the credit union may fund employee benefit
 1245 plans. The office shall consider the credit union's size and
 1246 financial condition and the duties of the employees and may
 1247 withhold approval if the request would create an unsafe or

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1248 unsound practice or condition for the credit union.

1249 Section 18. Subsection (20) of section 658.12, Florida
 1250 Statutes, is amended to read:

1251 658.12 Definitions.—Subject to other definitions contained
 1252 in the financial institutions codes and unless the context
 1253 otherwise requires:

1254 (20) "Trust business" means the business of acting as a
 1255 fiduciary when such business is conducted by a bank, a state or
 1256 federal association, or a trust company, or ~~and~~ also when
 1257 conducted by any other business organization for compensation
 1258 that the office does not consider to be de minimis as its sole
 1259 or principal business.

1260 Section 19. Subsection (4) of section 658.21, Florida
 1261 Statutes, is amended to read:

1262 658.21 Approval of application; findings required.—The
 1263 office shall approve the application if it finds that:

1264 (4) The proposed officers have sufficient financial
 1265 institution experience, ability, standing, and reputation and
 1266 the proposed directors have sufficient business experience,
 1267 ability, standing, and reputation to indicate reasonable promise
 1268 of successful operation, and none of the proposed officers or
 1269 directors has been convicted of, or pled guilty or nolo
 1270 contendere to, any violation of s. 655.50, relating to the
 1271 ~~Florida~~ control of money laundering and terrorist financing in
 1272 ~~Financial Institutions Act~~; chapter 896, relating to offenses
 1273 related to financial institutions; or ~~any~~ similar state or
 1274 federal law. At least two of the proposed directors who are not
 1275 also proposed officers must ~~shall~~ have had at least 1 year
 1276 direct experience as an executive officer, regulator, or

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 1277 director of a financial institution within the 3 years before ~~of~~
 1278 the date of the application. However, if the applicant
 1279 demonstrates that at least one of the proposed directors has
 1280 very substantial experience as an executive officer, director,
 1281 or regulator of a financial institution more than 3 years before
 1282 the date of the application, the office may modify the
 1283 requirement and allow only one director to have direct financial
 1284 institution experience within the last 3 years. The proposed
 1285 president or chief executive officer must ~~shall~~ have had at
 1286 least 1 year of direct experience as an executive officer,
 1287 director, or regulator of a financial institution within the
 1288 last 3 years.

1289 Section 20. Subsection (2) of section 658.235, Florida
 1290 Statutes, is amended to read:

1291 658.235 Subscriptions for stock; approval of major
 1292 shareholders.—

1293 (2) The directors shall also provide such detailed
 1294 financial, business, and biographical information as the
 1295 commission or office may reasonably require for each person who,
 1296 together with related interests, subscribes to 10 percent or
 1297 more of the voting stock or nonvoting stock that ~~which~~ is
 1298 convertible into voting stock of the proposed bank or trust
 1299 company. The office shall make an investigation of the
 1300 character, financial responsibility, and financial standing of
 1301 each such person in order to determine whether he or she is
 1302 likely to control the bank or trust company in a manner that
 1303 ~~which~~ would jeopardize the interests of the depositors and
 1304 creditors of the bank or trust company, the other stockholders,
 1305 or the general public. The ~~This~~ investigation must ~~shall~~ include

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 1306 a determination of whether ~~any~~ such person has been convicted
 1307 of, or pled guilty or nolo contendere to, a violation of s.
 1308 655.50, relating to the ~~Florida~~ control of money laundering and
 1309 terrorist financing in Financial Institutions Act; chapter 896,
 1310 relating to offenses related to financial transactions; or ~~any~~
 1311 similar state or federal law.

1312 Section 21. Section 658.49, Florida Statutes, is repealed.

1313 Section 22. Subsection (1) of section 663.02, Florida
 1314 Statutes, is amended to read:

1315 663.02 Applicability of state banking laws.—

1316 (1) International banking corporations having offices in
 1317 this state are ~~shall be~~ subject to all the provisions of the
 1318 financial institutions codes and chapter 655 as though such
 1319 ~~international banking~~ corporations were state banks or trust
 1320 companies, except where it may appear, from the context or
 1321 otherwise, that such provisions are clearly applicable only to
 1322 banks or trust companies organized under the laws of this state
 1323 or the United States. Without limiting the foregoing general
 1324 provisions, it is the intent of the Legislature that the
 1325 following provisions are applicable to such banks or trust
 1326 companies: s. 655.031, relating to administrative enforcement
 1327 guidelines; s. 655.032, relating to investigations, subpoenas,
 1328 hearings, and witnesses; s. 655.0321, relating to hearings,
 1329 proceedings, and related documents and restricted access
 1330 thereto; s. 655.033, relating to cease and desist orders; s.
 1331 655.037, relating to removal by the office of an officer,
 1332 director, committee member, employee, or other person; s.
 1333 655.041, relating to administrative fines and enforcement; s.
 1334 655.50, relating to the control of money laundering and

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1335 ~~terrorist financing; s. 658.49, relating to loans by banks not~~
 1336 ~~exceeding \$50,000, and any provision of law for which the~~
 1337 ~~penalty is increased under s. 775.31 for facilitating or~~
 1338 ~~furthering terrorism. International banking corporations do~~
 1339 ~~shall not have the powers conferred on domestic banks by the~~
 1340 ~~provisions of s. 658.60, relating to deposits of public funds.~~
 1341 ~~The provisions of Chapter 687, relating to interest and usury,~~
 1342 ~~applies shall apply to all bank loans not subject to s. 658.49.~~

1343 Section 23. Subsection (1) of section 663.09, Florida
 1344 Statutes, is amended to read:

1345 663.09 Reports; records.—

1346 (1) An ~~Every~~ international banking corporation doing
 1347 business in this state shall, at such times and in such form as
 1348 the commission prescribes, make written reports in the English
 1349 language to the office, under the oath of one of its officers,
 1350 managers, or agents transacting business in this state, showing
 1351 the amount of its assets and liabilities and containing such
 1352 other matters as the commission or office requires. An
 1353 international banking corporation that maintains two or more
 1354 offices may consolidate such information in one report unless
 1355 the office otherwise requires for purposes of its supervision of
 1356 the condition and operations of each such office. The late
 1357 filing of such reports ~~is shall be~~ subject to an ~~the~~ imposition
 1358 ~~of the~~ administrative fine as ~~prescribed~~ under ~~by~~ s.
 1359 655.045(2) ~~(b)~~. If ~~any~~ such international banking corporation
 1360 ~~fails shall fail~~ to make ~~any~~ such report, as directed by the
 1361 office, or if ~~any~~ such report contains a ~~shall contain any~~ false
 1362 statement knowingly made, the same shall be grounds for
 1363 revocation of the license of the international banking

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1364 corporation.

1365 Section 24. Subsection (2) of section 663.12, Florida
 1366 Statutes, is amended to read:

1367 663.12 Fees; assessments; fines.—

1368 (2) Each international bank agency, international branch,
 1369 and state-chartered investment company shall pay to the office ~~a~~
 1370 ~~semiannual assessment, payable~~ on or before January 31 and July
 1371 31 of each year, a semiannual assessment in an amount determined
 1372 ~~by rule~~ by the commission by rule and calculated ~~in a manner so~~
 1373 ~~as to recover the costs of the office incurred in connection~~
 1374 with the supervision of international banking activities
 1375 licensed under this part. ~~The~~ These rules must shall provide for
 1376 uniform rates of assessment for all licenses of the same type
 1377 and, shall provide for declining rates of assessment in relation
 1378 to the total assets of the licensee held in the state, but may
 1379 ~~shall not result, in any event, provide for~~ rates of assessment
 1380 which exceed the rate applicable to state banks pursuant to s.
 1381 658.73, unless the rate ~~of assessment~~ would result in a
 1382 semiannual assessment of less than \$1,000. For the purposes of
 1383 this subsection, the total assets of an international bank
 1384 agency, international branch, or state-chartered investment
 1385 company must shall include amounts due the agency or branch or
 1386 state investment company from other offices, branches, or
 1387 subsidiaries of the international banking corporations or other
 1388 corporations of which the agency, branch, or state-chartered
 1389 investment company is a part or from entities related to that
 1390 international banking corporation. ~~Each international~~
 1391 ~~representative office, international administrative office, or~~
 1392 ~~international trust company representative office shall pay to~~

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1393 ~~the office an annual assessment in the amount of \$2,000, payable~~
 1394 ~~on or before January 31 of each year.~~

1395 Section 25. Subsection (3) of section 663.306, Florida
 1396 Statutes, is amended to read:

1397 663.306 Decision by office.—The office may, in its
 1398 discretion, approve or disapprove the application, but it shall
 1399 not approve the application unless it finds that:

1400 (3) The proposed officers and directors have sufficient
 1401 experience, ability, standing, and reputation to indicate
 1402 reasonable promise of successful operation and none of the
 1403 proposed officers or directors have been convicted of, or pled
 1404 guilty or nolo contendere to, a violation of s. 655.50, relating
 1405 to the Florida control of money laundering and terrorist
 1406 financing in Financial Institutions Act; chapter 896, relating
 1407 to offenses related to financial transactions; or ~~any~~ similar
 1408 state or federal law.

1409 Section 26. Subsection (28) of section 665.013, Florida
 1410 Statutes, is amended to read:

1411 665.013 Applicability of chapter 658.—The following
 1412 sections of chapter 658, relating to banks and trust companies,
 1413 are applicable to an association to the same extent as if the
 1414 association were a "bank" operating thereunder:

1415 ~~(28) Section 658.49, relating to loans by banks not~~
 1416 ~~exceeding \$50,000.~~

1417 Section 27. Paragraph (c) of subsection (1) of section
 1418 665.033, Florida Statutes, is amended to read:

1419 665.033 Conversion of state or federal mutual association
 1420 to capital stock association.—

1421 (1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or

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1422 federal mutual association may apply to the office for
 1423 permission to convert itself into an association operated under
 1424 the provisions of this chapter in accordance with the following
 1425 procedures:

1426 (c) The office may approve or disapprove the plan ~~in its~~
 1427 ~~discretion~~, but may it shall not approve the plan unless it
 1428 finds that the association will comply sufficiently with the
 1429 requirements of the financial institutions codes after
 1430 conversion to entitle it to become an association operating
 1431 under the financial institutions codes and the rules of the
 1432 commission. The office may deny an ~~any~~ application from any
 1433 federal association that is subject to a ~~any~~ cease and desist
 1434 order or other supervisory restriction or order imposed by any
 1435 state or the federal supervisory authority, or insurer, or
 1436 guarantor or that has been convicted of, or pled guilty or nolo
 1437 contendere to, a violation of s. 655.50, relating to the ~~Florida~~
 1438 control of money laundering and terrorist financing in Financial
 1439 Institutions Act; chapter 896, relating to offenses related to
 1440 financial transactions; or ~~any~~ similar state or federal law.

1441 Section 28. Paragraph (a) of subsection (2) of section
 1442 665.034, Florida Statutes, is amended to read:

1443 665.034 Acquisition of assets of or control over an
 1444 association.—

1445 (2) The office shall issue the certificate of approval only
 1446 after it has made an investigation and determined that:

1447 (a) The proposed new owner or owners of voting capital
 1448 stock are qualified by character, experience, and financial
 1449 responsibility to control the association in a legal and proper
 1450 manner and none of the proposed new owners have been convicted

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1451 of, or pled guilty or nolo contendere to, a violation of s.
1452 655.50, relating to the ~~Florida~~ control of money laundering and
1453 terrorist financing in Financial Institutions Act; chapter 896,
1454 relating to offenses related to financial transactions; or ~~any~~
1455 similar state or federal law.

1456 Section 29. Subsection (29) of section 667.003, Florida
1457 Statutes, is amended to read:

1458 667.003 Applicability of chapter 658.—Any state savings
1459 bank is subject to all the provisions, and entitled to all the
1460 privileges, of the financial institutions codes except where it
1461 appears, from the context or otherwise, that such provisions
1462 clearly apply only to banks or trust companies organized under
1463 the laws of this state or the United States. Without limiting
1464 the foregoing general provisions, it is the intent of the
1465 Legislature that the following provisions apply to a savings
1466 bank to the same extent as if the savings bank were a "bank"
1467 operating under such provisions:

1468 ~~(29) Section 658.49, relating to loans by banks not~~
1469 ~~exceeding \$50,000.~~

1470 Section 30. Paragraph (c) of subsection (1) of section
1471 667.006, Florida Statutes, is amended to read:

1472 667.006 Conversion of state or federal mutual savings bank
1473 or state or federal mutual association to capital stock savings
1474 bank.—

1475 (1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.—Any state
1476 or federal mutual savings bank or state or federal mutual
1477 association may apply to the office for permission to convert
1478 itself into a capital stock savings bank operated under the
1479 provisions of this chapter in accordance with the following

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1480 procedures:

1481 (c) The office may approve or disapprove the plan ~~in its~~
1482 ~~discretion~~, but ~~may it shall~~ not approve the plan unless it
1483 finds that the savings bank will comply sufficiently with the
1484 requirements of the financial institutions codes after
1485 conversion to entitle it to become a savings bank operating
1486 under the financial institutions codes and the rules of the
1487 commission. The office may deny any application from a ~~any~~
1488 federal savings bank that is subject to a ~~any~~ cease and desist
1489 order or other supervisory restriction or order imposed by any
1490 state or the federal supervisory authority, or insurer, or
1491 guarantor or that has been convicted of, or pled guilty or nolo
1492 contendere to, a violation of s. 655.50, relating to the ~~Florida~~
1493 control of money laundering and terrorist financing in Financial
1494 Institutions Act; chapter 896, relating to offenses related to
1495 financial transactions; or ~~any~~ similar state or federal law.

1496 Section 31. Paragraph (a) of subsection (2) of section
1497 667.008, Florida Statutes, is amended to read:

1498 667.008 Acquisition of assets of or control over a savings
1499 bank.—

1500 (2) The office shall issue the certificate of approval only
1501 after it has made an investigation and determined that:

1502 (a) The proposed new owner or owners of voting capital
1503 stock are qualified by character, experience, and financial
1504 responsibility to control the savings bank in a legal and proper
1505 manner and none of the proposed new owners have been convicted
1506 of, or pled guilty or nolo contendere to, a violation of s.
1507 655.50, relating to the ~~Florida~~ control of money laundering and
1508 terrorist financing in Financial Institutions Act; chapter 896,

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1509 relating to offenses related to financial transactions; or ~~any~~
1510 similar state or federal law.

1511 Section 32. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic _____ Bill Number SB1012
(if applicable)

Name Robert Hayes Amendment Barcode _____
(if applicable)

Job Title DIVISION DIRECTOR OF FINANCIAL INSTITUTIONS

Address 200E. GAINES ST. Phone _____
Street

Tallahassee FL 32399 E-mail _____
City State Zip

Speaking: For Against Information

Representing OFR

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/2014

Meeting Date

Topic Financial Institutions

Bill Number SB 1012
(if applicable)

Name Jo Morris

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 200 E. Gaines St.
Street

Phone _____

Tallahassee FL 32399
City State Zip

E-mail _____

Speaking: For Against Information

Representing Office of Financial Regulation

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)

3/5/14
Meeting Date

Topic Bill

Bill Number SB 1012
(if applicable)

Name Anthony Dimarco

Amendment Barcode _____
(if applicable)

Job Title EVP of Int. Affairs

Address 1021 Monroville Rd

Phone 224-4245

Jal FL 33303
City State Zip

E-mail adimarc@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14

Meeting Date

Topic FINANCIAL INSTITUTIONS

Bill Number 1012
(if applicable)

Name JARED ROSS

Amendment Barcode _____
(if applicable)

Job Title SVP, Governmental Affairs

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Speaking: For Against Information

Representing FLORIDA CREDIT UNION ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Committee on Banking and Insurance

BILL: CS/SB 758

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Title Insurer Reserves

DATE: March 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 758 changes the unearned premium reserve requirement for title insurers holding \$50 million or more in surplus to policyholders. Those title insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, with certain adjustments. Title insurers with less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

This bill creates a schedule for the release of the unearned premium reserve over 20 years for companies with over \$50 million in surplus, as follows: 35 percent of the initial sum during the year following the year the premium was written or assumed, 15 percent during each year of the next succeeding 2 years, 10 percent during the next succeeding year, 3 percent during each of the next succeeding 3 years, 2 percent during each of the next succeeding 3 years, and 1 percent during each of the next succeeding 10 years.

This bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state. That reserve is released according to the requirements of law in effect in the former state at the time of domicile. Release of reserve based on premium written after the insurer moves to Florida is governed by Florida law.

This bill takes effect upon becoming a law.

II. Present Situation:

Title Insurance

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.²

Title Insurance Reserve Requirements

Insurance companies must maintain cash or liquid assets on hand to pay claims and satisfy other liabilities. These are called reserves. A title insurer must maintain two types of reserves. First, a title insurer must maintain reserves sufficient to pay all of its unpaid losses.³ In addition, a title insurer must maintain a guaranty fund or unearned premium reserve to be used for reinsurance in the event the insurer becomes insolvent.⁴

Section 625.111, F.S., provides that the unearned premium reserve must consist of not less than the sum of:

- A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums. For domestic title insurers subject to this section, such amounts shall be calculated in accordance with provisions of law of this state in effect at the time the associated premiums were written or assumed and as amended prior to July 1, 1999.
- A total amount equal to 30 cents for each \$1,000 of net retained liability⁵ for policies written or title liability assumed in reinsurance on or after July 1, 1999.
- An additional amount, if deemed necessary by a qualified actuary.

Title Insurance Unearned Premium Reserve Requirements in Other States

According to the Office of Insurance Regulation (OIR), Florida “has one of the highest statutory premium reserve requirements of all the states in which major title insurers are domiciled.”⁶ As examples, the OIR cited:

California	4.5% of premium and fees
Florida	\$.30 per \$1,000 of net retained liability
Minnesota	6.5% of premium and fees

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So.2d 793,797 (Fla. 4th DCA 2004).

³ See ss. 625.041, 625.111, F.S.

⁴ See s. 625.111, F.S.

⁵ “Net retained liability” means the “total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.” s. 625.11(4)(a), F.S.

⁶ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014)(on file with the Senate Committee on Banking and Insurance).

Nebraska	\$.17 per \$1,000 of net retained liability
Texas	\$.185 per \$1,000 of net retained liability. ⁷

Releasing Unearned Premium Reserve

In 1999, the Legislature changed the law to require a domestic title insurer to release the reserve over a period of 20 years.⁸ Section 625.111, F.S., set the following schedule for release of reserves:

For policies written before July 1, 1999, an insurer shall release:

- 30 percent of the initial aggregate sum during 1999
- 15 percent during calendar year 2000
- 10 percent during each of calendar years 2001 and 2002
- 5 percent during each of calendar years 2003 and 2004
- 3 percent during each of calendar years 2005 and 2006
- 2 percent during each of calendar years 2007-2013
- 1 percent during each of calendar years 2014-2018.

For policies written after July 1, 1999, an insurer shall release:

- 30 percent of the initial sum during calendar year next succeeding the year the premium was written
- 15 percent during the next succeeding year
- 10 percent during each of the next succeeding 2 years
- 5 percent during each of the next succeeding 2 years
- 3 percent during each of the next succeeding 2 years
- 2 percent during each of the next succeeding 7 years
- 1 percent during each of the next succeeding 5 years.

III. Effect of Proposed Changes:

Title Insurance Reserve Requirements

This bill provides that a title insurer must reserve the amount necessary to pay all of its known unpaid losses and claims incurred on or before the date of the financial statement, together with the expenses of adjustment or settlement. This requirement is in addition to the reserves required under s. 625.111, F.S. This bill removes references to unreported claims – claims where the loss has occurred but has not been reported – as a liability to be charged against a title insurers assets because unreported claims are accounted for in title insurance by the unearned premium reserve.⁹

This bill creates a new unearned premium reserve requirement for title insurers holding \$50 million or more in surplus as to policyholders. Those insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance

⁷ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 2 (on file with the Senate Committee on Banking and Insurance).

⁸ See Chapter 99-336, Laws of Florida.

⁹ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 2.

assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the OIR. Title insurers with less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

The effect of this change would be to reduce the unearned premium reserve requirement for title insurers with more than \$50 million in surplus. This change would not have an immediate effect because there are no title insurers with \$50 million in surplus domiciled in Florida.¹⁰ According to the OIR, reducing the statutory premium reserve requirement for larger title insurers could encourage foreign title insurers to re-domesticate to Florida.¹¹ Nationwide, seven title insurers have a surplus in excess of \$50 million.¹² The two Florida insurers placed in the rehabilitation since 2008 had less than \$50 million in surplus prior to the entry of the rehabilitation orders.¹³ A third Florida insurer ceased writing new policies when its surplus dropped from \$27 million to \$6 million.¹⁴

The bill does not remove the requirement that title insurers with a surplus of \$50 million or more also reserve 30 cents for each \$1,000 of net retained liability.¹⁵

Releasing Unearned Premium Reserve

This bill creates a schedule for the release of unearned premium reserve for companies with over \$50 million in surplus. This bill provides that the unearned premium for policies written or title liability assumed during a particular calendar year shall be released from reserve as follows:

The insurer shall release 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year.

Thereafter, this bill provides that the insurer shall release, on the same quarterly basis:

- 15 percent during each year of the next succeeding 2 years
- 10 percent during the next succeeding year
- 3 percent during each of the next succeeding 3 years
- 2 percent during each of the next succeeding 3 years
- 1 percent during each of the next succeeding 10 years.

¹⁰ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 3.

¹¹ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 3.

¹² *Demotech Performance of Title Insurance Companies 2013* at p. 253.

¹³ See <http://www.myfloridacfo.com/Division/Receiver/Companies/KEL/default.htm#.UxD1zfUeE> and http://www.myfloridacfo.com/Division/Receiver/Companies/National_Title/default.htm#.UxD2BPldUeF (last accessed February 28, 2014).

¹⁴ See <http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=14608> (last accessed February 28, 2014).

¹⁵ Requiring insurers with a surplus of more than \$50 million to have both a reserve of additional 6.5% of premium and a reserve of 30 cents per \$1,000 of net retained liability appears to be a drafting error. See Section VI of this analysis.

Reserve Requirement When a Title Insurer Moves to Florida

Currently, no title insurers are domiciled in Florida. If a title insurer moves to the state, it must immediately comply with Florida's reserve requirements. This bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile.

This bill requires that, for new business written after the effective date of the transfer of domicile to Florida, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve the appropriate amount as determined by the company's surplus.

Bulk Reserves

This bill provides that a domestic title insurer is not required to record a separate bulk reserve. "Bulk reserve" means provision for subsequent development on known claims. This bill further provides that if a separate bulk reserve is recorded, the statutory premium reserve must be reduced by the amount recorded for such bulk reserve.

Effective Date

This bill takes effect upon becoming a law.

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:

A bill analysis provided by the OIR stated that this bill could encourage foreign title insurers to re-domesticate to Florida which could increase business opportunities.¹⁶ Concerns have been expressed that created the “two tier” reserve system could disadvantage smaller title insurers. First, there is concern that lenders could use \$50 million as a benchmark for acceptable surplus. Finally, there is concern that smaller title insurers would be at a disadvantage when offering reissue rates to consumers.¹⁷

C. Government Sector Impact:

A bill analysis provided by the OIR stated that this bill could encourage foreign title insurers to re-domesticate to Florida which could increase tax and fee revenues to state and local governments.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 625.041, 625.111, 624.407, and 624.408.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Banking and Insurance on March 5, 2014:

The committee adopted an amendment to correct a drafting error and provide that title insurers with surplus greater than \$50 million would have a different reserve requirement than title insurers with surplus less than \$50 million.

B. Amendments:

None.

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

¹⁶ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 4.

¹⁷ See Discussion Points provided by representatives at Westcor Land Title Insurance Company (on file with the Senate Committee on Banking and Insurance).

¹⁸ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 4.



201870

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 64 - 87

and insert:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims, as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums ~~required under this section~~ to be reserved for unearned premiums on title



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11 guarantees and policies ~~at all times and for all purposes~~ shall
12 be considered and constitute unearned portions of the original
13 premiums and shall be charged as a reserve liability of the such
14 insurer in determining its financial condition. ~~While Such sums~~
15 ~~are so reserved funds, they~~ shall be withdrawn from the use of
16 the insurer for its general purposes, impressed with a trust in
17 favor of the holders of title guarantees and policies, and held
18 available for reinsurance of the title guarantees and policies
19 in the event of the insolvency of the insurer. ~~Nothing contained~~
20 ~~in~~ This section does not shall preclude the such insurer from
21 investing such reserve in investments authorized by law, ~~for~~
22 ~~such an insurer~~ and the income from such investments invested
23 ~~reserve~~ shall be included in the general income of the insurer
24 and may ~~to~~ be used by such insurer for any lawful purpose.

25 (1) For an unearned premium reserve reserves established on
26 or after July 1, 1999, such ~~unearned premium~~ reserve must be in
27 ~~shall consist of not less than~~ an amount at least equal to the
28 sum of the amounts specified in paragraphs (a), (b), and (d) for
29 title insurers holding less than \$50 million in surplus as to
30 policyholders as of the previous year end, and the sum of the
31 amounts specified in paragraphs (c) and (d) for title insurers
32 holding \$50 million or more in surplus as to policyholders as of
33 the previous year end:

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete lines 5 - 7

38 and insert:

39 amending s. 625.111, F.S.; revising and specifying the



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40
41

reserves certain title insurers must set aside;
specifying how such reserves will be released;

By Senator Lee

24-00866A-14

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1 A bill to be entitled
 2 An act relating to title insurer reserves; amending s.
 3 625.041, F.S.; specifying that a title insurer is
 4 liable for all of its unpaid losses and claims;
 5 amending s. 625.111, F.S.; specifying the reserves
 6 certain title insurers must set aside after a certain
 7 date; specifying how such reserves will be released;
 8 specifying which state law governs the amount of the
 9 reserve when a title insurer transfers its domicile to
 10 this state; defining "bulk reserve"; amending ss.
 11 624.407 and 624.408, F.S.; conforming cross-
 12 references; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 625.041, Florida Statutes, is amended to
 17 read:

18 625.041 Liabilities, in general.—In any determination of
 19 the financial condition of an insurer, liabilities to be charged
 20 against its assets ~~shall~~ include:

21 (1) The amount, estimated in accordance consistent with the
 22 ~~provisions of~~ this code, necessary to pay all of its unpaid
 23 losses and claims incurred on or prior to the date of statement,
 24 whether reported or unreported, together with the expenses of
 25 adjustment or settlement thereof.

26 (2) With respect to title insurance, the amount, estimated
 27 in accordance with this code, necessary to pay all of its known
 28 unpaid losses and claims incurred on or before the date of
 29 statement, together with the expenses of adjustment or

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30 settlement thereof. This requirement is in addition to the
 31 reserves required under s. 625.111.
 32 ~~(3)(2)~~ With respect ~~reference~~ to life and health insurance
 33 and annuity contracts:
 34 (a) The amount of reserves on life insurance policies and
 35 annuity contracts in force, valued according to the tables of
 36 mortality, rates of interest, and methods adopted pursuant to
 37 this code which are applicable thereto.
 38 (b) Reserves for disability benefits, for both active and
 39 disabled lives.
 40 (c) Reserves for accidental death benefits.
 41 (d) Any additional reserves that may be required by the
 42 office in accordance ~~consistent~~ with practice formulated or
 43 approved by the National Association of Insurance Commissioners
 44 or its successor organization, on account of such insurance,
 45 including contract and premium deficiency reserves.
 46 ~~(4)(3)~~ With respect ~~reference~~ to insurance other than that
 47 specified in subsections (2) and (3) ~~subsection (2), and other~~
 48 ~~than title insurance~~, the amount of reserves equal to the
 49 unearned portions of the gross premiums charged on policies in
 50 force, computed in accordance with this part.
 51 ~~(5)(4)~~ Taxes, expenses, and other obligations due or
 52 accrued at the date of the statement.
 53 ~~(6)(5)~~ An ~~Any~~ insurer in this state that writes workers'
 54 compensation insurance shall accrue a liability on its financial
 55 statements for all Special Disability Trust Fund assessments
 56 that are due within the current calendar year. ~~In addition,~~
 57 Those insurers shall also disclose in the notes to the financial
 58 statements required to be filed pursuant to s. 624.424 an

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59 estimate of future Special Disability Trust Fund assessments, if
60 the assessments are likely to occur and can be estimated with
61 reasonable certainty.

62 Section 2. Section 625.111, Florida Statutes, is amended to
63 read:

64 625.111 Title insurance reserve.—In addition to an adequate
65 reserve as to outstanding losses relating to known claims, as
66 required under s. 625.041, a title insurer shall establish,
67 segregate, and maintain a guaranty fund or unearned premium
68 reserve as provided in this section. The sums ~~required under~~
69 ~~this section~~ to be reserved for unearned premiums on title
70 guarantees and policies ~~at all times and for all purposes~~ shall
71 be considered and constitute unearned portions of the original
72 premiums and shall be charged as a reserve liability of the such
73 insurer in determining its financial condition. ~~While~~ Such ~~sums~~
74 ~~are so~~ reserved funds, ~~they~~ shall be withdrawn from the use of
75 the insurer for its general purposes, impressed with a trust in
76 favor of the holders of title guarantees and policies, and held
77 available for reinsurance of the title guarantees and policies
78 in the event of the insolvency of the insurer. ~~Nothing contained~~
79 ~~in~~ This section does not shall preclude the such insurer from
80 investing such reserve in investments authorized by law, ~~for~~
81 ~~such an insurer~~ and the income from such investments invested
82 ~~reserve~~ shall be included in the general income of the insurer
83 and may ~~to~~ be used by such insurer for any lawful purpose.

84 (1) For an unearned premium reserve reserves established on
85 or after July 1, 1999, such ~~unearned premium~~ reserve must be in
86 ~~shall consist of not less than~~ an amount at least equal to the
87 sum of:

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88 (a) A reserve with respect to unearned premiums for
89 policies written or title liability assumed in reinsurance
90 before July 1, 1999, equal to the reserve established on June
91 30, 1999, for those unearned premiums with such reserve being
92 subsequently released as provided in subsection (2). For
93 domestic title insurers subject to this section, such amounts
94 shall be calculated in accordance with ~~provisions of law of this~~
95 state law in effect at the time the associated premiums were
96 written or assumed and as amended before ~~prior to~~ July 1, 1999.

97 (b) A total amount equal to 30 cents for each \$1,000 of net
98 retained liability for policies written or title liability
99 assumed in reinsurance on or after July 1, 1999, with such
100 reserve being subsequently released as provided in subsection
101 (2). For the purpose of calculating this reserve, the total of
102 the net retained liability for all simultaneous issue policies
103 covering a single risk shall be equal to the liability for the
104 policy with the highest limit covering that single risk, net of
105 any liability ceded in reinsurance.

106 (c) On or after January 1, 2014, for title insurers holding
107 \$50 million or more in surplus as to policyholders as of the
108 previous year-end, a minimum of 6.5 percent of the total of the
109 following:

- 110 1. Direct premiums written; and
- 111 2. Premiums for reinsurance assumed, plus other income,
112 less premiums for reinsurance ceded as displayed in Schedule P
113 of the title insurer's most recent annual statement filed with
114 the office with such reserve being subsequently released as
115 provided in subsection (2). Title insurers with less than \$50
116 million in surplus as to policyholders must continue to record

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117 unearned premium reserve in accordance with paragraph (b).
 118 (d)(e) An additional amount, if deemed necessary by a
 119 qualified actuary, to which shall be subsequently released as
 120 provided in subsection (2). Using financial results as of
 121 December 31 of each year, all domestic title insurers shall
 122 obtain a Statement of Actuarial Opinion from a qualified actuary
 123 regarding the insurer's loss and loss adjustment expense
 124 reserves, including reserves for known claims, ~~adverse~~
 125 ~~development on known claims~~, incurred but not reported claims,
 126 and unallocated loss adjustment expenses. The actuarial opinion
 127 must shall conform to the annual statement instructions for
 128 title insurers adopted by the National Association of Insurance
 129 Commissioners and shall include the actuary's professional
 130 opinion of the insurer's reserves as of the date of the annual
 131 statement. If the amount of the reserve stated in the opinion
 132 and displayed in Schedule P of the annual statement for that
 133 reporting date is greater than the sum of the known claim
 134 reserve and unearned premium reserve as calculated under this
 135 section, as of the same reporting date and including any
 136 previous actuarial provisions added at earlier dates, the
 137 insurer shall add to the insurer's unearned premium reserve an
 138 actuarial amount equal to the reserve shown in the actuarial
 139 opinion, minus the known claim reserve and the unearned premium
 140 reserve, as of the current reporting date and calculated in
 141 accordance with this section, but ~~not in no event~~ calculated as
 142 of any date before prior to December 31, 1999. The comparison
 143 shall be made using that line on Schedule P displaying the Total
 144 Net Loss and Loss Adjustment Expense which is comprised of the
 145 Known Claim Reserve, and any associated Adverse Development

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146 Reserve, the reserve for Incurred But Not Reported Losses, and
 147 Unallocated Loss Adjustment Expenses.
 148 (2)(a) With respect to reserves ~~the reserve~~ established in
 149 accordance with:
 150 (a) Paragraph (1)(a), the domestic title insurer shall
 151 release the reserve over the subsequent ~~a period of 20~~
 152 ~~subsequent~~ years as provided in this paragraph. The insurer
 153 shall release 30 percent of the initial aggregate sum during
 154 1999, with one quarter of that amount being released on March
 155 31, June 30, September 30, and December 31, 1999, with the March
 156 31 and June 30 releases to be retroactive and reflected on the
 157 September 30 financial statements. Thereafter, the insurer shall
 158 release, on the same quarterly basis as specified for reserves
 159 released during 1999, a percentage of the initial aggregate sum
 160 as follows: 15 percent during calendar year 2000, 10 percent
 161 during each of calendar years 2001 and 2002, 5 percent during
 162 each of calendar years 2003 and 2004, 3 percent during each of
 163 calendar years 2005 and 2006, 2 percent during each of calendar
 164 years 2007-2013, and 1 percent during each of calendar years
 165 2014-2018.
 166 (b) ~~With respect to reserves established in accordance with~~
 167 Paragraph (1)(b), the unearned premium for policies written or
 168 title liability assumed during a particular calendar year shall
 169 be earned, and released from reserve, over the subsequent a
 170 ~~period of 20 subsequent~~ years as provided in this paragraph. The
 171 insurer shall release 30 percent of the initial sum during the
 172 year following next succeeding the year the premium was written
 173 or assumed, with one quarter of that amount being released on
 174 March 31, June 30, September 30, and December 31 of such year.

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175 Thereafter, the insurer shall release, on the same quarterly
 176 basis as specified for reserves released during the year
 177 following first succeeding the year the premium was written or
 178 assumed, a percentage of the initial sum as follows: 15 percent
 179 during the next succeeding year, 10 percent during each of the
 180 next succeeding 2 years, 5 percent during each of the next
 181 succeeding 2 years, 3 percent during each of the next succeeding
 182 2 years, 2 percent during each of the next succeeding 7 years,
 183 and 1 percent during each of the next succeeding 5 years.

184 (c) ~~With respect to reserves established in accordance with~~
 185 Paragraph (1)(c), the unearned premium for policies written or
 186 title liability assumed during a particular calendar year shall
 187 be earned, and released from reserve, over the subsequent 20
 188 years at an amortization rate not to exceed the formula in this
 189 paragraph. The insurer shall release 35 percent of the initial
 190 sum during the year following the year the premium was written
 191 or assumed, with one quarter of that amount being released on
 192 March 31, June 30, September 30, and December 31 of such year.
 193 Thereafter, the insurer shall release, on the same quarterly
 194 basis as specified for reserve released during the year
 195 following the year the premium was written or assumed, a
 196 percentage of the initial sum as follows: 15 percent during each
 197 year of the next succeeding 2 years, 10 percent during the next
 198 succeeding year, 3 percent during each of the next succeeding 3
 199 years, 2 percent during each of the next succeeding 3 years, and
 200 1 percent during each of the next succeeding 10 years.

201 (d) Paragraph (1)(d), any additional amount established in
 202 any calendar year shall be released in the years subsequent to
 203 its establishment as provided in paragraph (c) ~~(b)~~, with the

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204 timing and percentage of releases being in all respects
 205 identical to those of unearned premium reserves that are
 206 calculated as provided in paragraph (c) ~~(b)~~ and established with
 207 regard to premiums written or liability assumed in reinsurance
 208 in the same year as the year in which any additional amount was
 209 originally established.

210 (3) If a title insurer that is organized under the laws of
 211 another state transfers its domicile to this state, the
 212 statutory or unearned premium reserve shall be the amount
 213 required by the laws of the title insurer's former state of
 214 domicile as of the date of transfer of domicile and shall be
 215 released from reserve according to the requirements of law in
 216 effect in the former state at the time of domicile. On or after
 217 January 1, 2014, for new business written after the effective
 218 date of the transfer of domicile to this state, the domestic
 219 title insurer shall add to and set aside in the statutory or
 220 unearned premium reserve such amount as provided in paragraph
 221 (1)(c).

222 (4)~~(3)~~ At any reporting date, the amount of the required
 223 releases of existing unearned premium reserves under subsection
 224 (2) shall be calculated and deducted from the total unearned
 225 premium reserve before any additional amount is established for
 226 the current calendar year in accordance with ~~the provisions of~~
 227 paragraph (1)(d) ~~(1)(e)~~.

228 (5) A domestic title insurer is not required to record a
 229 separate bulk reserve. However, if a separate bulk reserve is
 230 recorded, the statutory premium reserve must be reduced by the
 231 amount recorded for such bulk reserve.

232 (6)~~(4)~~ As used in this section, the term:

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233 (a) "Bulk reserve" means provision for subsequent
 234 development on known claims.

235 ~~(b)(a)~~ "Net retained liability" means the total liability
 236 retained by a title insurer for a single risk, after taking into
 237 account the deduction for ceded liability, if any.

238 ~~(c)(b)~~ "Qualified actuary" means a person who is, as
 239 detailed in the National Association of Insurance Commissioners'
 240 Annual Statement Instructions:

241 1. A member in good standing of the Casualty Actuarial
 242 Society;

243 2. A member in good standing of the American Academy of
 244 Actuaries who has been approved as qualified for signing
 245 casualty loss reserve opinions by the Casualty Practice Council
 246 of the American Academy of Actuaries; or

247 3. A person who otherwise has competency in loss reserve
 248 evaluation as demonstrated to the satisfaction of the insurance
 249 regulatory official of the domiciliary state. In such case, at
 250 least 90 days before ~~prior to the filing of~~ its annual
 251 statement, the insurer must request ~~approval~~ that the person be
 252 deemed qualified and that request must be approved or denied.
 253 The request must include the National Association of Insurance
 254 Commissioners' Biographical Form and a list of all loss reserve
 255 opinions issued in the last 3 years by this person.

256 ~~(d)(e)~~ "Single risk" means the insured amount of a ~~any~~
 257 title insurance policy, except that where two or more title
 258 insurance policies are issued simultaneously covering different
 259 estates in the same real property, "single risk" means the sum
 260 of the insured amounts of all such ~~title insurance~~ policies. A
 261 ~~Any~~ title insurance policy insuring a mortgage interest, a claim

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262 payment under which reduces the insured amount of a fee or
 263 leasehold title insurance policy, shall be excluded in computing
 264 the amount of a single risk to the extent that the insured
 265 amount of the mortgage title insurance policy does not exceed
 266 the insured amount of the fee or leasehold title insurance
 267 policy.

268 Section 3. Subsection (5) of section 624.407, Florida
 269 Statutes, is amended to read:

270 624.407 Surplus required; new insurers.-

271 (5) For the purposes of this section, liabilities do not
 272 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
 273 For purposes of computing minimum surplus as to policyholders
 274 pursuant to s. 625.305(1), liabilities include liabilities
 275 required under s. 625.041(5) ~~s. 625.041(4)~~.

276 Section 4. Subsection (2) of section 624.408, Florida
 277 Statutes, is amended to read:

278 624.408 Surplus required; current insurers.-

279 (2) For purposes of this section, liabilities do not
 280 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
 281 For purposes of computing minimum surplus as to policyholders
 282 pursuant to s. 625.305(1), liabilities include liabilities
 283 required under s. 625.041(5) ~~s. 625.041(4)~~.

284 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5

Meeting Date

Topic Title Ins Reserves

Bill Number 758 (if applicable)

Name Doug Mang

Amendment Barcode (if applicable)

Job Title

Address Street

Phone

City State Zip

E-mail

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

Representing First American Title Ins

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14

Meeting Date

Topic Title Ins. Reserves

Bill Number 758
(if applicable)

Name Nick Larossi

Amendment Barcode _____
(if applicable)

Job Title _____

Address 101 E. College Ave

Phone 222-9075

Street

St 502

E-mail nlarossi@capcityconsult.com

City

State

Zip

Speaking: For Against Information

Representing Old Republic Title

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5

Meeting Date

Topic TITLE INSURANCE

Bill Number 758
(if applicable)

Name MONTÉ STEVENS

Amendment Barcode _____
(if applicable)

Job Title DEPUTY Chief of Staff

Address 200 E. GAINES ST
Street

Phone 413-2871

TALLY FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing OIR

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)

3/5/14

Meeting Date

Topic STATUTORY PREMIUM RESERVES

Bill Number 758
(if applicable)

Name WILLIAM JEFFRY STEIN

Amendment Barcode _____
(if applicable)

Job Title VICE PRESIDENT, FLORIDA COUNSEL

Address 1800 MARSA ST

Phone 877 788 9800 x 240

Street

OVIEDO

FL

32765

City

State

Zip

E-mail jstein@alliantnational.com

Speaking: For Against Information

Representing ALLIANT NATIONAL TITLE INSURANCE COMPANY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

3/5 Meeting Date

Topic Title Insurance Reserves Bill Number SB 758 (if applicable)

Name Greg Black Amendment Barcode 201870 (if applicable)

Job Title Attorney - Metz, Husband & Daughton, PA

Address 215 S. Monroe Street, Suite 505 Phone 205-9000

Tallahassee FL 32301

E-mail greg.black@metzlaw.com

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

Representing Attorneys Title Fund Services - ATFS

Appearing at request of Chair: [] Yes [X] No Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 5, 2014
Meeting Date

Topic Title Insurance Reserves

Bill Number SR 758
(if applicable)

Name Michael Schefstad

Amendment Barcode _____
(if applicable)

Job Title Chief Financial Officer

Address 817 Glen Arden Way

Phone 407-592-7677

Artemonte Springs FL 32701
City State Zip

E-mail MSCHEFSTAD

Speaking: For Against Information

Representing Westcoast Land Title Insurance Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1006

INTRODUCER: Senator Hays

SUBJECT: Consumer Collection Practices

DATE: February 26, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Favorable
2.			CJ	
3.			AP	

I. Summary:

SB 1006 subjects “control persons” of consumer collection agencies (CCAs) to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of a criminal conviction. The bill enhances the authority of the Office of Financial Regulation (OFR) to register, investigate, examine, and bring enforcement actions against consumer collection agencies. The bill requires CCA registrants to report criminal convictions, changes from the initial application, and changes to the controlling persons of a CCA agency.

II. Present Situation:

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged off” corporate records.¹ Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which in turn may use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

¹ The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36,903 (June 12, 2000). A “charge-off” does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies.

State and Federal Regulation

State and federal debt collection laws provide consumer protections against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

Federal: The Fair Debt Collection Practices Act (FDCPA) is primarily enforced by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau.² The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past 3 years.³

Florida: At the state level, part VI of chapter 559, Florida Statutes, is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972.⁴ The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines “consumer collection agency” as “any debt collector⁵ or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act.”⁶ The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.⁷

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.⁸ Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and attorney’s fees and costs. If the court finds that the suit fails to raise a justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney’s fees incurred by the defendant.⁹

In terms of the FDCPA’s relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.¹⁰ The Act also provides that in the event

² 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs the FTC to coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

³ *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 1 (July 7, 2013) (statement of James Reilly Dolan, Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission).

⁴ Chapter 72-81, Laws of Florida.

⁵ Defined broadly at s. 559.55(6), F.S.

⁶ Section 559.55(7), F.S.

⁷ E-mail from the OFR on file with Banking & Insurance staff.

⁸ Section 559.55(6), F.S., and 15 U.S.C. 1692a(6).

⁹ Section 559.77 and 15 U.S.C. § 1692k.

¹⁰ 15 U.S.C. § 1692n.

of an inconsistency with the FDCPA, the provision which is more protective for the consumer or debtor shall prevail.¹¹

Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies that are not otherwise exempted by the Act. The Act exempts from registration, original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies authorized to do business in this state.¹²

According to the OFR, there are currently 1,344 registered consumer collection agencies in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. Of that number, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.¹³ Once registered, CCAs must renew their registration between October 1 and December 31 of every year.¹⁴

A consumer collection agency must meet minimal requirements to register with the OFR and is “entitled to be registered when registration information is complete on its face and the \$200 registration fee has been paid.”¹⁵ Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of consumer collection agencies. Currently, the OFR cannot deny registration to any applicant, even if its control persons have been convicted of felony financial crimes or the applicant has been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.¹⁶

Other regulatory programs administered by the OFR provide statutory and rule authority to deny licensure or registration based on applicants’ civil, criminal, and regulatory history, which provides important public protections in light of the nature of industries regulated by the OFR

¹¹ Section 559.552, F.S.

¹² Section 559.553(4), F.S. However, it is noted that these persons are only exempt from the registration requirement in this section, not the rest of the Act.

¹³ E-mail from the OFR on file with Banking & Insurance staff.

¹⁴ During the 2012 year, 1,283 consumer collection agencies renewed their registrations with the OFR. OFR bill analysis of SB 1006 on file with Banking & Insurance staff.

¹⁵ Section 559.553(3), F.S. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.

¹⁶ *Id.* See *Welch v. Florida West Coast, Inc.*, 816 So.2d 711 (Fla. 2nd DCA 2002) (holding that registration to engage in business as consumer collection agency is complete upon submission of registration form together with required fee). But see *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) (holding that failing to register as a consumer collection agency in Florida may serve as a basis for a claim under the FDCPA, which prohibits “claim[ing], attempt[ing], or threatening to enforce a debt when such person knows that the debt is not legitimate, or assert[ing] the existence of some other legal right when such person knows that the right does not exist.”)

and their access to consumers’ financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or “control or relevant persons” listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods during which an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

The following table illustrates disqualifying periods for these other licenses under the OFR’s jurisdiction. These disqualifying periods are explained in further detail through commission rule.¹⁷

Industry/License Type	Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude	All other felonies	Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude
Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.) ¹⁸	- Permanent bar ¹⁹ - 15 year bar for felonies involving acts of moral turpitude	7 year bar	5 year bar
Relevant persons of money services businesses (ch. 560, F.S.) ²⁰	15 year bar	7 year bar	5 year bar
Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.) ²¹	15 year bar	N/A	5 year bar

Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.²² Additionally, unregistered out-of-state consumer debt collectors can be subject to

¹⁷ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR’s Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR’s regulatory authority.

¹⁸ See Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).

¹⁹ The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch. 560 and ch. 517, F.S.).

²⁰ See Chapter 69V-560, Fla. Admin. Code (Money Transmitters).

²¹ See Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).

²² Section 559.785, F.S.

administrative fines of up to \$10,000 and enforcement actions by the Office of the Attorney General.²³

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over any person if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on registrants.²⁴

Enforcement

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry:

- Required registrants to maintain and produce certain books and records for at least 3 years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;²⁵
- Designated the OFR, not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute; required consumer complaints to be subject to penalty of perjury; required registrants to respond to the OFR's inquiries regarding consumer complaints;
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to \$10,000 per violation, suspensions or revocations on registrants, and cease-and-desist orders against any person.²⁶

The OFR is required to notify the appropriate state attorney or the Attorney General of any determination by the OFR that an unregistered CCA has violated the Act.²⁷

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.²⁸

III. Effect of Proposed Changes:

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S., of the Act:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new s. 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-year, 7-year, and 15-year disqualifying periods from registration based on applicants' criminal histories.

²³ Section 559.565, F.S.

²⁴ Sections 559.727 and 559.730, F.S.

²⁵ See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.

²⁶ Ch. 2010-127, L.O.F. and s. 559.5556, F.S. *See also* Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.

²⁷ Section 559.725(5), F.S.

²⁸ Sections 559.5556 and 559.725(4), F.S.

- “Control person” – these natural persons must be fingerprinted and will be subject to registration review.

The bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S., for applicants, including a completed application form, a nonrefundable application fee of \$200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and by the Federal Bureau of Investigation (FBI) for federal criminal background checks to enable the OFR to determine applicants’ fitness for registration. The costs of fingerprint processing are borne by the persons subject to the background check, while the OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is \$65 per control person, and the annual retention fee is \$6.²⁹ CCAs who become registered before the bill’s effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e. before the next renewal cycle).

The bill subjects registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons are convicted or plead no lo contendere to certain offenses, when changes occur in the information contained in the initial application (such as a new business address), and of changes in the registrant’s business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act, in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable \$200 renewal fee and fingerprint retention fee of \$6 at renewal time.

The bill creates s. 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of ch. 119 and the Act.³⁰

The bill provides additional grounds for administrative action in s. 559.730, F.S., such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to denial, suspension, revocation, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to \$1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such

²⁹ E-mail from the OFR on file with Banking & Insurance staff.

³⁰ Senate bill 1004 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

The bill provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires control persons to submit electronic/live-scan fingerprints to live-scan vendors (who in turn submit fees to the FDLE for the background checks). This will result in estimated total revenues of \$53,040. This estimate is based on the OFR's revenue projection estimate that the OFR will receive 408 initial consumer collection agency applications for 2014-2015,³¹ with an average of 2 control persons per applicant to be fingerprinted.

Although the fee charged by each live-scan vendor varies, the average fee (according to the OFR) is \$65.

- 408 applications x 2 control persons per applicant = 816 control persons expected for the first fiscal year and for each subsequent fiscal year.³²
- 816 control persons x \$65 per applicant = \$53,040 to cover the costs of fingerprinting each control person related to a CCA application (paid directly to FDLE).

The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

³¹ E-mail from the OFR on file with Banking & Insurance staff.

³² According to the OFR, the number of projected control persons remained the same for subsequent fiscal years due to the possibility that the number of licensees may either increase or decrease. E-mail from the OFR on file with Banking & Insurance staff.

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- \$16.50 for a federal background check, which is forwarded to the FBI.³³

For state revenue purposes, the estimated fiscal impact is:

- 816 control persons x \$24 (state background check) for the initial and each subsequent fiscal year = \$19,584.
- Due to the bill's October 1, 2014 effective date, only a small population in the 2014 renewal cycle would be subject to the new fingerprinting requirements of the bill. Accordingly, the initial fiscal year impact includes the fingerprinting of 2,566 control persons. It should be noted, however, that the bill would authorize full fingerprinting at renewal time for those registrants renewing by December 31, 2014 that were approved before October 1, 2014.³⁴
- Accordingly, the first fiscal year includes:
- 2,566 control persons fingerprinted at 12/31/2014, renewal x \$24 (state background check) = \$61,584.
- The total estimated revenue for the first fiscal year is \$81,168.

In addition, the bill requires that fingerprints be retained as part of renewing a CCA registration. The cost to retain fingerprints at the state level is \$6 per control person. Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of 2 control persons per CCA, there would be 2,566 control persons subject to the \$6 annual retention fee that OFR would collect during registration renewal. Thus, the estimated total revenues for retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses to the FDLE.³⁵

- 1,283 CCA registrant renewals x 2 control persons per registrant = 2,566 control persons.
- 2,566 control persons x \$6 per person = \$15,396 to cover the costs of retained fingerprint fees to be passed onto FDLE (for the initial and each subsequent fiscal year).

B. Private Sector Impact:

The bill requires that control persons of non-exempt collection agencies be fingerprinted and screened. Each control person will incur an average live-scan cost of \$65.³⁶ The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and

³³ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁴ OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁵ *Id.*

³⁶ According to the OFR, the average cost to process electronic fingerprints through a live-scan vendor is \$65, which is inclusive of the \$40.50 charge by FDLE and a cost added by the vendor to cover their services. E-mail from the OFR on file with Banking & Insurance staff.

- \$16.50 for a federal background check, which is forwarded to the FBI.³⁷

Once registered, control persons of CCAs must submit an annual fee of \$6 for the cost of retaining fingerprints with the FDLE.³⁸

First Fiscal Year:

408 applications x 2 control persons = 816 control persons

816 x \$65 = \$53,040

2,566 control persons fingerprinted at December 31, 2014, renewal

2,566 x \$65 = \$166,790

Total for Year 1 = \$219,830

Subsequent Fiscal Years:

408 applications x 2 control persons = 816 control persons

816 x \$65 = \$53,040

Retained print costs for 2,566 control persons at each renewal

2,566 x \$6 = \$15,396

Total Year 2 = \$68,436

C. Government Sector Impact:

The estimated total revenues for fingerprint retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses.

The FDLE has indicated that while this bill alone does not necessitate additional FTE or other resources, the bill in combination with additional background screening bills could create a need for additional staffing or other resources.³⁹

The OFR indicated that the bill may result in a slight increase in investigations and examinations under the Act, but it should be able to absorb this caseload increase with existing resources.⁴⁰

The bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements.

VI. Technical Deficiencies:

None.

³⁷ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁸ OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

³⁹ *Id.*

⁴⁰ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.55, 559.553, 559.555, 559.565, and 559.730.

This bill creates the following sections of the Florida Statutes: 559.554, 559.5541, and 559.5551.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Hays

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1 A bill to be entitled
 2 An act relating to consumer collection practices;
 3 amending s. 559.55, F.S.; defining terms; amending s.
 4 559.553, F.S.; removing provisions relating to the
 5 revocation or suspension of a professional license
 6 which allow the Office of Financial Regulation to
 7 reject an applicant for registration; conforming a
 8 cross-reference to changes made by the act; creating
 9 s. 559.554, F.S.; providing for the powers and duties
 10 of the Financial Services Commission and the Office of
 11 Financial Regulation; creating s. 559.5541, F.S.;
 12 authorizing the office to conduct examinations and
 13 investigations; amending s. 559.555, F.S.; revising
 14 requirements for registration as a consumer collection
 15 agency; specifying a registration fee; creating s.
 16 559.5551, F.S.; requiring registrants to report,
 17 within a specified time period, a conviction of, or
 18 plea of nolo contendere to, a crime or an
 19 administrative enforcement action; requiring
 20 registrants to report, within a specified time period,
 21 a change in a control person or the form of the
 22 organization, or any other change in the information
 23 supplied in the initial application; amending s.
 24 559.565, F.S.; conforming a cross-reference to changes
 25 made by the act; amending s. 559.730, F.S.; revising
 26 the administrative remedies and penalties available to
 27 the office; requiring the commission to adopt
 28 guidelines to impose administrative penalties;
 29 providing an effective date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 559.55, Florida Statutes, is reordered
 34 and amended to read:
 35 559.55 Definitions.—The following terms shall, unless the
 36 context otherwise indicates, have the following meanings for the
 37 purpose of this part:
 38 (1) "Commission" means the Financial Services Commission.
 39 (6)(1) "Debt" or "consumer debt" means any obligation or
 40 alleged obligation of a consumer to pay money arising out of a
 41 transaction in which the money, property, insurance, or services
 42 that which are the subject of the transaction are primarily for
 43 personal, family, or household purposes, whether or not such
 44 obligation has been reduced to judgment.
 45 (8)(2) "Debtor" or "consumer" means any natural person
 46 obligated or allegedly obligated to pay any debt.
 47 (4) "Control person" means an individual, partnership,
 48 corporation, trust, or organization that possesses the power,
 49 directly or indirectly, to direct the management or policies of
 50 a company, whether through ownership of securities, by contract,
 51 or otherwise. The term includes, but is not limited to:
 52 (a) A company's executive officers, including the
 53 president, chief executive officer, chief financial officer,
 54 chief operations officer, chief legal officer, chief compliance
 55 officer, director, and other individuals having similar status
 56 or functions.
 57 (b) For a corporation, a shareholder who, directly or
 58 indirectly, owns 10 percent or more or that has the power to

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59 vote 10 percent or more, of a class of voting securities unless
60 the applicant is a publicly traded company.

61 (c) For a partnership, all general partners and limited or
62 special partners who have contributed 10 percent or more or that
63 have the right to receive, upon dissolution, 10 percent or more
64 of the partnership's capital.

65 (d) For a trust, each trustee.

66 (e) For a limited liability company, all elected managers
67 and those members who have contributed 10 percent or more or
68 that have the right to receive, upon dissolution, 10 percent or
69 more of the partnership's capital.

70 (5)(3) "Creditor" means a any person who offers or extends
71 credit creating a debt or to whom a debt is owed. The term, ~~but~~
72 does not include a any person to the extent that they receive an
73 assignment or transfer of a debt in default solely for the
74 purpose of facilitating collection of such debt for another.

75 (10)(4) "Office" means the Office of Financial Regulation
76 of the ~~Financial Services~~ commission.

77 (2)(5) "Communication" means the conveying of information
78 regarding a debt, directly or indirectly, to a any person
79 through any medium.

80 (7)(6) "Debt collector" means a any person who uses an any
81 instrumentality of commerce within this state, whether initiated
82 from within or outside this state, in any business the principal
83 purpose of which is the collection of debts, or who regularly
84 collects or attempts to collect, directly or indirectly, debts
85 owed or due or asserted to be owed or due another. The term
86 "debt collector" includes a any creditor who, in the process of
87 collecting her or his own debts, uses a any name other than her

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88 or his own which would indicate that a third person is
89 collecting or attempting to collect such debts. The term does
90 not include:

91 (a) An ~~Any~~ officer or employee of a creditor while, in the
92 name of the creditor, collecting debts for such creditor;

93 (b) A ~~Any~~ person while acting as a debt collector for
94 another person, both of whom are related by common ownership or
95 affiliated by corporate control, if the person acting as a debt
96 collector for persons to whom it is so related or affiliated and
97 if the principal business of such persons is not the collection
98 of debts;

99 (c) An ~~Any~~ officer or employee of any federal, state, or
100 local governmental body to the extent that collecting or
101 attempting to collect any debt is in the performance of her or
102 his official duties;

103 (d) A ~~Any~~ person while serving or attempting to serve legal
104 process on another ~~any other~~ person in connection with the
105 judicial enforcement of a any debt;

106 (e) A ~~Any~~ not-for-profit organization which, at the request
107 of consumers, performs bona fide consumer credit counseling and
108 assists consumers in the liquidation of their debts by receiving
109 payments from such consumers and distributing such amounts to
110 creditors; or

111 (f) A ~~Any~~ person collecting or attempting to collect any
112 debt owed or due or asserted to be owed or due another to the
113 extent that such activity is incidental to a bona fide fiduciary
114 obligation or a bona fide escrow arrangement; concerns a debt
115 which was originated by such person; concerns a debt which was
116 not in default at the time it was obtained by such person; or

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117 concerns a debt obtained by such person as a secured party in a
 118 commercial credit transaction involving the creditor.

119 ~~(3)(7)~~ "Consumer collection agency" means a any debt
 120 collector or business entity engaged in the business of
 121 soliciting consumer debts for collection or of collecting
 122 consumer debts, which debt collector or business is not
 123 expressly exempted as specified in s. 559.553(3) ~~set forth in s.~~
 124 ~~559.553(4)~~.

125 ~~(11)(8)~~ "Out-of-state consumer debt collector" means a any
 126 person whose business activities in this state involve both
 127 collecting or attempting to collect consumer debt from debtors
 128 located in this state by means of interstate communication
 129 originating from outside this state and soliciting consumer debt
 130 accounts for collection from creditors who have a business
 131 presence in this state. For purposes of this subsection, a
 132 creditor has a business presence in this state if either the
 133 creditor or an affiliate or subsidiary of the creditor has an
 134 office in this state.

135 (9) "Federal Fair Debt Collection Practices Act" or
 136 "Federal Act" means the federal legislation regulating fair debt
 137 collection practices, as specified ~~set forth~~ in Pub. L. No. 95-
 138 109, as amended and published in 15 U.S.C. ss. 1692 et seq.

139 Section 2. Section 559.553, Florida Statutes, is amended to
 140 read:

141 559.553 Registration of consumer collection agencies
 142 required; exemptions.-

143 (1) A ~~After January 1, 1994, no person may not shall~~ engage
 144 in business in this state as a consumer collection agency or
 145 continue to do business in this state as a consumer collection

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146 agency without first registering in accordance with this part,
 147 and thereafter maintaining a valid registration.

148 (2) Each consumer collection agency doing business in this
 149 state shall register with the office and renew such registration
 150 annually as set forth in s. 559.555.

151 ~~(3) A prospective registrant shall be entitled to be~~
 152 ~~registered when registration information is complete on its face~~
 153 ~~and the applicable registration fee has been paid; however, the~~
 154 ~~office may reject a registration submitted by a prospective~~
 155 ~~registrant if the registrant or any principal of the registrant~~
 156 ~~previously has held any professional license or state~~
 157 ~~registration which was the subject of any suspension or~~
 158 ~~revocation which has not been explained by the prospective~~
 159 ~~registrant to the satisfaction of the office either in the~~
 160 ~~registration information submitted initially or upon the~~
 161 ~~subsequent written request of the office. In the event that an~~
 162 ~~attempted registration is rejected by the office the prospective~~
 163 ~~registrant shall be informed of the basis for rejection.~~

164 ~~(3)(4)~~ This section does shall not apply to:

165 (a) An Any original creditor.

166 (b) A Any member of The Florida Bar.

167 (c) A Any financial institution authorized to do business
 168 in this state and any wholly owned subsidiary and affiliate
 169 thereof.

170 (d) A Any licensed real estate broker.

171 (e) An Any insurance company authorized to do business in
 172 this state.

173 (f) A Any consumer finance company and any wholly owned
 174 subsidiary and affiliate thereof.

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- 175 (g) A ~~Any~~ person licensed pursuant to chapter 520.
- 176 (h) An ~~Any~~ out-of-state consumer debt collector who does
177 not solicit consumer debt accounts for collection from credit
178 grantors who have a business presence in this state.
- 179 (i) An ~~Any~~ FDIC-insured institution or subsidiary or
180 affiliate thereof.
- 181 ~~(4)-(5)~~ An ~~Any~~ out-of-state consumer debt collector as
182 defined in s. 559.55(11) ~~s. 559.55(8)~~ who is not exempt from
183 registration by application of subsection (3) ~~(4)~~ and who fails
184 to register in accordance with this part shall be subject to an
185 enforcement action by the state as specified in s. 559.565.
- 186 Section 3. Section 559.554, Florida Statutes, is created to
187 read:
- 188 559.554 Powers and duties of the commission and office.-
- 189 (1) The office is responsible for the administration and
190 enforcement of this part.
- 191 (2) The commission may adopt rules to administer this part,
192 including rules:
- 193 (a) Requiring electronic submission of forms, documents,
194 and fees required by this part.
- 195 (b) Establishing time periods during which a consumer
196 collection agency is barred from registration due to prior
197 criminal convictions of, or guilty or nolo contendere pleas by,
198 an applicant's control persons, regardless of adjudication.
- 199 1. The rules must provide:
- 200 a. A 15-year disqualifying period for felonies involving
201 fraud, dishonesty, breach of trust, money laundering, or other
202 acts of moral turpitude.
- 203 b. A 7-year disqualifying period for felonies not specified

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- 204 in sub-subparagraph a.
- 205 c. A 5-year disqualifying period for misdemeanors involving
206 fraud, dishonesty, or other acts of moral turpitude.
- 207 2. The rules must provide for an additional waiting period
208 due to dates of imprisonment or community supervision, the
209 commitment of multiple crimes, and other factors reasonably
210 related to the applicant's criminal history.
- 211 3. The rules must provide for mitigating factors for crimes
212 identified in sub-subparagraphs 1.a.-c.
- 213 4. An applicant is not eligible for registration until
214 expiration of the disqualifying period set by rule.
- 215 5. Section 112.011 does not apply to eligibility for
216 registration under this part.
- 217 (3) All fees, charges, and fines collected pursuant to this
218 part shall be deposited into the Regulatory Trust Fund of the
219 office.
- 220 Section 4. Section 559.5541, Florida Statutes, is created
221 to read:
- 222 559.5541 Examinations and investigations.-
- 223 (1) Notwithstanding s. 559.725(4), the office may, without
224 advance notice, conduct examinations and investigations, within
225 or outside this state, to determine whether a person has
226 violated this part or related rules. For purposes of this
227 section, the office may examine the books, accounts, records,
228 and other documents or matters of any person subject to this
229 part. The office may compel the production of all relevant
230 books, records, and other documents and materials relative to an
231 examination or investigation. Examinations may not be made more
232 often than once during a 48-month period unless the office has

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233 reason to believe a person has violated or will violate this
 234 part or related rules.

235 (2) In order to reduce the burden on persons subject to
 236 this part, the office may conduct a joint or concurrent
 237 examination with a state or federal regulatory agency and may
 238 furnish a copy of all examinations to an appropriate regulator
 239 if the regulator agrees to abide by the confidentiality
 240 provisions in chapter 119 and this part. The office may also
 241 accept an examination from any appropriate regulator.

242 Section 5. Section 559.555, Florida Statutes, is amended to
 243 read:

244 559.555 Registration of consumer collection agencies;
 245 procedure.-

246 (1) A Any person who acts ~~required to register~~ as a
 247 consumer collection agency must be registered in accordance with
 248 this section. ~~shall furnish to the office the registration fee~~
 249 and information as follows:

250 (2) In order to apply for a consumer collection agency
 251 registration, an applicant must:

252 (a) Submit a completed application form as prescribed by
 253 rule of the commission.

254 (b) Submit a nonrefundable application fee of \$200.
 255 Application fees may not be prorated for partial years of
 256 registration.

257 (c) Submit fingerprints for each of the applicant's control
 258 persons in accordance with rules adopted by the commission.

259 1. The fingerprints may be submitted through a third-party
 260 vendor authorized by the Department of Law Enforcement to
 261 provide live-scan fingerprinting.

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262 2. A state criminal history background check must be
 263 conducted through the Department of Law Enforcement, and a
 264 federal criminal history background check must be conducted
 265 through the Federal Bureau of Investigation.

266 3. All fingerprints submitted to the Department of Law
 267 Enforcement must be submitted electronically and entered into
 268 the statewide automated biometric identification system
 269 established in s. 943.05(2)(b) and available for use in
 270 accordance with s. 943.05(2)(g) and (h). The office shall pay an
 271 annual fee to the Department of Law Enforcement to participate
 272 in the system and inform the Department of Law Enforcement of
 273 any person whose fingerprints are no longer required to be
 274 retained.

275 4. The costs of fingerprint processing, including the cost
 276 of retaining the fingerprints, shall be borne by the person
 277 subject to the background check.

278 5. The office is responsible for reviewing the results of
 279 the state and federal criminal history background checks and
 280 determining whether the applicant meets registration
 281 requirements.

282 (3) The office shall issue a consumer collection agency
 283 registration to each person who is not otherwise ineligible and
 284 who meets the requirements of this section. However, it is a
 285 ground for denial of registration if the applicant or one of the
 286 applicant's control persons has committed any violation
 287 specified in this part, or is the subject of a pending felony
 288 criminal prosecution or a prosecution or an administrative
 289 enforcement action, in any jurisdiction, which involves fraud,
 290 dishonesty, breach of trust, money laundering, or any other act

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291 of moral turpitude.

292 (4) A registration issued under this part is not
 293 transferable or assignable.

294 (5) A consumer collection agency shall report, on a form
 295 prescribed by rule of the commission, any change in the
 296 information contained in an initial application form, or an
 297 amendment thereto, within 30 days after the change is effective.

298 ~~(1) The registrant shall pay to the office a registration~~
 299 ~~fee in the amount of \$200. All amounts collected shall be~~
 300 ~~deposited by the office to the credit of the Regulatory Trust~~
 301 ~~Fund of the office.~~

302 ~~(2) Each registrant shall provide to the office the~~
 303 ~~business name or trade name, the current mailing address, the~~
 304 ~~current business location which constitutes its principal place~~
 305 ~~of business, and the full name of each individual who is a~~
 306 ~~principal of the registrant. "Principal of a registrant" means~~
 307 ~~the registrant's owners if a partnership or sole proprietorship,~~
 308 ~~corporate officers, corporate directors other than directors of~~
 309 ~~a not-for-profit corporation organized pursuant to chapter 617~~
 310 ~~and Florida resident agent if a corporate registrant. The~~
 311 ~~registration information shall include a statement clearly~~
 312 ~~identifying and explaining any occasion on which any~~
 313 ~~professional license or state registration held by the~~
 314 ~~registrant, by any principal of the registrant, or by any~~
 315 ~~business entity in which any principal of the registrant was the~~
 316 ~~owner of 10 percent or more of such business, was the subject of~~
 317 ~~any suspension or revocation.~~

318 ~~(6)(3)~~ Renewal of registration shall be made between
 319 October 1 and December 31 of each year. There shall be no

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320 proration of the fee for any registration. In order to renew a
 321 consumer collection agency registration, a registrant must
 322 submit a nonrefundable renewal fee equal to the registration fee
 323 and a nonrefundable fee to cover the costs of further
 324 fingerprint processing and retention as set forth by commission
 325 rule.

326 (7) A consumer collection agency registrant whose initial
 327 registration is approved and issued by the office pursuant to
 328 this section before October 1, 2014, who seeks renewal of the
 329 registration must submit fingerprints for each control person
 330 for live-scan processing pursuant to paragraph (2)(c). Such
 331 fingerprints must be submitted before renewing a registration
 332 that is scheduled to expire December 31, 2014.

333 Section 6. Section 559.5551, Florida Statutes, is created
 334 to read:

335 559.5551 Requirements of registrants.—A registrant under
 336 this part shall report to the office in a manner prescribed by
 337 rule of the commission:

338 (1) A conviction of, or plea of nolo contendere to,
 339 regardless of adjudication, a crime or administrative violation
 340 that involves fraud, dishonesty, breach of trust, money
 341 laundering, or any other act of moral turpitude, in any
 342 jurisdiction, by the registrant or any control person within 30
 343 days after the date of conviction, entry of a plea of nolo
 344 contendere, or final administrative action.

345 (2) A conviction of, or plea of nolo contendere to,
 346 regardless of adjudication, a felony committed by the registrant
 347 or any control person within 30 days after the date of
 348 conviction or the date the plea of nolo contendere is entered.

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349 (3) A change to the information contained in an initial
 350 application form or an amendment to the application within 30
 351 days after the change is effective.

352 (4) An addition or subtraction of a control person or a
 353 change in the form of business organization. A control person
 354 added by a registrant is subject to this part and must submit
 355 fingerprints in accordance with s. 559.555 and the rules of the
 356 commission. The office may bring an administrative action in
 357 accordance with s. 559.730 to enforce this part if the added
 358 control person fails to meet registration requirements or comply
 359 with any other provision of this part.

360 Section 7. Section 559.565, Florida Statutes, is amended to
 361 read:

362 559.565 Enforcement action against out-of-state consumer
 363 debt collector.— The remedies of this section are cumulative to
 364 other sanctions and enforcement provisions of this part for any
 365 violation by an out-of-state consumer debt collector, as defined
 366 in s. 559.55(11) s. ~~559.55(8)~~.

367 (1) An out-of-state consumer debt collector who collects or
 368 attempts to collect consumer debts in this state without first
 369 registering in accordance with this part is subject to an
 370 administrative fine of up to \$10,000 together with reasonable
 371 attorney fees and court costs in any successful action by the
 372 state to collect such fines.

373 (2) A ~~Any~~ person, whether or not exempt from registration
 374 under this part, who violates s. 559.72 is subject to sanctions
 375 the same as any other consumer debt collector, including
 376 imposition of an administrative fine. The registration of a duly
 377 registered out-of-state consumer debt collector is subject to

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378 revocation or suspension in the same manner as the registration
 379 of any other registrant under this part.

380 (3) In order to effectuate this section and enforce the
 381 requirements of this part as it relates to out-of-state consumer
 382 debt collectors, the Attorney General is expressly authorized to
 383 initiate such action on behalf of the state as he or she deems
 384 appropriate in any state or federal court of competent
 385 jurisdiction.

386 Section 8. Section 559.730, Florida Statutes, is amended to
 387 read:

388 559.730 Grounds for disciplinary action; administrative
 389 remedies.—

390 (1) Each of the following acts constitutes a ground for
 391 which the disciplinary actions specified in subsection (2) may
 392 be taken against a person registered or required to be
 393 registered under this part:

394 (a) Failure to disburse funds in accordance with
 395 agreements.

396 (b) Fraud, misrepresentation, deceit, negligence, or
 397 incompetence in a collection transaction.

398 (c) Commission of fraud, misrepresentation, concealment, or
 399 dishonest dealing by trick, scheme, or device; culpable
 400 negligence; breach of trust in a business transaction in any
 401 state, nation, or territory; or aiding, assisting, or conspiring
 402 with another person engaged in such misconduct and in
 403 furtherance thereof.

404 (d) Being convicted of, or entering a plea of guilty or
 405 nolo contendere to, regardless of adjudication, a felony or
 406 crime involving fraud, dishonesty, breach of trust, money

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407 laundering, or act of moral turpitude.

408 (e) Having a final judgment entered against the registrant
 409 in a civil action upon grounds of fraud, embezzlement,
 410 misrepresentation, or deceit.

411 (f) Being the subject of a decision, finding, injunction,
 412 suspension, prohibition, revocation, denial, judgment, or
 413 administrative order by a court of competent jurisdiction or an
 414 administrative law judge, or by a state or federal agency,
 415 involving a violation of a federal or state law relating to debt
 416 collection or a rule or regulation adopted under such law.

417 (g) Having a license or registration, or the equivalent, to
 418 practice a profession or occupation denied, suspended, or
 419 revoked, or otherwise acted against, including the denial of a
 420 registration or license by a registration or licensing authority
 421 of this state or another state, territory, or country.

422 (h) Acting as a consumer collection agency without a
 423 current registration issued under this part.

424 (i) A material misstatement or omission of fact on an
 425 initial or amended registration application.

426 (j) Payment to the office for a registration or permit with
 427 a check or electronic transmission of funds, which is dishonored
 428 by the applicant's or registrant's financial institution.

429 (k) Failure to comply with, or a violation of, any
 430 provision of this part, or any rule or order made or issued
 431 pursuant to this part.

432 (l) Failure to maintain, preserve, and keep available for
 433 examination all books, accounts, or other documents required by
 434 this part and the rules of the commission.

435 (m) Refusal to permit an investigation or examination of

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436 books and records, or refusal to comply with an office subpoena
 437 or subpoena duces tecum.

438 (n) Failure to timely pay a fee, charge, or fine imposed or
 439 assessed pursuant to this part and the rules of the commission.

440 (2) If the office finds a person in violation of any act
 441 specified in this section, it may enter an order imposing one or
 442 more of the following penalties:

443 (a) Issuance of a reprimand.

444 (b) Suspension of a registration, subject to reinstatement
 445 upon satisfying all reasonable conditions imposed by the office.

446 (c) Revocation of a registration.

447 (d) Denial of a registration.

448 (e) Imposition of a fine of up to \$10,000 for each count or
 449 separate offense.

450 (f) An administrative fine of up to \$1,000 per day for each
 451 day that a person engages as a consumer collection agency
 452 without a valid registration issued under this part.

453 ~~(1) The office may impose an administrative fine against,~~
 454 ~~or revoke or suspend the registration of, a registrant under~~
 455 ~~this part who has committed a violation of s. 559.72. Final~~
 456 ~~action to fine, suspend, or revoke the registration of a~~
 457 ~~registrant is subject to review in accordance with chapter 120.~~

458 (3)(2) The office may impose suspension rather than
 459 revocation of a registration if circumstances warrant that one
 460 or the other should be imposed and the registrant demonstrates
 461 that the registrant has taken affirmative steps that can be
 462 expected to effectively eliminate the violations and that the
 463 registrant's registration has never been previously suspended.

464 (4) A consumer collection agency is subject to the

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465 disciplinary actions specified in subsection (2) for a violation
 466 of subsection (1) by a control person of the consumer collection
 467 agency.

468 (5) Pursuant to s. 120.60(6), the office may summarily
 469 suspend the registration of a consumer collection agency if the
 470 office has reason to believe that a registrant poses an
 471 immediate, serious danger to the public's health, safety, or
 472 welfare. The arrest of the registrant, or the consumer
 473 collection agency's control person, for any felony or any crime
 474 involving fraud, dishonesty, breach of trust, money laundering,
 475 or any other act of moral turpitude is deemed sufficient to
 476 constitute an immediate danger to the public's health, safety,
 477 or welfare. Any proceeding for the summary suspension of a
 478 registration must be conducted by the commissioner of the
 479 office, or designee, who shall issue the final summary order.

480 (6) The office may deny a request to terminate a
 481 registration or withdraw a registration application if the
 482 office believes that an act that would be a ground for
 483 registration denial, suspension, restriction, or revocation
 484 under this part has been committed.

485 ~~(7)(3) In addition to, or in lieu of suspension or~~
 486 ~~revocation of a registration, the office may impose an~~
 487 ~~administrative fine of up to \$10,000 per violation against a~~
 488 ~~registrant for violations of s. 559.72. The Financial Services~~
 489 ~~commission shall adopt rules establishing guidelines for~~
 490 ~~imposing administrative penalties.~~

491 ~~(8)(4)~~ This part does not preclude any person from pursuing
 492 remedies available under the Federal Fair Debt Collection
 493 Practices Act for any violation of such act.

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494 Section 9. This act shall take effect October 1, 2014.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/2014

Meeting Date

Topic _____

Bill Number SB 1006
(if applicable)

Name Jo Morris

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 200 E. Gaines St.
Street

Phone _____

Tallahassee FL 32309
City State Zip

E-mail _____

Speaking: For Against Information

Representing Office of Financial Regulation

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)

2/5/14
Meeting Date

Topic Bill

Bill Number 1006
(if applicable)

Name Frank Meiners

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1633

Phone 591-0277

Tall FL 32502
City State Zip

E-mail frank@chqmail.com

Speaking: For Against Information

Representing FL Collectors Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1002

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 6, 2014 **REVISED:**

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	FAV/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1002 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR). The bill provides that information held by the OFR pursuant to an investigation or examination under the Consumer Collection Practices Act is confidential and exempt from disclosure. Such information may, however, be disclosed to law enforcement or other administrative agencies. This bill provides that such information is no longer confidential and exempt once the investigation or examination is complete or ceases to be active unless disclosure would jeopardize another active investigation or examination, reveal the personal identifying information of a consumer, reveal the identity of a confidential source, reveal investigative techniques or procedures, or reveal trade secrets.

This bill provides that the public records exemption is repealed on October 2, 2019, unless reenacted by the Legislature.

This bill contains a statement of public necessity required by article I, s. 24, Fla. Const.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

II. Present Situation:

Article I, s. 24(a) of the Florida Constitution provides:

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.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. 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 copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

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.¹

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.² All such materials are open for public inspection unless made exempt.³

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.⁴ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁵

¹ Section 119.011(12), F.S.

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

³ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁴ Florida Attorney General Opinion 85-62.

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

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁶ The exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption may not contain other substantive provisions.⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act⁹ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, 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.¹⁰

Regulation of Consumer Collection Agencies and Debt Collectors

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the OFR. Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

SB 1006 provides the OFR with greater power to examine and investigate consumer collection agencies. Under current law, the OFR has no authority to withhold from disclosure any information relating to consumer complaints, investigations, examinations, and registrations except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).¹¹

SB 1006 also authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

III. Effect of Proposed Changes:

This bill provides that information held by the OFR pursuant to an investigation or examination of a violation the Florida Consumer Collection Practices Act is confidential and exempt from s. 119.07(1), F.S. and article I, section 24 of the Florida Constitution. This bill provides that information made confidential and exempt may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

⁶ See Fla. Const., art. I, s. 24(c).

⁷ See Fla. Const., art. I, s. 24(c).

⁸ See Fla. Const., art. I, s. 24(c).

⁹ See section 119.15, F.S.

¹⁰ See section 119.15(6)(b), F.S.

¹¹ Section 119.0712(3), F.S., contains an agency-specific exemption for the OFR, in which any information that the OFR receives from other state or federal regulatory, administrative, or criminal justice agencies that is confidential or exempt in accordance with the laws of the other agency.

This bill provides that such information is no longer confidential and exempt once the investigation or examination is completed or ceases to be active¹² unless disclosure of the information would:

- Jeopardize the integrity of another active investigation or examination.
- Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. The complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active but the complainant's personal financial and health information remains confidential and exempt.¹³
- Reveal the identity of a confidential source.
- Reveal investigative or examination techniques or procedures.
- Reveal trade secrets, as defined in s. 688.002, F.S.

This bill provides that it is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill requires a two-thirds vote.

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

¹² This bill provides that an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the OFR has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval.

¹³ This bill defines "personal financial and health information" as information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt, information relating to a consumer's financial transactions of any kind, information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth, a consumer's personal health condition, disease, or a history of a consumer's personal medical diagnosis or treatment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Line 141 does not identify the linked bill. SB 1006 is linked to this bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 559.5558 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on March 5, 2014:

The committee adopted an amendment to show that this bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 141
and insert:
SB 1006 or substantially similar legislation takes effect, if
such

By Senator Hays

11-00403-14

20141002__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 559.5558, F.S.; providing a public records exemption
 4 for information held by the Office of Financial
 5 Regulation pursuant to an investigation or examination
 6 of consumer collection agencies; providing for future
 7 repeal and legislative review of the exemption under
 8 the Open Government Sunset Review Act; providing a
 9 statement of public necessity; providing a contingent
 10 effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Section 559.5558, Florida Statutes, is created
 15 to read:
 16 559.5558 Public records exemption.—
 17 (1) DEFINITIONS.—As used in this section, the term
 18 “personal financial and health information” means:
 19 (a) Information relating to the existence, nature, source,
 20 or amount of a consumer’s personal income, expenses, and debt;
 21 (b) Information relating to a consumer’s financial
 22 transactions of any kind;
 23 (c) Information relating to the existence, identification,
 24 nature, or value of a consumer’s assets, liabilities, or net
 25 worth;
 26 (d) A consumer’s personal health condition, disease, or
 27 injury; or
 28 (e) A history of a consumer’s personal medical diagnosis or
 29 treatment.

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

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30 (2) INVESTIGATIONS AND EXAMINATIONS.—
 31 (a) Except as otherwise provided in this section,
 32 information held by the office pursuant to an investigation or
 33 examination of a violation of this part is confidential and
 34 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 35 Constitution. However, information made confidential and exempt
 36 pursuant to this section may be disclosed by the office to a law
 37 enforcement agency or another administrative agency in the
 38 performance of its official duties and responsibilities.
 39 (b) Such information is no longer confidential and exempt
 40 once the investigation or examination is completed or ceases to
 41 be active unless disclosure of the information would:
 42 1. Jeopardize the integrity of another active investigation
 43 or examination;
 44 2. Reveal the personal identifying information of a
 45 consumer, unless the consumer is also the complainant. In the
 46 case of a complainant, the complainant’s personal identifying
 47 information is subject to disclosure after the investigation or
 48 examination is completed or ceases to be active; however, the
 49 complainant’s personal financial and health information remains
 50 confidential and exempt;
 51 3. Reveal the identity of a confidential source;
 52 4. Reveal investigative or examination techniques or
 53 procedures; or
 54 5. Reveal trade secrets, as defined in s. 688.002.
 55 (c) For purposes of this section, an investigation or
 56 examination shall be considered active if the investigation or
 57 examination is proceeding with reasonable dispatch and the
 58 office has a reasonable good faith belief that the investigation

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59 or examination may lead to the filing of an administrative,
 60 civil, or criminal proceeding or the denial or conditional grant
 61 of an application for registration or other approval required
 62 under this part.

63 (3) REVIEW AND REPEAL.—This section is subject to the Open
 64 Government Sunset Review Act in accordance with s. 119.15 and
 65 shall stand repealed on October 2, 2019, unless reviewed and
 66 saved from repeal through reenactment by the Legislature.

67 Section 2. The Legislature finds that it is a public
 68 necessity that information held by the Office of Financial
 69 Regulation pursuant to an investigation or examination conducted
 70 under part VI of chapter 559, Florida Statutes, be confidential
 71 and exempt from public records requirements for the following
 72 reasons:

73 (1) An investigation or examination conducted by the Office
 74 of Financial Regulation may lead to the filing of an
 75 administrative, civil, or criminal proceeding or to the denial
 76 or conditional granting of a registration. The premature release
 77 of such information could frustrate or thwart the investigation
 78 or examination and impair the ability of the office to
 79 effectively and efficiently administer part VI of chapter 559,
 80 Florida Statutes.

81 (2) Information held by the Office of Financial Regulation
 82 which is provided to a law enforcement agency or another
 83 administrative agency for further investigation or examination
 84 needs to remain confidential and exempt until the investigation
 85 or examination is completed or ceases to be active. Release of
 86 this information before the completion of that investigation or
 87 examination would jeopardize the integrity of the investigation

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88 and impair the ability of other agencies to carry out their
 89 statutory duties.

90 (3) Investigations and examinations of consumer collection
 91 agencies frequently involve the gathering of sensitive personal
 92 information, including financial and health information
 93 concerning complainants and consumers. The office may not
 94 otherwise have access to this sensitive personal information but
 95 for the investigation or examination. Because of the sensitive
 96 personal nature of the information gathered, if the individuals
 97 who are the subjects of such information are identifiable, the
 98 disclosure of this information to the public could cause
 99 unwarranted damage to the good names or reputations of the
 100 individuals, especially if information associated with the
 101 individuals is inaccurate. Furthermore, if the individuals who
 102 are the subjects of such information are identifiable, public
 103 access to such information could jeopardize the financial safety
 104 of such individuals by placing them at risk of becoming the
 105 subjects of identity theft. The Legislature further finds that
 106 it is a public necessity that health information held by the
 107 office be made confidential and exempt because matters of
 108 personal health are traditionally private and confidential
 109 concerns between the patient and the health care provider. The
 110 private and confidential nature of personal health matters
 111 pervades both the public and private health care sectors.
 112 Moreover, public disclosure of health information could have a
 113 negative effect upon a person's business and personal
 114 relationships and could also have detrimental financial
 115 consequences.

116 (4) Releasing information identifying a confidential source

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117 could jeopardize both the integrity of a current and future
118 investigation or examination as well as the safety of the
119 confidential source.

120 (5) Revealing investigative or examination techniques and
121 procedures could allow a person to hide or conceal violations of
122 law that otherwise would have been discovered during an
123 investigation or examination. This exemption is necessary for
124 the office, as well as law enforcement and other administrative
125 agencies, in order for such agencies to effectively and
126 efficiently carry out their statutory duties, which would be
127 significantly impaired without this exemption.

128 (6) A trade secret derives independent economic value,
129 actual or potential, from not being generally known to, and not
130 readily ascertainable by, other persons who can obtain economic
131 value from its disclosure or use. Without an exemption for a
132 trade secret held by the office, that trade secret becomes a
133 public record when received and must be divulged upon request.
134 Divulging a trade secret under the public records law would
135 destroy the value of that property, causing a financial loss to
136 the person or entity submitting the trade secret. Release of
137 that information would give business competitors an unfair
138 advantage and weaken the position of the person or entity
139 supplying the trade secret in the marketplace.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/2014

Meeting Date

Topic _____

Bill Number SB 1002
(if applicable)

Name Jo Morris

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 200 E. Gaines St.
Street

Phone _____

Tallahassee FL 32399
City State Zip

E-mail _____

Speaking: For Against Information

Representing Office of Financial Regulation

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 Committee on Banking and Insurance

BILL: SPB 7062

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: Citizens Property Insurance Corporation Coverage

DATE: March 3, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow, Knudson</u>	<u>Knudson</u>		<u>Pre-meeting</u>

I. Summary:

SPB 7062 enacts the following changes to property insurance laws, primarily relating to Citizens Property Insurance Corporation (Citizens):

- The proposed bill directs Citizens to include commercial residential buildings within the Citizens policyholder eligibility clearinghouse program (clearinghouse) by October 1, 2015.
- Surplus lines insurers are authorized to make offers of similar coverage through the clearinghouse if no authorized insurers participating in the clearinghouse make an offer of coverage and the surplus lines insurer meets enhanced financial and disclosure requirements.
- The proposed bill applies a 15 percent limitation on the maximum rate increase that may be imposed annually to a commercial non-residential policy, an increase from 10 percent under current law.
- The Citizens policyholder surcharge is amended, increasing the maximum Citizens policyholder surcharge from 15 to 20 percent for coastal account deficits, but decreasing the maximum surcharge from 15 to 10 percent for personal lines account deficits.
- The bill requires Citizens to issue an annual report of its estimated bonding capacity, estimated claims paying capacity, and estimated year-end cash balance.
- The proposed bill directs Citizens to stop writing new commercial residential multi-peril policies in the Coastal Account. Instead, Citizens will write separate Wind and All-Other Perils (AOP) policies.

The proposed bill increases the residential property insurance deductible for non-hurricane losses that must be offered by insurers from \$500 to \$1,000. The proposed bill applies the 10 percent fee limit on public adjuster fees related to claims arising from a declared state-of-emergency to all such claims, rather than only claims filed within 1 year of the event. Public adjusters are also prohibited from accepting a power-of-attorney that vests in the PA the right to select the person or entity that will perform repairs.

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹ Citizens is not a private insurance company.² Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors³ (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.⁴ Assets may not be commingled or used to fund losses in another account.⁵

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.⁶

¹ Admitted market means insurance companies licensed to transact insurance in Florida.

² s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

³ The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives.

⁴ The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁵ s. 627.351(6)(b)2b., F.S.

⁶ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of \$1 million or greater.⁷ The eligibility threshold for such policies will be reduced annually in \$100,000 increments until it reaches \$700,000, effective January 1, 2017. Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first \$1 million of commercial non-residential wind-only coverage and the first \$2.5 million of commercial residential multi-peril policies.

Citizens Financial Resources for Paying Claims

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Citizens projected surplus for 2014 and its policies, premium in force and total exposure as of January 31, 2014, is as follows:⁸

Table 1: Citizens Surplus, Premium, Exposure, and Premium in Force

Citizens Account	Surplus	Policies In Force	Premium In Force ⁹	Total Exposure ¹⁰
Personal Lines	\$2.73 Billion	610,237	\$999 Million	\$113.4 Billion
Commercial Lines	\$1.54 Billion	7,534	\$196 Million	\$36.8 Billion
Coastal	\$3.39 Billion	383,106	\$1.071 Billion	\$164.6 Billion
TOTAL	\$7.66 Billion	1,000,877	\$2.266 Billion	\$314.8 Billion

It is estimated that as of December 31, 2014, Citizens will have an accumulated surplus¹¹ of approximately \$7.66 billion. Citizens has approximately \$1.85 billion in private reinsurance¹² coverage and \$4.48 billion in mandatory layer reinsurance from the FHCF.¹³ Citizens has additional pre-event liquidity¹⁴ of \$3.93 billion. For the 2014 storm season, Citizens has an estimated aggregate claims paying capacity of \$17.9 billion.

If Citizens incurs a deficit (i.e. its obligations to pay claims exceed its capital plus reinsurance recoveries), it may levy regular assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute¹⁵ as follows:

⁷ s. 627.351(6)(a)3.a., F.S.

⁸ See <https://www.citizensfla.com/about/corpfinancials.cfm> (last accessed by Banking and Insurance Committee staff on Feb. 20, 2014).

⁹ Rounded to the nearest \$1 million.

¹⁰ Rounded to the nearest \$100 million.

¹¹ Surplus amounts consist of preliminary (unaudited) 2013 surplus and 2014 projected net income.

¹² 2014 projected private risk transfer estimated as the 2013 program.

¹³ Florida Hurricane Catastrophe (FHCF) coverage is based on preliminary 2013 retention and payment multiples. Actual multiples may be significantly different.

¹⁴ Pre-Event Liquidity does not represent risk transfer and any monies drawn must be repaid.

¹⁵ s. 627.351(6)(b)3.a., d., and i., F.S.

Citizens Surcharge – Require up to a 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers compensation). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment – Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders, including Citizens policyholders, except medical malpractice and workers compensation policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Citizens resources for paying claims and assessable shortfall amounts for probable maximum loss events occurring once every 50 years, 100 years, and 250 years are detailed in tables 2-A, 2-B, and 2-C, below.¹⁶

Table 2-A: Citizens 1 in 50 Year Probable Maximum Losses and Potential Assessments¹⁷
 (\$ in billions)

Citizens Accounts	1: 50 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$3.129	\$1.428	\$1.702	\$0	\$0
Coastal	\$7.563	\$2.934	\$2.780	\$1.850	\$0
TOTAL	\$10.657	\$4.326	\$4.481	\$1.850	\$0

Table 2-B: Citizens 1 in 100 Year Probable Maximum Losses and Potential Assessments
 (\$ in billions)

Citizens Accounts	1: 100 Year PML Loss	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$5.406	\$3.704	\$1.702	\$0	\$0
Coastal	\$11.841	\$3.390	\$2.780	\$1.850	\$3.822
TOTAL	\$17.448	\$7.660	\$4.481	\$1.850	\$3.456

¹⁶ Citizens Property Insurance Corporation, Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential Assessments, pg. 5 (February 2014). (On file with the Senate Banking and Insurance Committee).

¹⁷ PML is estimated 100-year single event probable maximum loss based on modeled losses as of December 31, 2013, per AIR CLASIC/2, Version 15 based on a weighted average of Standard Sea Surface Temperature (SSST) and Warm Sea Surface Temperature (WSST) Event Catalogs and include estimated loss adjustment expenses. Although combined PMLs and surplus are shown, assessments are triggered at an account level and FHCF coverage is combined for PLA/CLA and separate for Coastal. PMLs are not additive; the combined value shown is not the sum of PLA/CLA + Coastal PMLs.

Table 2-C: Citizens 1 in 250 Year Probable Maximum Losses and Potential Assessments
(\$ in billions)

Citizens Accounts	1: 250 Year PML	Surplus Recovery	FHCF Reimbursement	Reinsurance/ Cat Bonds	Assessable Shortfall
PLA/CLA	\$9.532	\$4.270	\$1.702	\$0	\$3.560
Coastal	\$19.165	\$3.390	\$2.780	\$1.850	\$11.145
TOTAL	\$28.303	\$7.660	\$4.481	\$1.850	\$14.311

Citizens Rates

Rates for Citizens coverage are required to be actuarially sound,¹⁸ except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage,¹⁹ excluding coverage changes and surcharges.²⁰ The 10 percent limitation on rate increases is referred to as the Citizens rate “glide path” to achieving actuarially sound rates.²¹ The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Commercial Lines Non-Residential Rates

Citizens presented data detailing the rate adequacy of its commercial non-residential policies at the January 11, 2014 meeting of the Senate Banking and Insurance Committee. The data indicates that over 90 percent of Citizens commercial non-residential policies (19,680 of 21,467 policies) are wind-only policies in the coastal account that have an average 24.3 rate need, using Citizens 2014 rates. Citizens writes only the first \$1 million of wind-only commercial non-residential coverage.

Table 3-A: Citizens Commercial Lines Non-Residential Policies and Average Rate Adequacy²²
(Data as of June 30, 2013)

Citizens Account/ Policy Type	Policies in Force	Buildings	Average Rate Adequacy	Exposure
Commercial Lines – Multiperil	1557	2287	2.8% Percent Above Adequacy	\$1.755 Billion

¹⁸ s. 627.351(6)(n)1., F.S.

¹⁹ s. 627.351(6)(n)6., F.S.

²⁰ s. 627.351(6)(n), F.S.

²¹ With the enactment of Chapter 2007-001, L.O.F., from January 25, 2007 to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account).

²² Citizens Property Insurance Corporation, *Senate Banking & Insurance Committee – Response to Data Request*, pgs. 18-22 (January 3, 2014). http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2430.pdf (Last accessed by staff of Senate Banking and Insurance Committee March 3, 2014).

Coastal Account – Multi-peril	230	321	73.5 Percent Below Adequacy	\$392 Million
Coastal Account – Wind Only	19,680	27872	24.3 Percent Below Adequacy	\$11.935 Billion

Of the 19,680 coastal account wind-only policies, 17,234 policies have a rate need of 30 percent or less. The average in-force premium charged such properties correlated with the expected rate need. For example, policies with a rate need of 10 or less percent have an average in-force premium of \$2,680; policies with a rate need ranging from 30 to 40 percent have an average in-force premium of \$6,097; and policies with a rate need greater than 50 percent have an average in-force premium of \$11,048.

Table 3-B: Citizens Commercial Lines Non-Residential Coastal Account Wind-Only Rate Adequacy (Data as of June 30, 2013)²³

Indicated Rate Change	Policies In Force	Average Premium (2014 Rate Level)	Average Expected Rate Need (2014 Rates)	Total Insured Value
Below 10%	2,529	\$2,680	4.5%	\$1.512 Billion
10% to 20%	7,963	\$3,948	15.6%	\$4.763 Billion
20% to 30%	6,742	\$4,091	24.2%	\$3.768 Billion
30% to 40%	1,074	\$6,097	32.1%	\$686 Million
40% to 50%	787	\$8,773	42.2%	\$610 Million
50% or more	621	\$11,048	59.4%	\$594 Million
TOTAL	19,716	\$4,368	24.3%	\$11.935 Billion

Coastal account commercial lines non-residential multi-peril policies currently have the greatest rate need among Citizens commercial lines non-residential policies. Citizens has 230 of these policies in force with a total insured value of approximately \$346 million. All but two of these policies have a rate need between 70 percent and 80 percent.

Table 3-C: Citizens Commercial Non-Residential Coastal Account Multi-Peril Rate Adequacy (Data as of June 30, 2013)²⁴

Indicated Rate Change	Policies In Force	Average Premium (2014 Rate Level)	Average Expected Rate Need (2014 Rates)	Total Insured Value
Below 70%	2	\$28,764	13.3%	\$4.5 Million
70% to 75%	112	\$12,467	74.3%	\$203 Million
75% to 80%	116	\$6,774	76.5%	\$139 Million
TOTAL	230	\$9,738	73.5%	\$346 Million

²³ See fn. 22 at pg. 23.

²⁴ Citizens Property Insurance Corporation, *Indicated Rate Change and Expected Loss Ratio*, (Page 112 of the Final Meeting Materials of the Feb. 18, 2014 Florida Senate Banking and Insurance Committee)
http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2456.pdf

Citizens Clearinghouse

In 2013, the Florida Legislature passed SB 1770 creating s. 627.3518, F.S., which mandated the creation of the Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse) for personal residential risks.²⁵ The clearinghouse has two purposes, to determine if a new or renewal policy is eligible for Citizens coverage and to enhance access of new Citizens applicants and existing Citizens policyholders to offers of coverage from authorized insurers.²⁶ The clearinghouse facilitates the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. Citizens launched the personal residential clearinghouse for new applicants on January 27, 2014.²⁷

All applicants for Citizens personal lines residential coverage and all Citizens personal lines residential policies at renewal are submitted to the clearinghouse. The clearinghouse interacts with participating private-market insurers to match specific risks with the OIR approved rating and underwriting criteria of each participating insurer. The Clearinghouse displays all quotes that have been received for each risk submitted. However, a Citizens quote will be displayed as ineligible if one or more participating insurers makes a comparable offer of coverage priced within 15 percent of Citizens' premium for new applicants²⁸ or for a renewal policy makes a comparable offer of coverage priced no more than Citizens current rate. If a risk is deemed ineligible for Citizens, the policyholder's agent will be unable to submit the application to Citizens but will be able to access the offering insurer's policy system to bind the coverage. While the same eligibility thresholds apply for new commercial policies,²⁹ there is no clearinghouse for commercial-residential and commercial non-residential new or renewal policies written by Citizens.

The 2013 Legislature directed Citizens to develop appropriate procedures for developing a clearinghouse for commercial residential coverage that would divert ineligible applicants and existing Citizens policyholders into the private insurance market.³⁰ The Citizens report was issued December 30, 2013. The report indicates that admitted insurers currently writing commercial residential property in Florida are interested in participating in a commercial residential clearinghouse. Citizens also indicated that it has been contacted by prospective insurers targeting commercial residential lines and opined that there is significant interest in this product line. The lack of statutory authority to create a clearinghouse was identified as the primary obstacle to its creation.

²⁵ ch. 2013-60, L.O.F

²⁶ s. 627.3518(2), F.S.

²⁷ Citizens Property Insurance Corporation, Citizens Statement on Property Insurance Clearinghouse Rollout (January 27, 2014). <https://www.citizensfla.com/shared/press/articles/141/01.27.2014.pdf> (Last accessed by Banking and Insurance Committee Staff March 4, 2013).

²⁸ s. 627.351(6)(c)5.a., F.S.

²⁹ s. 627.351(6)(c)5.b., F.S.

³⁰ ch. 2013-60, s. 10, L.O.F.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies authorized to transact insurance in Florida). There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation to transact insurance in Florida. Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers.”³¹ The OIR determines whether a surplus lines insurer is “eligible” based on statutory guidelines. Eligibility requirements³² reviewed by the OIR for surplus lines include:

- Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office;
- Insurer is authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions);
- Insurer provides the OIR with its current annual financial statement;
- Insurer meets surplus requirements (delineated below); and
- Insurer has a good reputation relating to payment of claims and policyholder service.

Generally, a surplus lines insurer must have and maintain surplus of \$15 million or more in order to obtain and maintain eligibility. In addition, an insurer formed outside the U.S. must have and maintain in the U.S. a trust fund containing at least \$5.4 million.³³ The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers.³⁴ A finding of eligibility by the OIR only means the surplus lines insurer appears to be financially sound and to have a satisfactory claims practice.

The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or is in unsound financial condition; does not make reasonable prompt payment of claims; or does not meet the statutory guidelines for eligibility (including maintenance of \$15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule.

Public Adjusters

Public adjusters are defined as persons, other than licensed attorneys, who, for compensation, prepare or file an insurance claim form for an insured or third-party claimant in negotiating or

³¹ See s. 626.914(2), F.S.

³² s. 626.918, F.S.

³³ s. 626.918(2)(d)1.a., F.S.

³⁴ s. 626.918(4), F.S.

settling an insurance claim on behalf of the insured or third party.³⁵ The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.

A public adjuster may not charge a fee related to a residential property insurance claim greater than 20 percent of the insurance claims payment, except that the public adjuster may not charge a fee greater than 10 percent of the claims payment for claims related to an event that is declared a state of emergency by the Governor if the claim is made during the first year after the declaration.³⁶ These fee caps apply only to residential property insurance policies and condominium association policies.³⁷

Personal Lines Residential Required Deductible Offering

Currently, s. 627.701(7), F.S., requires that for personal lines residential insurance, the insurer must offer a deductible of \$500 applicable to losses from perils other than hurricanes. This offer must be made in a form approved by the OIR and must be made at least once every 3 years.

III. Effect of Proposed Changes:

Citizens Property Insurance Corporation

Commercial Residential Insurance in the Coastal Account [s. 627.351(6)(b)2.a.(III), F.S.]
Effective July 1, 2014, Citizens may not offer new commercial residential multiperil insurance policies in the Coastal Account. Instead Citizens will only offer commercial residential wind-only policies and separate commercial residential policies that exclude wind. Citizens may continue renewing commercial residential multi-peril policies within the Coastal Account that provide coverage on June 30, 2014.

Citizens Policyholder Surcharge [s. 627.351(6)(b)3.i.(I), F.S.]

If the Citizens Board of Governors determines that one or more of the three accounts (Personal Lines, Coastal, or Commercial) has a projected deficit, the board levies a Citizens policyholder surcharge against all policyholders of the corporation. A policyholder surcharge of up to 15 percent of premium may be levied to fund a deficit for each Citizens account. All Citizens policyholders are subject to the surcharges, regardless of which account is projected to have a deficit. For example, if the Board projected a deficit for the Coastal Account requiring a 10 percent policyholder surcharge and a deficit for the Personal Lines Account requiring a 2 percent surcharge, all Citizens policyholders would be charged a 12 percent surcharge. Citizens policyholders are subject to a maximum 45 percent surcharge consisting of up to 15 percent for each of the three accounts.

³⁵ s. 626.854, F.S. See, part VI (Insurance Adjusters) under ch. 626, F.S.

³⁶ s. 626.854(11)(b), F.S.

³⁷ s. 626.854(18), F.S.

The bill increases the maximum Citizens policyholder surcharge for Coastal Account deficits to 20 percent of premium and decreases the maximum surcharge for Personal Lines Account deficits to 10 percent of premium. The maximum surcharge liability of Citizens policyholders remains 45 percent of premium.

***Citizens Rates for Commercial Nonresidential Policies* [s. 627.351(6)(n), F.S.]**

Effective January 1, 2015, the proposed bill increases the annual maximum rate increase that may be implemented on a commercial nonresidential insurance policy from 10 percent to 15 percent, excluding coverage changes and surcharges.

***Surplus Lines Insurer Participation in Citizens Clearinghouse* [s. 627.3518, F.S.]**

Surplus lines insurers are authorized by the bill to participate in the Citizens clearinghouse beginning January 1, 2015. A surplus lines insurer must offer similar coverage to that provided by Citizens. Coverage may be offered by a surplus lines insurer only if the risk receives no coverage offers from authorized insurers. An offer of coverage from a surplus lines insurer will not affect whether a risk is eligible to be insured by Citizens.

The surplus lines insurer must provide prominent notice to the policyholder of the following:

- An offer of coverage from a surplus lines insurer does not affect the policyholder's eligibility for coverage from Citizens.
- A policyholder who accepts an offer of coverage from a surplus lines insurer may submit a new application for coverage to Citizens at any time.
- Surplus lines policies are not covered by the Florida Insurance Guaranty Association (FIGA).
- Rates for surplus lines insurance are not subject to review by the Office of Insurance Regulation.
- Notice regarding any information required by the Office of Insurance Regulation.
 - Under s. 626.916(1)(e), F.S., the agent must provide written notice to a personal residential property insured that coverage may be available and less expensive from Citizens, but also explains that Citizens assessments are higher and that Citizens coverage may be less than the property's existing coverage.
 - Under s. 626.954, F.S., the insured must be provided notice that surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency and that surplus lines insurers are not protected by the FIGA.

A Citizens policyholder who accepts an offer of coverage from a surplus lines insurer and subsequently applies for coverage with Citizens within 36 months of being insured by Citizens will be considered a renewal policy. The rates on such policies will be rated as renewals and thus be subject to the 10 percent limit on annual rate increases.

To participate in the clearinghouse, the surplus lines insurer must be eligible to offer coverage under Florida's Surplus Lines Law (ss. 626.913-626.937, F.S.), maintain at least a \$50 million surplus on a company or pooled basis, be rated A- or higher by A.M. Best Company, and have the ability to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season through its reserves, surplus, reinsurance and reinsurance equivalents.

Inclusion of Commercial Residential Risks within the Citizens Clearinghouse [627.3518, F.S.]

The bill requires Citizens to implement by October 1, 2015, procedures for facilitating offers of coverage to commercial residential risks through the clearinghouse.

Reports Submitted by Citizens [s. 627.351(6)(hh), F.S., s. 627.3519, F.S., and s. 627.35191, F.S.]

The bill changes the due date for the report on Citizens non-catastrophic calendar-year loss ratios to March 1, rather than January 15, to provide Citizens sufficient time to complete the report. The bill requires Citizens to provide a report detailing its estimated borrowing capacity, claims-paying capacity, and estimated year-end balance to the Legislature and the Financial Services Commission in May of each year. Section 627.3519, F.S., is repealed because it requires a report that is duplicative of the report required under s. 627.35191, F.S.

Public Adjusters [s. 626.854(11), (18), and (19), F.S.]

Under current law, the maximum fee a public adjuster may charge is 20 percent of a residential property insurance or condominium unit-owner insurance policy claim payment. However, when a claim is based on events that are declared a state of emergency by the Governor and is made during the year after those events the maximum fee is 10 percent of the claim payment. The bill applies the 10 percent maximum fee limitation related to all such claims based on a state-of-emergency, regardless of when the claim is made.

The bill prohibits the execution of a power of attorney that vests the authority to choose the persons or entities that will perform repair work on a residential property insurance loss in a public adjuster, a public-adjuster apprentice, or any person acting on their behalf.

Offer of Personal Lines Residential Property Insurance Deductible [s. 627.701(7), F.S.]

Under current law, prior to issuing a personal lines residential property insurance policy, the insurer must offer a \$500 deductible applicable to non-hurricane losses. The bill increases the minimum deductible that must be offered for non-hurricane losses to \$1,000 for all such policies issued on or after January 1, 2015. For policies issued before that date, the \$1,000 deductible must also be offered before the first renewal of a policy on or after January 1, 2015. The insurer must continue providing notice of this deductible offering at least once every 3 years, as required under current law.

Effective Date

The effective date of the bill is July 1, 2014, except as otherwise provided.

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 inclusion of commercial residential policies within the Citizens clearinghouse would help enforce the 15 percent eligibility requirement for new Citizens applicants, and encourage private-market insurers to offer coverage to existing Citizens policyholders. Private market insurers are actively writing commercial residential policies that insure newer buildings with a replacement cost greater than \$10 million. Citizens estimates that approximately up to 15 percent of its current commercial residential policies would be attractive to the private market, given Citizens current rates for such risks and their characteristics such as location, age and building construction type. Commercial residential policies constitute approximately 20 percent of Citizens total risk, with a 1 in 100 PML of \$4.065 Billion.

Allowing surplus lines insurers to participate in the Citizens clearinghouse may serve to further depopulate Citizens. The bill requires a participating surplus lines insurer to maintain at least \$50 million in surplus and demonstrate the ability to cover two 1 in 100 PML events in a single hurricane season. If these financial protections prove insufficient to prevent an insolvency, claims of policyholders who accept an offer of coverage from a surplus lines insurer will not be covered by the Florida Insurance Guaranty Association.

Prohibiting Citizens from writing new commercial residential multi-peril policies in the coastal account and instead allowing Citizens to offer separate wind-only and all-other perils (AOP) policies may further depopulate such policies. Testimony from Citizens representatives indicated a rate arbitrage issue exists, whereby the Citizens premium in the Coastal Account for multi-peril policies is less expensive than the Citizens premiums for a wind-only policies plus a separate all-other perils policy. Citizens' rates for All Other Perils coverage, if rated separately from wind, are approximately competitive with the private market. When wind and AOP are combined in a multi-peril product, the rate becomes non-competitive with the private market.

Increasing the coastal account surcharge to 20 percent, while reducing the personal lines surcharge to 10 percent, will increase the Citizens policyholder surcharges and decrease the regular and emergency assessments paid in certain circumstances. This change will occur during a storm that causes a coastal account deficit requiring more than the current

15 percent Citizens policyholder surcharge if the increased assessment due to the expansion of the coastal account surcharge exceeds the reduction that results from lowering the personal lines account surcharge to 10 percent. For example, under these new surcharge amounts, if Citizens policyholders are assessed 18 percent of premium for a coastal account deficit and 7 percent of premium for a personal lines account deficit, the Citizens policyholder would pay a surcharge of 25 percent of premium. Under current law, the coastal account surcharge would be limited to 15 percent, which would be added to the 7 percent PLA surcharge, resulting in a 22 percent surcharge. However, in a storm where the 20 percent coastal surcharge and the 10 percent PLA surcharge are both levied, the maximum Citizens policyholder surcharge will remain unchanged from current law, which imposes a 15 percent surcharge per account.

Increasing the limitation on rate increases for Citizens commercial non-residential policies to 15 percent should result in over 80 percent of such policies being rate adequate within 2 years, and almost all such policies being rate adequate within 4 years. The increase will result in the majority of such policyholders seeing greater annual rate increases than under current law until such policies reach rate adequacy. However, the collection of additional premium will increase Citizens claims paying resources.

C. Government Sector Impact:

Citizens may incur expenses associated with implementing procedures to include commercial residential risks within the Citizens clearinghouse.

VI. Technical Deficiencies:

The PCB requires a title amendment on lines 2-3 because not all provisions of the bill relate to Citizens Property Insurance Corporation.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.854, 627.351, 627.3518, 627.35191, and 627.701.

This bill repeals section 627.3519 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
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The Committee on Banking and Insurance (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 89.

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

And the title is amended as follows:

Delete lines 3 - 14

and insert:

Corporation coverage; amending s. 627.351, F.S.;

deleting



364132

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 90 - 93

and insert:

Section 2. Paragraphs (a), (b), and (hh) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents



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11 and businesses of this state.

12 1. The Legislature finds that private insurers are
13 unwilling or unable to provide affordable property insurance
14 coverage in this state to the extent sought and needed. The
15 absence of affordable property insurance threatens the public
16 health, safety, and welfare and ~~likewise threatens~~ the economic
17 health of the state. The state, therefore, has a compelling
18 public interest and a public purpose to assist in assuring that
19 property in the state is insured ~~and that it is insured~~ at
20 affordable rates so as to facilitate the remediation,
21 reconstruction, and replacement of damaged or destroyed property
22 in order to reduce or avoid ~~the~~ negative effects on otherwise
23 ~~resulting to~~ the public health, safety, and welfare, to the
24 economy of the state, and to the revenues of the state and local
25 governments which are needed to provide for the public welfare.
26 It is necessary, therefore, to provide affordable property
27 insurance to applicants who are in good faith entitled to
28 procure insurance through the voluntary market but are unable to
29 do so. The Legislature intends, therefore, that affordable
30 property insurance be provided and that it continue to be
31 provided, as long as necessary, through Citizens Property
32 Insurance Corporation, a government entity that is an integral
33 part of the state, ~~and that is~~ not a private insurance company.
34 To that end, the corporation shall strive to increase the
35 availability of affordable property insurance in this state,
36 while achieving efficiencies and economies, and while providing
37 service to policyholders, applicants, and agents which is no
38 less than the quality generally provided in the voluntary
39 market, for the achievement of the foregoing public purposes.



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40 Because it is essential for this government entity to have the
41 maximum financial resources to pay claims following a
42 catastrophic hurricane, it is further the intent of the
43 Legislature that the corporation continue to be an integral part
44 of the state, ~~and~~ that the income of the corporation be exempt
45 from federal income taxation, and that interest on the debt
46 obligations issued by the corporation be exempt from federal
47 income taxation.

48 2. The Residential Property and Casualty Joint Underwriting
49 Association originally created by this statute shall be known as
50 the Citizens Property Insurance Corporation. The corporation
51 shall provide insurance for residential and commercial property,
52 for applicants who are entitled, but, in good faith, are unable
53 to procure insurance through the voluntary market. The
54 corporation shall operate pursuant to a plan of operation
55 approved by order of the Financial Services Commission. The plan
56 is subject to continuous review by the commission. The
57 commission may, by order, withdraw approval of all or part of a
58 plan if the commission determines that conditions have changed
59 since approval was granted and that the purposes of the plan
60 require changes in the plan. For the purposes of this
61 subsection, residential coverage includes both personal lines
62 residential coverage, which consists of the type of coverage
63 provided by homeowner's, mobile home owner's, dwelling,
64 tenant's, condominium unit owner's, and similar policies; and
65 commercial lines residential coverage, which consists of the
66 type of coverage provided by condominium association, apartment
67 building, and similar policies.

68 3. With respect to coverage for personal lines residential



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69 structures:

70 a. Effective January 1, 2014, a structure that has a
71 dwelling replacement cost of \$1 million or more, or a single
72 condominium unit that has a combined dwelling and contents
73 replacement cost of \$1 million or more is not eligible for
74 coverage by the corporation. Such dwellings insured by the
75 corporation on December 31, 2013, may continue to be covered by
76 the corporation until the end of the policy term. The office
77 shall approve the method used by the corporation for valuing the
78 dwelling replacement costs under ~~cost for the purposes of~~ this
79 subparagraph. If a policyholder is insured by the corporation
80 before being determined to be ineligible pursuant to this
81 subparagraph and such policyholder files a lawsuit challenging
82 the determination, the policyholder may remain insured by the
83 corporation until the conclusion of the litigation.

84 b. Effective January 1, 2015, a structure that has a
85 dwelling replacement cost of \$900,000 or more, or a single
86 condominium unit that has a combined dwelling and contents
87 replacement cost of \$900,000 or more, is not eligible for
88 coverage by the corporation. Such dwellings insured by the
89 corporation on December 31, 2014, may continue to be covered by
90 the corporation only until the end of the policy term.

91 c. Effective January 1, 2016, a structure that has a
92 dwelling replacement cost of \$800,000 or more, or a single
93 condominium unit that has a combined dwelling and contents
94 replacement cost of \$800,000 or more, is not eligible for
95 coverage by the corporation. Such dwellings insured by the
96 corporation on December 31, 2015, may continue to be covered by
97 the corporation until the end of the policy term.



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98 d. Effective January 1, 2017, a structure that has a
99 dwelling replacement cost of \$700,000 or more, or a single
100 condominium unit that has a combined dwelling and contents
101 replacement cost of \$700,000 or more, is not eligible for
102 coverage by the corporation. Such dwellings insured by the
103 corporation on December 31, 2016, may continue to be covered by
104 the corporation until the end of the policy term.

105

106 The requirements of sub-subparagraphs b.-d. do not apply in
107 counties where the office determines there is not a reasonable
108 degree of competition. In such counties a personal lines
109 residential structure that has a dwelling replacement cost of
110 less than \$1 million, or a single condominium unit that has a
111 combined dwelling and contents replacement cost of less than \$1
112 million, is eligible for coverage by the corporation.

113 4. It is the intent of the Legislature that policyholders,
114 applicants, and agents of the corporation receive service and
115 treatment of the highest possible level but never less than that
116 generally provided in the voluntary market. It is also intended
117 that the corporation be held to service standards no less than
118 those applied to insurers in the voluntary market by the office
119 with respect to responsiveness, timeliness, customer courtesy,
120 and overall dealings with policyholders, applicants, or agents
121 of the corporation.

122 5.a. Effective January 1, 2009, a personal lines
123 residential structure that is located in the "wind-borne debris
124 region," as defined in s. 1609.2, International Building Code
125 (2006), and that has an insured value on the structure of
126 \$750,000 or more is not eligible for coverage by the corporation



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127 unless the structure has opening protections as required under
128 the Florida Building Code for a newly constructed residential
129 structure in that area. A residential structure is deemed to
130 comply with this subparagraph if it has shutters or opening
131 protections on all openings and if such opening protections
132 complied with the Florida Building Code at the time they were
133 installed.

134 b. Any major structure as defined in s. 161.54(6) (a) for
135 which a permit is applied on or after July 1, 2014, for new
136 construction or substantial improvement as defined in s.
137 161.54~~(12)~~ is not eligible for coverage by the corporation if
138 the structure is seaward of the coastal construction control
139 line established pursuant to s. 161.053 or is within the Coastal
140 Barrier Resources System as designated by 16 U.S.C. ss. 3501-
141 3510. The restrictions of this subparagraph imposed on major
142 structures located within the Coastal Barrier Resources System
143 do not apply in a county where the corporation provides
144 windstorm coverage on more than 75 percent of personal lines
145 residential policies.

146
147 ===== T I T L E A M E N D M E N T =====

148 And the title is amended as follows:

149 Delete line 14

150 and insert:

151 reference; amending s. 627.351, F.S.; providing
152 exemptions from the restriction on obtaining coverage
153 from Citizens Property Insurance Corporation for major
154 structures under certain conditions; deleting



962288

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 397 and 398

insert:

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the



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11 procurement of financial services providers and underwriters
12 must be made pursuant to s. 627.3513. Contracts for goods or
13 services valued at or more than \$100,000 are subject to approval
14 by the board.

15 1. The corporation is an agency for purposes of s. 287.057,
16 except that, for purposes of s. 287.057(22), the corporation is
17 an eligible user.

18 a. The authority of the Department of Management Services
19 and the Chief Financial Officer under s. 287.057 extends to the
20 corporation as if the corporation were an agency.

21 b. The executive director of the corporation is the agency
22 head under s. 287.057, except for resolution of bid protests for
23 which the board would serve as the agency head.

24 2. The corporation must provide notice of a decision or
25 intended decision concerning a solicitation, contract award, or
26 exceptional purchase by electronic posting. Such notice must
27 contain the following statement: "Failure to file a protest
28 within the time prescribed in this section constitutes a waiver
29 of proceedings."

30 a. A person adversely affected by the corporation's
31 decision or intended decision to award a contract pursuant to s.
32 287.057(1) or (3)(c) who elects to challenge the decision must
33 file a written notice of protest with the executive director of
34 the corporation within 72 hours after the corporation posts a
35 notice of its decision or intended decision. For a protest of
36 the terms, conditions, and specifications contained in a
37 solicitation, including ~~any~~ provisions governing the methods for
38 ranking bids, proposals, replies, awarding contracts, reserving
39 rights of further negotiation, or modifying or amending any



962288

40 contract, the notice of protest must be filed in writing within
41 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,
42 Sundays, and state holidays are excluded in the computation of
43 the 72-hour time period.

44 b. A formal written protest must be filed within 10 days
45 after the date the notice of protest is filed. The formal
46 written protest must state with particularity the facts and law
47 upon which the protest is based. Upon receipt of a formal
48 written protest that has been timely filed, the corporation must
49 stop the solicitation or contract award process until the
50 subject of the protest is resolved by final board action unless
51 the executive director sets forth in writing particular facts
52 and circumstances that require the continuance of the
53 solicitation or contract award process without delay in order to
54 avoid an immediate and serious danger to the public health,
55 safety, or welfare. The corporation must provide an opportunity
56 to resolve the protest by mutual agreement between the parties
57 within 7 business days after receipt of the formal written
58 protest. If the subject of a protest is not resolved by mutual
59 agreement within 7 business days, the corporation's board must
60 place the protest on the agenda and resolve it at its next
61 regularly scheduled meeting. The protest must be heard by the
62 board at a publicly noticed meeting in accordance with
63 procedures established by the board.

64 c. In a protest of an invitation-to-bid or request-for-
65 proposals procurement, submissions made after the bid or
66 proposal opening which amend or supplement the bid or proposal
67 may not be considered. In protesting an invitation-to-negotiate
68 procurement, submissions made after the corporation announces



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69 its intent to award a contract, reject all replies, or withdraw
70 the solicitation that amends or supplements the reply may not be
71 considered. Unless otherwise provided by law, the burden of
72 proof rests with the party protesting the corporation's action.
73 In a competitive-procurement protest, other than a rejection of
74 all bids, proposals, or replies, the corporation's board must
75 conduct a de novo proceeding to determine whether the
76 corporation's proposed action is contrary to the corporation's
77 governing statutes, the corporation's rules or policies, or the
78 solicitation specifications. The standard of proof for the
79 proceeding is whether the corporation's action was clearly
80 erroneous, contrary to competition, arbitrary, or capricious. In
81 any bid-protest proceeding contesting an intended corporation
82 action to reject all bids, proposals, or replies, the standard
83 of review by the board is whether the corporation's intended
84 action is illegal, arbitrary, dishonest, or fraudulent.

85 d. Failure to file a notice of protest or failure to file a
86 formal written protest constitutes a waiver of proceedings.

87 e. In lieu of a bid protest proceeding conducted by the
88 board in accordance with this subparagraph, the corporation may
89 refer the protest to the Division of Administrative Hearings for
90 a proceeding pursuant to s. 120.569. The division has
91 jurisdiction to conduct a proceeding on such protest if a
92 referral is made by the corporation.

93 3. Contract actions and decisions by the board under this
94 paragraph are final. Any further legal remedy must be made in
95 the Circuit Court of Leon County.

96
97 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



962288

98 And the directory clause is amended as follows:

99 Delete lines 90 - 91

100 and insert:

101 Section 2. Paragraphs (b), (e), and (hh) of subsection (6)
102 of section 627.351, Florida Statutes, are amended to read:

103

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

105 And the title is amended as follows:

106 Delete line 27

107 and insert:

108 projected deficit; authorizing the Division of
109 Administrative Hearings to hear protests of the
110 corporation's decisions regarding the purchase of
111 commodities and contractual services; revising the
112 date for submitting



439764

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 406 - 471.

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

And the title is amended as follows:

Delete lines 29 - 30

and insert:

amending s.



812680

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 510 - 515

and insert:

(5) Effective January 1, 2015, an eligible surplus lines insurer may make an offer of similar coverage on personal lines or commercial lines residential property valued at more than \$700,000 which is submitted through the clearinghouse program if no other offers of coverage for such property were submitted by authorized insurers participating in the program and the office



812680

11 determines that the eligible surplus lines insurer:

12

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

14 And the title is amended as follows:

15 Delete line 39

16 and insert:

17 corporation's clearinghouse program for certain

18 residential properties and providing



268180

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 525 - 536

and insert:

(d) Provides prominent notice to the policyholder:

1. That the policyholder does not have to accept an offer of coverage from a surplus lines insurer;

2. That an offer of coverage from a surplus lines insurer does not affect whether the policyholder is eligible for coverage from the corporation;



268180

11 3. That a policyholder who accepts an offer of coverage
12 from a surplus lines insurer may, at any time, submit a new
13 application for coverage to the corporation;

14 4. That surplus lines policies are not covered by the
15 Florida Insurance Guaranty Association;

16 5. That rates for surplus lines insurance are not subject
17 to review by the office; and

18 6. Of any additional information required by the office.

19

20 Such notice must be signed by the policyholder and kept on file
21 with the surplus lines insurer for as long as the policyholder
22 remains insured by the surplus lines insurer.



556552

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 684 and 685
insert:

Section 8. Subsection (9) is added to section 627.711,
Florida Statutes, to read:

627.711 Notice of premium discounts for hurricane loss
mitigation; uniform mitigation verification inspection form.—

(9) Citizens Property Insurance Corporation may create an
addendum to the uniform mitigation verification form for use by



556552

11 a county when applying mitigation credits if that county has:
12 (a) Implemented a building code that is more stringent than
13 the highest code recognized on the uniform mitigation
14 verification form; and
15 (b) Completed a study verifying the use of the more
16 stringent code.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 51

21 and insert:

22 for residential property insurance; amending s.
23 627.711, F.S.; authorizing the corporation to create
24 an addendum to the uniform mitigation verification
25 form for use by counties under certain circumstances;
26 providing



312886

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment

In title, delete lines 2 - 3
and insert:
An act relating to property insurance; amending s.
626.854, F.S.;

FOR CONSIDERATION By the Committee on Banking and Insurance

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1 A bill to be entitled
 2 An act relating to Citizens Property Insurance
 3 Corporation coverage; amending s. 626.854, F.S.;
 4 revising the applicability of the limitations on
 5 public adjuster charges for claims based on events
 6 that are the subject of a declaration of a state of
 7 emergency; prohibiting a public adjuster, a public
 8 adjuster apprentice, or a person acting on his or her
 9 behalf from entering into a contract or accepting a
 10 power of attorney that allows the public adjuster, the
 11 public adjuster apprentice, or a person acting on his
 12 or her behalf to choose the persons or entities that
 13 will perform repair work; conforming a cross-
 14 reference; amending s. 627.351, F.S.; deleting
 15 reference to the Residential Property and Casualty
 16 Joint Underwriting Association with respect to issuing
 17 certain residential or commercial policies; requiring
 18 the corporation to cease offering new commercial
 19 residential policies providing multiperil coverage
 20 after a certain date and providing that the
 21 corporation continue offering commercial residential
 22 wind-only policies; authorizing the corporation to
 23 offer commercial residential policies excluding wind;
 24 providing exceptions; specifying the amount of the
 25 surcharge to be assessed against personal lines,
 26 commercial lines, and coastal accounts to cover a
 27 projected deficit; revising the date for submitting
 28 the annual loss ratio report for residential coverage;
 29 deleting obsolete provisions; revising the annual rate

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30 increase implemented by the corporation; amending s.
 31 627.3518, F.S.; defining the term "surplus lines
 32 insurer"; requiring the corporation to implement
 33 procedures for diverting ineligible applicants and
 34 existing policyholders for commercial residential
 35 coverage from the corporation by a certain date;
 36 deleting the requirement that the corporation report
 37 such procedures to the Legislature; authorizing
 38 eligible surplus lines insurers to participate in the
 39 corporation's clearinghouse program and providing
 40 criteria for such eligibility; conforming cross-
 41 references; providing that certain applicants who
 42 accept an offer from a surplus lines insurer are
 43 considered a renewal; repealing s. 627.3519, F.S.,
 44 relating to an annual report requirement relating to
 45 aggregate net probable maximum losses; amending s.
 46 627.35191, F.S.; requiring the corporation to annually
 47 provide certain estimates for the next 12-month period
 48 to the Legislature and the Financial Services
 49 Commission; amending s. 627.701, F.S.; increasing the
 50 amount of the deductible that an insurer must offer
 51 for residential property insurance; providing
 52 effective dates.

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

55
 56 Section 1. Present subsection (18) of section 626.854,
 57 Florida Statutes, is redesignated as subsection (19), paragraph
 58 (b) of subsection (11) and present subsection (18) of that

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59 section are amended, and a new subsection (18) is added to that
60 section, to read:

61 626.854 "Public adjuster" defined; prohibitions.—The
62 Legislature finds that it is necessary for the protection of the
63 public to regulate public insurance adjusters and to prevent the
64 unauthorized practice of law.

65 (11)

66 (b) A public adjuster may not charge, agree to, or accept
67 from any source compensation, payment, commission, fee, or any
68 other thing of value in excess of:

69 1. Ten percent of the amount of insurance claim payments
70 made by the insurer for claims based on events that are the
71 subject of a declaration of a state of emergency by the
72 Governor. ~~This provision applies to claims made during the year
73 after the declaration of emergency. After that year, the
74 limitations in subparagraph 2. apply.~~

75 2. Twenty percent of the amount of insurance claim payments
76 made by the insurer for claims that are not based on events that
77 are the subject of a declaration of a state of emergency by the
78 Governor.

79 (18) A public adjuster, a public adjuster apprentice, or
80 any person acting on behalf of a public adjuster or apprentice
81 may not enter into a contract or accept a power of attorney that
82 vests in the public adjuster, the public adjuster apprentice, or
83 the person acting on behalf of a public adjuster or apprentice
84 the effective authority to choose the persons or entities that
85 will perform repair work.

86 ~~(19)(18) The provisions of Subsections (5)-(18) (5) (17)~~
87 apply only to residential property insurance policies and

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88 condominium unit owner policies as described ~~defined~~ in s.
89 718.111(11).

90 Section 2. Paragraphs (b) and (hh) of subsection (6) of
91 section 627.351, Florida Statutes, are amended to read:

92 627.351 Insurance risk apportionment plans.—

93 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

94 (b)1. All insurers authorized to write one or more subject
95 lines of business in this state are subject to assessment by the
96 corporation and, for the purposes of this subsection, are
97 referred to collectively as "assessable insurers." Insurers
98 writing one or more subject lines of business in this state
99 pursuant to part VIII of chapter 626 are not assessable
100 insurers; however, but insureds who procure one or more subject
101 lines of business in this state pursuant to part VIII of chapter
102 626 are subject to assessment by the corporation and are
103 referred to collectively as "assessable insureds." An insurer's
104 assessment liability begins on the first day of the calendar
105 year following the year in which the insurer was issued a
106 certificate of authority to transact insurance for subject lines
107 of business in this state and terminates 1 year after the end of
108 the first calendar year during which the insurer no longer holds
109 a certificate of authority to transact insurance for subject
110 lines of business in this state.

111 2.a. All revenues, assets, liabilities, losses, and
112 expenses of the corporation shall be divided into three separate
113 accounts as follows:

114 (I) A personal lines account for personal residential
115 policies issued by the corporation, ~~or issued by the Residential
116 Property and Casualty Joint Underwriting Association and renewed~~

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117 ~~by the corporation,~~ which provides comprehensive, multiperil
 118 coverage on risks that are not located in areas eligible for
 119 coverage by the Florida Windstorm Underwriting Association as
 120 those areas were defined on January 1, 2002, and for policies
 121 that do not provide coverage for the peril of wind on risks that
 122 are located in such areas;

123 (II) A commercial lines account for commercial residential
 124 and commercial nonresidential policies issued by the
 125 corporation, ~~or issued by the Residential Property and Casualty~~
 126 ~~Joint Underwriting Association and renewed by the corporation,~~
 127 which provides coverage for basic property perils on risks that
 128 are not located in areas eligible for coverage by the Florida
 129 Windstorm Underwriting Association as those areas were defined
 130 on January 1, 2002, and for policies that do not provide
 131 coverage for the peril of wind on risks that are located in such
 132 areas; and

133 (III) A coastal account for personal residential policies
 134 and commercial residential and commercial nonresidential
 135 property policies issued by the corporation, ~~or transferred to~~
 136 ~~the corporation,~~ which provides coverage for the peril of wind
 137 on risks that are located in areas eligible for coverage by the
 138 Florida Windstorm Underwriting Association as those areas were
 139 defined on January 1, 2002. The corporation may offer policies
 140 that provide multiperil coverage and ~~the corporation shall~~
 141 ~~continue to~~ offer policies that provide coverage only for the
 142 peril of wind for risks located in areas eligible for coverage
 143 in the coastal account. Effective July 1, 2014, the corporation
 144 shall cease offering new commercial residential policies
 145 providing multiperil coverage and shall instead continue to

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146 offer commercial residential wind-only policies, and may offer
 147 commercial residential policies excluding wind. The corporation
 148 may, however, continue to renew a commercial residential
 149 multiperil policy on a building that is insured by the
 150 corporation on June 30, 2014, under a multiperil policy. In
 151 issuing multiperil coverage, the corporation may use its
 152 approved policy forms and rates for the personal lines account.
 153 An applicant or insured who is eligible to purchase a multiperil
 154 policy from the corporation may purchase a multiperil policy
 155 from an authorized insurer without prejudice to the applicant's
 156 or insured's eligibility to prospectively purchase a policy that
 157 provides coverage only for the peril of wind from the
 158 corporation. An applicant or insured who is eligible for a
 159 corporation policy that provides coverage only for the peril of
 160 wind may elect to purchase or retain such policy and also
 161 purchase or retain coverage excluding wind from an authorized
 162 insurer without prejudice to the applicant's or insured's
 163 eligibility to prospectively purchase a policy that provides
 164 multiperil coverage from the corporation. It is the goal of the
 165 Legislature that there be an overall average savings of 10
 166 percent or more for a policyholder who currently has a wind-only
 167 policy with the corporation, and an ex-wind policy with a
 168 voluntary insurer or the corporation, and who obtains a
 169 multiperil policy from the corporation. It is the intent of the
 170 Legislature that the offer of multiperil coverage in the coastal
 171 account be made and implemented in a manner that does not
 172 adversely affect the tax-exempt status of the corporation or
 173 creditworthiness of or security for currently outstanding
 174 financing obligations or credit facilities of the coastal

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175 account, the personal lines account, or the commercial lines
 176 account. The coastal account must also include quota share
 177 primary insurance under subparagraph (c)2. The area eligible for
 178 coverage under the coastal account also includes the area within
 179 Port Canaveral, which is bordered on the south by the City of
 180 Cape Canaveral, bordered on the west by the Banana River, and
 181 bordered on the north by Federal Government property.

182 b. The three separate accounts must be maintained as long
 183 as financing obligations entered into by the Florida Windstorm
 184 Underwriting Association or Residential Property and Casualty
 185 Joint Underwriting Association are outstanding, in accordance
 186 with the terms of the corresponding financing documents. If the
 187 financing obligations are no longer outstanding, the corporation
 188 may use a single account for all revenues, assets, liabilities,
 189 losses, and expenses of the corporation. Consistent with this
 190 subparagraph and prudent investment policies that minimize the
 191 cost of carrying debt, the board shall exercise its best efforts
 192 to retire existing debt or obtain the approval of necessary
 193 parties to amend the terms of existing debt, so as to structure
 194 the most efficient plan for consolidating ~~to consolidate~~ the
 195 three separate accounts into a single account.

196 c. Creditors of the Residential Property and Casualty Joint
 197 Underwriting Association and the accounts specified in sub-sub-
 198 subparagraphs a.(I) and (II) may have a claim against, and
 199 recourse to, those accounts and no claim against, or recourse
 200 to, the account referred to in sub-sub-subparagraph a.(III).
 201 Creditors of the Florida Windstorm Underwriting Association have
 202 a claim against, and recourse to, the account referred to in
 203 sub-sub-subparagraph a.(III) and no claim against, or recourse

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204 to, the accounts referred to in sub-sub-subparagraphs a.(I) and
 205 (II).

206 d. Revenues, assets, liabilities, losses, and expenses not
 207 attributable to particular accounts shall be prorated among the
 208 accounts.

209 e. The Legislature finds that the revenues of the
 210 corporation are revenues that are necessary to meet the
 211 requirements set forth in documents authorizing the issuance of
 212 bonds under this subsection.

213 f. The income of the corporation may not inure to the
 214 benefit of any private person.

215 3. With respect to a deficit in an account:

216 a. After accounting for the Citizens policyholder surcharge
 217 imposed under sub-subparagraph i., if the remaining projected
 218 deficit incurred in the coastal account in a particular calendar
 219 year:

220 (I) Is not greater than 2 percent of the aggregate
 221 statewide direct written premium for the subject lines of
 222 business for the prior calendar year, the entire deficit shall
 223 be recovered through regular assessments of assessable insurers
 224 under paragraph (q) and assessable insureds.

225 (II) Exceeds 2 percent of the aggregate statewide direct
 226 written premium for the subject lines of business for the prior
 227 calendar year, the corporation shall levy regular assessments on
 228 assessable insurers under paragraph (q) and on assessable
 229 insureds in an amount equal to the greater of 2 percent of the
 230 projected deficit or 2 percent of the aggregate statewide direct
 231 written premium for the subject lines of business for the prior
 232 calendar year. Any remaining projected deficit shall be

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233 recovered through emergency assessments under sub-subparagraph
234 d.

235 b. Each assessable insurer's share of the amount being
236 assessed under sub-subparagraph a. must be in the proportion
237 that the assessable insurer's direct written premium for the
238 subject lines of business for the year preceding the assessment
239 bears to the aggregate statewide direct written premium for the
240 subject lines of business for that year. The assessment
241 percentage applicable to each assessable insured is the ratio of
242 the amount being assessed under sub-subparagraph a. to the
243 aggregate statewide direct written premium for the subject lines
244 of business for the prior year. Assessments levied by the
245 corporation on assessable insurers under sub-subparagraph a.
246 must be paid as required by the corporation's plan of operation
247 and paragraph (q). Assessments levied by the corporation on
248 assessable insureds under sub-subparagraph a. shall be collected
249 by the surplus lines agent at the time the surplus lines agent
250 collects the surplus lines tax required by s. 626.932, and paid
251 to the Florida Surplus Lines Service Office at the time the
252 surplus lines agent pays the surplus lines tax to that office.
253 Upon receipt of regular assessments from surplus lines agents,
254 the Florida Surplus Lines Service Office shall transfer the
255 assessments directly to the corporation as determined by the
256 corporation.

257 c. After accounting for the Citizens policyholder surcharge
258 imposed under sub-subparagraph i., the remaining projected
259 deficits in the personal lines account and in the commercial
260 lines account in a particular calendar year shall be recovered
261 through emergency assessments under sub-subparagraph d.

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262 d. Upon a determination by the board of governors that a
263 projected deficit in an account exceeds the amount that is
264 expected to be recovered through regular assessments under sub-
265 subparagraph a., plus the amount that is expected to be
266 recovered through surcharges under sub-subparagraph i., the
267 board, after verification by the office, shall levy emergency
268 assessments for as many years as necessary to cover the
269 deficits, to be collected by assessable insurers and the
270 corporation and collected from assessable insureds upon issuance
271 or renewal of policies for subject lines of business, excluding
272 National Flood Insurance policies. The amount collected in a
273 particular year must be a uniform percentage of that year's
274 direct written premium for subject lines of business and all
275 accounts of the corporation, excluding National Flood Insurance
276 Program policy premiums, as annually determined by the board and
277 verified by the office. The office shall verify the arithmetic
278 calculations involved in the board's determination within 30
279 days after receipt of the information on which the determination
280 was based. The office shall notify assessable insurers and the
281 Florida Surplus Lines Service Office of the date on which
282 assessable insurers shall begin to collect and assessable
283 insureds shall begin to pay such assessment. The date must be at
284 least ~~may be not less than~~ 90 days after the date the
285 corporation levies emergency assessments pursuant to this sub-
286 subparagraph. Notwithstanding any other provision of law, the
287 corporation and each assessable insurer that writes subject
288 lines of business shall collect emergency assessments from its
289 policyholders without such obligation being affected by any
290 credit, limitation, exemption, or deferment. Emergency

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291 assessments levied by the corporation on assessable insureds
 292 shall be collected by the surplus lines agent at the time the
 293 surplus lines agent collects the surplus lines tax required by
 294 s. 626.932 and paid to the Florida Surplus Lines Service Office
 295 at the time the surplus lines agent pays the surplus lines tax
 296 to that office. The emergency assessments collected shall be
 297 transferred directly to the corporation on a periodic basis as
 298 determined by the corporation and held by the corporation solely
 299 in the applicable account. The aggregate amount of emergency
 300 assessments levied for an account ~~under this sub-subparagraph~~ in
 301 any calendar year may be less than but may not exceed the
 302 greater of 10 percent of the amount needed to cover the deficit,
 303 plus interest, fees, commissions, required reserves, and other
 304 costs associated with financing the original deficit, or 10
 305 percent of the aggregate statewide direct written premium for
 306 subject lines of business and all accounts of the corporation
 307 for the prior year, plus interest, fees, commissions, required
 308 reserves, and other costs associated with financing the deficit.

309 e. The corporation may pledge the proceeds of assessments,
 310 projected recoveries from the Florida Hurricane Catastrophe
 311 Fund, other insurance and reinsurance recoverables, policyholder
 312 surcharges and other surcharges, and other funds available to
 313 the corporation as the source of revenue for and to secure bonds
 314 issued under paragraph (q), bonds or other indebtedness issued
 315 under subparagraph (c)3., or lines of credit or other financing
 316 mechanisms issued or created under this subsection, or to retire
 317 any other debt incurred as a result of deficits or events giving
 318 rise to deficits, or in any other way that the board determines
 319 will efficiently recover such deficits. The purpose of the lines

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320 of credit or other financing mechanisms is to provide additional
 321 resources to assist the corporation in covering claims and
 322 expenses attributable to a catastrophe. As used in this
 323 subsection, the term "assessments" includes regular assessments
 324 under sub-subparagraph a. or subparagraph (q)1. and emergency
 325 assessments under sub-subparagraph d. Emergency assessments
 326 collected under sub-subparagraph d. are not part of an insurer's
 327 rates, are not premium, and are not subject to premium tax,
 328 fees, or commissions; however, failure to pay the emergency
 329 assessment shall be treated as failure to pay premium. The
 330 emergency assessments ~~under sub-subparagraph d.~~ shall continue
 331 as long as any bonds issued or other indebtedness incurred with
 332 respect to a deficit for which the assessment was imposed remain
 333 outstanding, unless adequate provision has been made for the
 334 payment of such bonds or other indebtedness pursuant to the
 335 documents governing such bonds or indebtedness.

336 f. As used in this subsection for purposes of any deficit
 337 incurred on or after January 25, 2007, the term "subject lines
 338 of business" means insurance written by assessable insurers or
 339 procured by assessable insureds for all property and casualty
 340 lines of business in this state, but not including workers'
 341 compensation or medical malpractice. As used in this sub-
 342 subparagraph, the term "property and casualty lines of business"
 343 includes all lines of business identified on Form 2, Exhibit of
 344 Premiums and Losses, in the annual statement required of
 345 authorized insurers under s. 624.424 and any rule adopted under
 346 this section, except for those lines identified as accident and
 347 health insurance and except for policies written under the
 348 National Flood Insurance Program or the Federal Crop Insurance

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349 Program. For purposes of this sub-subparagraph, the term
350 "workers' compensation" includes both workers' compensation
351 insurance and excess workers' compensation insurance.

352 g. The Florida Surplus Lines Service Office shall determine
353 annually the aggregate statewide written premium in subject
354 lines of business procured by assessable insureds and report
355 that information to the corporation in a form and at a time the
356 corporation specifies to ensure that the corporation can meet
357 the requirements of this subsection and the corporation's
358 financing obligations.

359 h. The Florida Surplus Lines Service Office shall verify
360 the proper application by surplus lines agents of assessment
361 percentages for regular assessments and emergency assessments
362 levied under this subparagraph on assessable insureds and assist
363 the corporation in ensuring the accurate, timely collection and
364 payment of assessments by surplus lines agents as required by
365 the corporation.

366 i. ~~In 2008 or thereafter,~~ Upon a determination by the board
367 of governors that an account has a projected deficit, the board
368 shall levy a Citizens policyholder surcharge against all
369 policyholders of the corporation.

370 (I) The surcharge shall be levied as a uniform percentage
371 of the premium ~~for all corporation policyholders for the policy~~
372 of up to 10 percent of the policy premium for deficits in the
373 personal lines account, up to 15 percent of the policy such
374 premium for deficits in the commercial lines account, and up to
375 20 percent of the policy premium for deficits in the coastal
376 account, which funds shall be used to offset the deficit.

377 (II) The surcharge is payable upon cancellation or

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378 termination of the policy, upon renewal of the policy, or upon
379 issuance of a new policy by the corporation within the first 12
380 months after the date of the levy or the period of time
381 necessary to fully collect the surcharge amount.

382 (III) The corporation may not levy any regular assessments
383 under paragraph (q) pursuant to sub-subparagraph a. or sub-
384 subparagraph b. with respect to a particular year's deficit
385 until the corporation has first levied the full amount of the
386 surcharge authorized by this sub-subparagraph.

387 (IV) The surcharge is not considered premium and is not
388 subject to commissions, fees, or premium taxes. However, failure
389 to pay the surcharge shall be treated as failure to pay premium.

390 j. If the amount of any assessments or surcharges collected
391 from corporation policyholders, assessable insurers or their
392 policyholders, or assessable insureds exceeds the amount of the
393 deficits, such excess amounts shall be remitted to and retained
394 by the corporation in a reserve to be used by the corporation,
395 as determined by the board of governors and approved by the
396 office, to pay claims or reduce any past, present, or future
397 plan-year deficits or to reduce outstanding debt.

398 (hh) The corporation shall ~~must~~ prepare a report for each
399 calendar year outlining both the statewide average and county-
400 specific details of the loss ratio attributable to losses that
401 are not catastrophic losses for residential coverage provided by
402 the corporation, which information must be presented to the
403 office and available for public inspection on the Internet
404 website of the corporation by March 1 ~~January 15th~~ of the
405 following calendar year.

406 Section 3. Effective January 1, 2015, paragraph (n) of

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407 subsection (6) of section 627.351, Florida Statutes, is amended
408 to read:

409 627.351 Insurance risk apportionment plans.—

410 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

411 (n)~~1~~. Rates for coverage provided by the corporation must
412 be actuarially sound and subject to s. 627.062, except as
413 otherwise provided in this paragraph.

414 1. The corporation shall file its recommended rates for
415 each personal and commercial line of business it writes with the
416 office at least annually. The corporation shall provide any
417 additional information regarding the rates which the office
418 requires. The office shall consider the recommendations of the
419 board and issue a final order establishing the rates for the
420 corporation within 45 days after the recommended rates are
421 filed. The corporation may not pursue an administrative
422 challenge or judicial review of the final order of the office.

423 2. In addition to the rates otherwise determined pursuant
424 to this paragraph, the corporation shall impose and collect an
425 amount equal to the premium tax provided in s. 624.509 to
426 augment the financial resources of the corporation.

427 3. After the public hurricane loss-projection model under
428 s. 627.06281 has been found to be accurate and reliable by the
429 Florida Commission on Hurricane Loss Projection Methodology, the
430 model shall serve as the minimum benchmark for determining the
431 windstorm portion of the corporation's rates. This subparagraph
432 does not require or allow the corporation to adopt rates lower
433 than the rates otherwise required or allowed by this paragraph.

434 ~~4. The rate filings for the corporation which were approved~~
435 ~~by the office and took effect January 1, 2007, are rescinded,~~

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436 ~~except for those rates that were lowered. As soon as possible,~~
437 ~~the corporation shall begin using the lower rates that were in~~
438 ~~effect on December 31, 2006, and provide refunds to~~
439 ~~policyholders who paid higher rates as a result of that rate~~
440 ~~filing. The rates in effect on December 31, 2006, remain in~~
441 ~~effect for the 2007 and 2008 calendar years except for any rate~~
442 ~~change that results in a lower rate. The next rate change that~~
443 ~~may increase rates shall take effect pursuant to a new rate~~
444 ~~filing recommended by the corporation and established by the~~
445 ~~office, subject to this paragraph.~~

446 4.5. Beginning on July 15, 2009, and annually thereafter,
447 The corporation shall ~~must~~ make a recommended actuarially sound
448 rate filing for each personal and commercial line of business it
449 writes, ~~to be effective no earlier than January 1, 2010.~~

450 5.6. Beginning on or after January 1, 2015 ~~2010~~, and
451 notwithstanding the board's recommended rates and the office's
452 final order regarding the corporation's filed rates under
453 subparagraph 1., the corporation shall annually implement a rate
454 increase that ~~which~~, except for sinkhole coverage:

455 a. For personal residential and commercial residential
456 policies, does not exceed 10 percent for any single policy
457 issued by the corporation, excluding coverage changes and
458 surcharges.

459 b. For commercial nonresidential policies, does not exceed
460 15 percent for any single policy issued by the corporation,
461 excluding coverage changes and surcharges.

462 ~~6.7.~~ The corporation may also implement an increase to
463 reflect the effect on the corporation of the cash buildup factor
464 pursuant to s. 215.555(5)(b).

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465 ~~7.8-~~ The corporation's implementation of rates as
 466 prescribed in subparagraph ~~5. 6-~~ shall cease for any line of
 467 business written by the corporation upon the corporation's
 468 implementation of actuarially sound rates. Thereafter, the
 469 corporation shall annually make a recommended actuarially sound
 470 rate filing for each commercial and personal line of business
 471 the corporation writes.

472 Section 4. Paragraph (e) is added to subsection (1) of
 473 section 627.3518, Florida Statutes, subsection (2) and paragraph
 474 (e) of subsection (4) of that section are amended, present
 475 subsections (5) through (10) of that section are redesignated as
 476 subsections (6) through (11), respectively, present subsection
 477 (11) is redesignated as subsection (13), new subsections (5) and
 478 (12) are added to that section, and present subsections (5)
 479 through (7) of that section are amended, to read:

480 627.3518 Citizens Property Insurance Corporation
 481 policyholder eligibility clearinghouse program.—The purpose of
 482 this section is to provide a framework for the corporation to
 483 implement a clearinghouse program by January 1, 2014.

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

485 (e) "Surplus lines insurer" means an unauthorized insurer
 486 that has been made eligible by the office to issue coverage
 487 under the Surplus Lines Law.

488 (2) In order to confirm eligibility with the corporation
 489 and to enhance the access of new applicants for coverage and
 490 existing policyholders of the corporation to offers of coverage
 491 from authorized insurers and surplus lines insurers, the
 492 corporation shall establish a program for personal residential
 493 risks in order to facilitate the diversion of ineligible

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494 applicants and existing policyholders ~~from the corporation~~ into
 495 the voluntary insurance market. The corporation shall also
 496 develop appropriate procedures for facilitating the diversion of
 497 ineligible applicants and existing policyholders for commercial
 498 residential coverage into the private insurance market and
 499 implement these procedures by October 1, 2015 ~~shall report such~~
 500 ~~procedures to the President of the Senate and the Speaker of the~~
 501 ~~House of Representatives by January 1, 2014.~~

502 (4) Any authorized insurer may participate in the program;
 503 however, participation is not mandatory for any insurer.
 504 Insurers making offers of coverage to new applicants or renewal
 505 policyholders through the program:

506 (e) May participate through their single-designated
 507 managing general agent or broker; however, the provisions of
 508 paragraph (7) (a) ~~(6) (a)~~ regarding ownership, control, and use of
 509 the expirations continue to apply.

510 (5) Effective January 1, 2015, an eligible surplus lines
 511 insurer may make an offer of similar coverage on a risk
 512 submitted through the clearinghouse program if no offers of
 513 coverage were submitted by authorized insurers participating in
 514 the program and the office determines that the eligible surplus
 515 lines insurer:

516 (a) Maintains a surplus of \$50 million on a company or
 517 pooled basis;

518 (b) Is rated "A-" or higher by A.M. Best Company;

519 (c) Maintains reserves, surplus, reinsurance, and
 520 reinsurance equivalents to cover the eligible surplus lines
 521 insurer's 100-year probable maximum hurricane loss at least
 522 twice in a single hurricane season, and submits such reinsurance

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523 to the office for review for purposes of participation in the
 524 program; and
 525 (d) Provides prominent notice to the policyholder:
 526 1. That an offer of coverage from a surplus lines insurer
 527 does not affect whether the policyholder is eligible for
 528 coverage from the corporation;
 529 2. That a policyholder who accepts an offer of coverage
 530 from a surplus lines insurer may, at any time, submit a new
 531 application for coverage to the corporation;
 532 3. That surplus lines policies are not covered by the
 533 Florida Insurance Guaranty Association;
 534 4. That rates for surplus lines insurance are not subject
 535 to review by the office; and
 536 5. Of any additional information required by the office.
 537 (6)(5) Notwithstanding s. 627.3517, an ~~any~~ applicant for
 538 new coverage from the corporation is not eligible for coverage
 539 from the corporation if provided an offer of coverage from an
 540 authorized insurer through the program at a premium that is at
 541 or below the eligibility threshold established in s.
 542 627.351(6)(c)5.a. ~~or b.~~ Whenever an offer of coverage for a
 543 personal lines ~~or commercial lines residential~~ risk is received
 544 for a policyholder of the corporation at renewal from an
 545 authorized insurer through the program, if the offer is equal to
 546 or less than the corporation's renewal premium for comparable
 547 coverage, the risk is not eligible for coverage with the
 548 corporation. ~~If in the event~~ an offer of coverage for a new
 549 applicant is received from an authorized insurer through the
 550 program, and the premium offered exceeds the eligibility
 551 threshold contained in s. 627.351(6)(c)5.a. ~~or b.~~, the applicant

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552 or insured may elect to accept such coverage, or may elect to
 553 accept or continue coverage with the corporation. If ~~In the~~
 554 event an offer of coverage for a personal lines ~~or commercial~~
 555 lines residential risk is received from an authorized insurer at
 556 renewal through the program~~7~~ and if the premium offered is more
 557 than the corporation's renewal premium for comparable coverage,
 558 the insured may elect to accept such coverage~~7~~, or may elect to
 559 accept or continue coverage with the corporation. Section
 560 627.351(6)(c)5.a.(I) or b.(I) does not apply to an offer of
 561 coverage from an authorized insurer obtained through the
 562 program. An applicant for personal lines residential coverage
 563 from the corporation who was declared ineligible for coverage at
 564 renewal by the corporation in the previous 36 months due to an
 565 offer of coverage pursuant to this subsection is ~~shall be~~
 566 considered a renewal under this section if the corporation
 567 determines that the authorized insurer making the offer of
 568 coverage pursuant to this subsection continues to insure the
 569 applicant and increased the rate on the policy in excess of the
 570 increase allowed for the corporation under s. 627.351(6)(n)5
 571 ~~627.351(6)(n)6.~~
 572 (7)(6) Independent insurance agents submitting new
 573 applications for coverage or that are the agent of record on a
 574 renewal policy submitted to the program:
 575 (a) Are granted and must maintain ownership and the
 576 exclusive use of expirations, records, or other written or
 577 electronic information directly related to such applications or
 578 renewals written through the corporation or through an insurer
 579 participating in the program, notwithstanding s.
 580 627.351(6)(c)5.a.(I)(B) and (II)(B) and b.(I)(B) and (II)(B).

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581 Such ownership is granted for as long as the insured remains
 582 with the agency or until sold or surrendered in writing by the
 583 agent. Contracts with the corporation or required by the
 584 corporation must not amend, modify, interfere with, or limit
 585 such rights of ownership. Such expirations, records, or other
 586 written or electronic information may be used to review an
 587 application, issue a policy, or for any other purpose necessary
 588 for placing such business through the program.

589 (b) May not be required to be appointed by any insurer
 590 participating in the program for policies written solely through
 591 the program, notwithstanding ~~the provisions of~~ s. 626.112.

592 (c) May accept an appointment from an ~~any~~ insurer
 593 participating in the program.

594 (d) May enter into ~~either~~ a standard or limited agency
 595 agreement with the insurer, at the insurer's option.

596 Applicants ineligible for coverage in accordance with subsection
 597 (6) ~~(5)~~ remain ineligible if their independent agent is
 598 unwilling or unable to enter into a standard or limited agency
 599 agreement with an insurer participating in the program.

601 (8) ~~(7)~~ Exclusive agents submitting new applications for
 602 coverage or that are the agent of record on a renewal policy
 603 submitted to the program:

604 (a) Must maintain ownership and the exclusive use of
 605 expirations, records, or other written or electronic information
 606 directly related to such applications or renewals written
 607 through the corporation or through an insurer participating in
 608 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 609 (II)(B) and b.(I)(B) and (II)(B). Contracts with the corporation

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610 or required by the corporation must not amend, modify, interfere
 611 with, or limit such rights of ownership. Such expirations,
 612 records, or other written or electronic information may be used
 613 to review an application, issue a policy, or for any other
 614 purpose necessary for placing such business through the program.

615 (b) May not be required to be appointed by any insurer
 616 participating in the program for policies written solely through
 617 the program, notwithstanding ~~the provisions of~~ s. 626.112.

618 (c) Must only facilitate the placement of an offer of
 619 coverage from an insurer whose limited servicing agreement is
 620 approved by that exclusive agent's exclusive insurer.

621 (d) May enter into a limited servicing agreement with the
 622 insurer making an offer of coverage, and only after the
 623 exclusive agent's insurer has approved the limited servicing
 624 agreement terms. The exclusive agent's insurer must approve a
 625 limited service agreement for the program for an ~~any~~ insurer for
 626 which it has approved a service agreement for other purposes.

627 Applicants ineligible for coverage in accordance with subsection
 628 (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling
 629 or unable to enter into a standard or limited agency agreement
 630 with an insurer making an offer of coverage to that applicant.

631 (12) An applicant for coverage from the corporation who was
 632 a policyholder of the corporation within the previous 36 months
 633 and who subsequently accepted an offer of coverage from a
 634 surplus lines insurer is considered a renewal under this
 635 section.

636 Section 5. Section 627.3519, Florida Statutes, is repealed.

637 Section 6. Section 627.35191, Florida Statutes, is amended

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639 to read:

640 627.35191 Required reports ~~Annual report of aggregate net~~
 641 ~~probable maximum losses, financing options, and potential~~
 642 ~~assessments.-~~

643 (1) By ~~no later than~~ February 1 of each year, the Florida
 644 Hurricane Catastrophe Fund and Citizens Property Insurance
 645 Corporation shall each submit a report to the Legislature and
 646 the Financial Services Commission identifying their respective
 647 aggregate net probable maximum losses, financing options, and
 648 potential assessments. The report issued by the fund and the
 649 corporation must include their respective 50-year, 100-year, and
 650 250-year probable maximum losses; analysis of all reasonable
 651 financing strategies for each such probable maximum loss,
 652 including the amount and term of debt instruments; specification
 653 of the percentage assessments that would be needed to support
 654 each of the financing strategies; and calculations of the
 655 aggregate assessment burden on Florida property and casualty
 656 policyholders for each of the probable maximum losses.

657 (2) In May of each year, Citizens Property Insurance
 658 Corporation shall also provide to the Legislature and the
 659 Financial Services Commission a statement of the estimated
 660 borrowing capacity of the corporation for the next 12-month
 661 period, the estimated claims-paying capacity of the corporation,
 662 and the corporation's estimated balance as of December 31 of the
 663 current calendar year. Such estimates must take into account
 664 that the corporation, the Florida Hurricane Catastrophe Fund,
 665 and the Florida Insurance Guaranty Association may all be
 666 concurrently issuing debt instruments following a catastrophic
 667 event.

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668 Section 7. Effective January 1, 2015, subsection (7) of
 669 section 627.701, Florida Statutes, is amended to read:

670 627.701 Liability of insureds; coinsurance; deductibles.-
 671 (7) ~~Before~~ ~~Prior~~ ~~to~~ issuing a personal lines residential
 672 property insurance policy on or after January 1, 2015 ~~April 1,~~
 673 ~~1997,~~ or ~~before~~ ~~prior~~ ~~to~~ the first renewal of a residential
 674 property insurance policy on or after January 1, 2015 ~~April 1,~~
 675 ~~1997,~~ the insurer must offer a deductible equal to \$1,000 ~~\$500~~
 676 applicable to losses from perils other than hurricane. The
 677 insurer must provide the policyholder with notice of the
 678 availability of the deductible specified in this subsection in a
 679 form approved by the office at least once every 3 years. The
 680 failure to provide such notice constitutes a violation of this
 681 code but does not affect the coverage provided under the policy.
 682 An insurer may require a higher deductible only as part of a
 683 deductible program lawfully in effect on June 1, 1996, or as
 684 part of a similar deductible program.

685 Section 8. Except as otherwise expressly provided in this
 686 act, this act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3
3-5-14

Meeting Date

Topic Public Adjusters

Bill Number 7062

Name Steve Geller

Amendment Barcode Mayford Award
(if applicable)

Job Title Attorney

Address 100 W. Cypress Creek Rd. Ste. 700

Phone 904-491-1120

FT. Lauderdale FL 33309
City State Zip

E-mail Steve.Geller@ganlaw.com

Speaking: For Against Information

Representing Florida Association of Public Insurance Adjusters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Citizens

Bill Number SPB 7062
(if applicable)

Name Mike Rump

Amendment Barcode Montfort Amendment
(if applicable)

Job Title Vice President - Florida Assoc. of Public Ins. Adjusters (FAPIA)

Address 12437 SW 1st St.

Phone 954 478 1606

Street
Coral Springs FL 33071
City State Zip

E-mail mRump@FAPIA.NET

Speaking: For Against Information

Representing FAPIA

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)

8/5/14
Meeting Date

Topic Citizens Property Ins / DOAH hearings Bill Number 7062
(if applicable)

Name Christine Ashburn Amendment Barcode 962288
(if applicable)

Job Title VP Communications, legislative & External affairs

Address 2312 Killeam Center Blvd - A Phone 850-513-3746
Street

Tallahassee, FL 32309 E-mail christine.ashburn@
City State Zip citizensfla.com

Speaking: For Against Information

Representing Citizens Property Ins. Corp

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)

March 5, 2014
Meeting Date

Topic Citizens

Bill Number SPB 7062
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title lobbyist

Address _____
Street

City State Zip

Phone _____

E-mail _____

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/14
Meeting Date

Topic Citizens

Bill Number 7062
(if applicable)

Name Sarah Gledhill

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida Wildlife Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic CITIZENS

Bill Number 7062
(if applicable)

Name TRAVIS MOORE

Amendment Barcode 812680
(if applicable)

Job Title _____

Address P.O. BOX 781
Street

Phone _____

Largo FL 33779
City State Zip

E-mail MOORET@Tampabay.N.com

Speaking: For Against Information

Representing FL Association For Insurance Reform

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

5 MARCH 2014
Meeting Date

Topic _____

Bill Number SPB 7062
(if applicable)

Name PAUL JESS

Amendment Barcode 268180
(if applicable)

Job Title _____

Address 218 S MONROE
Street

Phone 224-9403

City

State

Zip

E-mail _____

Speaking: For Against Information

IF THERE ARE QUESTIONS

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/14

Meeting Date

Topic Citizens Property Ins. Corp

Bill Number 7062
(if applicable)

Name Christine Ashburn

Amendment Barcode _____
(if applicable)

Job Title VP-Communications, legislative & external affairs

Address 2812 Killiam Center Blvd - Bldg A

Phone 850-513-3746

Street

Tallahassee FL 32309

City

State

Zip

E-mail Christine.Ashburn@citizensofla.com

Speaking: For Against Information

Representing Citizens Property Ins Corp

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)

3/5/2014
Meeting Date

Topic Property Ins.

Bill Number SB7062
(if applicable)

Name Mark Delegal

Amendment Barcode _____
(if applicable)

Job Title Retained Counsel

Address 315 S. Calhoun Street #600

Phone 224-7000

TLH FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Chamber

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 _____

Bill Number 1062
(if applicable)

Name DORE MANG

Amendment Barcode _____
(if applicable)

Job Title _____

Address 600 E. STEPHENSON

Phone _____

Street

TRACY _____

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FLA SURPLUS LINES ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

5/5/14
Meeting Date

Topic CITIZENS BILL Bill Number SB7062
Name DOUG MANG Amendment Barcode 812680
(if applicable)
(if applicable)

Job Title _____
Address 460 E. JEFFERSON Phone _____
Street
TALLAH FL 32302 E-mail _____
City State Zip

Speaking: For Against Information
Representing FLA. SURPLUS LINES ASSOC

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Banking and Insurance
Children, Families, and Elder Affairs
Ethics and Elections
Rules
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 3, 2014

The Honorable Don Gaetz
President of the Florida Senate
409 The Capitol

Via email

Dear President Gaetz:

I need to handle a hearing this Wednesday before the City of Miami, and have booked a noon departure flight. I respectfully request that I be excused from Senate Business after 11:00 am. on Wednesday, March 5, and Thursday morning, March 6.

Your consideration is greatly appreciated.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore