

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

**COMMERCE AND TOURISM**  
**Senator Detert, Chair**  
**Senator Abruzzo, Vice Chair**

**MEETING DATE:** Monday, April 15, 2013  
**TIME:** 3:30 —5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 262</b> Banking and Insurance / Smith (Similar CS/H 157, Compare CS/CS/H 635, CS/S 1046)	Delivery of Insurance Policies; Providing that an insurance policy may be delivered by electronic means; specifying the types of policies that can be delivered electronically; requiring that a paper copy of the policy be provided upon request, etc.  BI      04/02/2013 Fav/CS CM      04/15/2013 Favorable RC	Favorable Yeas 11 Nays 0
2	<b>SB 418</b> Detert (Similar CS/H 223)	Insurance; Authorizing the posting of specified types of insurance policies and endorsements on an insurer's Internet website in lieu of mailing or delivery to the insured if the insurer complies with certain conditions, etc.  BI      04/09/2013 Favorable CM      04/15/2013 Fav/CS	Fav/CS Yeas 10 Nays 1
3	<b>CS/SB 550</b> Banking and Insurance / Simpson (Identical CS/CS/H 457)	Collection of Worthless Payment Instruments; Applying certain provisions relating to civil actions brought to collect dishonored checks, drafts, and orders of payment to specified types of payment instruments to permit the award of triple damages, court costs, and reasonable attorney fees, the imposition of service charges, and requirements for written demands for payment that must be delivered before commencement of collection actions; authorizing the payee of a dishonored payment instrument to recover bank fees and a service charge without filing a civil action, etc.  BI      04/02/2013 Fav/CS CM      04/15/2013 Favorable JU	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, April 15, 2013, 3:30 —5:30 p.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 814</b> Banking and Insurance / Brandes (Similar CS/H 783)	Branch Offices Conducting Securities Transactions; Providing for a branch office notice filing with the Office of Financial Regulation in lieu of registration; prohibiting a securities dealer or investment advisor from conducting business from a branch office unless a specified notice has been filed with the office; providing for expiration, renewal, suspension, revocation, and termination of branch office notice filings under specified circumstances, etc.  BI 04/09/2013 Fav/CS CM 04/15/2013 Favorable JU	Favorable Yeas 11 Nays 0
5	<b>CS/SB 1408</b> Banking and Insurance / Richter (Similar CS/H 1191, Compare CS/S 1046)	Captive Insurance; Replacing the term "captive insurer" with "captive insurance company" in part V of ch. 628, F.S.; expanding the risks that an industrial insured capital insurance company may insure; providing that an industrial insured captive insurance company may provide certain insurance if the company has and maintains unencumbered capital and surplus of a certain amount; conforming terms and requiring captive insurance companies to deposit and maintain securities for the protection of policyholders, etc.  BI 04/09/2013 Fav/CS CM 04/15/2013 Favorable AP	Favorable Yeas 11 Nays 0

---

Other Related Meeting Documents

---

An electronic copy of the Appearance Request form is available to download from any  
Senate committee page on the Senate's website, [www.flSenate.gov](http://www.flSenate.gov)

---

**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 Commerce and Tourism

**BILL:** CS/SB 262

**INTRODUCER:** Banking and Insurance Committee and Senator Smith

**SUBJECT:** Delivery of Insurance Policies

**DATE:** April 12, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	<b>Fav/CS</b>
2.	Malcolm	Hrdlicka	CM	<b>Favorable</b>
3.			RC	
4.				
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 262 allows an insurer to transmit a policy electronically for certain types of specified commercial risks. For these specified types of coverage, electronic transmission of a policy constitutes delivery to the insured. The electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

This bill amends s. 627.421, F.S.

## II. Present Situation:

Section 627.421, F.S., requires every insurance policy<sup>1</sup> to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

### Applicability of Federal and State Law Relating to Electronic Transactions

#### *E-SIGN*

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>2</sup> Insurance is specifically included in E-SIGN.<sup>3</sup> E-SIGN provides that a signature, contract, or other record will not be denied legal effect solely because it is in electronic format or because electronic signatures or records were used in its formation.<sup>4</sup> E-SIGN states that it does not require any person to agree to use or accept electronic records or signatures, other than a governmental record.<sup>5</sup> E-SIGN provides that information required by law to be in writing can be made available electronically to a consumer only if:

- The consumer has affirmatively consented to receive the information electronically and has not withdrawn that consent;
- The consumer has been provided a “clear and conspicuous statement”:
  - Informing the consumer of any right to receive the record in paper format;
  - Informing the consumer of the right to withdraw the consent;
  - Informing the consumer whether the consent applies only to the particular transaction or identified categories of records;
  - Describing the procedures for the consumer to withdraw consent;
  - Informing the consumer of how a paper copy may be obtained; and
  - Informing the consumer whether a fee will be charged for the paper copy.
- The consumer has been provided a statement of the hardware and software needed to access and retain the electronic records;
- The consumer consents electronically, reasonably demonstrating the ability to access the information; and
- If a change in the hardware or software requirements creates a material risk that the consumer will not be able to access or retain records, the provider of the records must:
  - Provide the consumer with a statement of the revised hardware and software that would be needed; and
  - Provide the consumer with a statement of the right to withdraw consent without the imposition of any fees or other consequence that was not specified in the initial disclosures.<sup>6</sup>

<sup>1</sup> Section 627.402(1), F.S., defines “policy” to include endorsements, riders, and clauses. However, reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered pursuant to s. 627.421, F.S. See s. 627.401, F.S.

<sup>2</sup> See Section 101, Pub. L. No. 106-229, 106th Cong. (June 30, 2000).

<sup>3</sup> 15 U.S.C. s. 7001(i).

<sup>4</sup> 15 U.S.C. s. 7001(a)(2).

<sup>5</sup> 15 U.S.C. s. 7001(b)(2).

<sup>6</sup> 15 U.S.C. s. 7001(c)(1).

While federal law generally preempts state law, E-SIGN allows states to be exempt from federal preemption by conforming state legislation to one of two options.<sup>7</sup> First, a state may avoid federal preemption by E-SIGN if the state enacts the Uniform Electronic Transaction Act (UETA) as approved by the National Conference of Commissioners on Uniform State Laws in 1999.<sup>8</sup> If, however, the state enactment makes any exception to the scope of UETA, it will be preempted to the extent that the exception is inconsistent with E-SIGN.<sup>9</sup> Second, a state may avoid federal preemption by E-SIGN if the state enacts legislation that specifies alternative procedures for the use and determination of legal validity of electronic transactions that: (1) are consistent with E-SIGN; (2) do not give greater legal status to specific types of technologies or security measures; and (3) specifically reference E-SIGN in the state statute.<sup>10</sup>

### **FUETA**

In 2000, Florida adopted the substantive provisions of UETA, with minor differences added to reflect Florida law, as Florida's Uniform Electronic Transaction Act (FUETA).<sup>11</sup> FUETA contains a number of provisions regarding the use of electronic records and signatures in a transaction. The goal of FUETA is to make sure that transactions that are finalized electronically are as enforceable as transactions memorialized on paper with manual signatures.<sup>12</sup>

FUETA does not require a record to be sent, communicated, received, or used electronically.<sup>13</sup> It applies only to transactions in which each party has agreed to conduct the transaction electronically.<sup>14</sup> Whether the parties have agreed to conduct the transaction electronically is determined from the context, the surrounding circumstances, and the parties' conduct.<sup>15</sup> If a party agrees to conduct a transaction electronically, that party may refuse to conduct other transactions electronically.<sup>16</sup> If the parties have agreed to conduct a transaction electronically and a provision of law requires the delivery of information in writing, that requirement is satisfied by an electronic transmission.<sup>17</sup> However, if another provision of law requires a record to be sent in a specified manner, the record must comply with the posting, transmittal, and content requirements of the other statute.<sup>18</sup>

---

<sup>7</sup> 15 U.S.C. 7002(a).

<sup>8</sup> 15 U.S.C. 7002(a)(1).

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

<sup>10</sup> 15 USC s. 7002(a)(2).

<sup>11</sup> Chapter 2000-164, s. 1, L.O.F.; s. 668.50, F.S.; see Final Staff Analysis for CS/CS/SB 1334 by the House Committee on Utilities & Communications, 10, available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=View&BillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=View&BillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334) (last visited April 9, 2013) (indicating that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements."); Uniform Electronic Transactions Act (1999), available at [http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf) (last visited April 9, 2013); National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at <http://www.ncsl.org/issuesresearch/telecom/uniformelectronic-transactions-acts.aspx> (last visited April 9, 2013). Although FUETA has been amended five times since adoption in 2000, none of the amendments were substantive.

<sup>12</sup> Uniform Law Commission, *Electronic Transactions Act Summary*, available at <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Transactions%20Act> (last visited April 9, 2013). See s. 668.50(7), F.S.

<sup>13</sup> Section 668.50(5)(a), F.S.

<sup>14</sup> Section 668.50(5)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 668.50(5)(c), F.S.

<sup>17</sup> Section 668.50(8)(a), F.S.

<sup>18</sup> Section 668.50(8)(b), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 627.421, F.S., to allow an insurer to transmit a policy electronically for certain types of specified commercial risks. Electronic transmission of a policy constitutes delivery to the insured or to the person entitled to delivery for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

The electronic transmission of the policy is required to include notice of the recipient's right to receive the policy by United States mail rather than by electronic transmission. The insurer must provide a paper copy of the policy if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

**Section 2** provides that the 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:

By permitting certain commercial insurers to deliver insurance policies electronically, the bill may reduce the administrative costs to insurers associated with printing and mailing.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the Office of Insurance Regulation, the bill may be preempted by E-SIGN because it may conflict with FUETA.<sup>19</sup> Under E-SIGN, the consumer must affirmatively consent to receive information electronically before that transaction can be recognized as valid.<sup>20</sup> However, E-SIGN allow states to be exempt from federal preemption by conforming state legislation to the Uniform Electronic Transaction Act (UETA).<sup>21</sup> If, however, the state enactment makes any exception to the scope of UETA, the state law will be preempted to the extent that the exception is inconsistent with E-SIGN.<sup>22</sup>

As explained above, Florida adopted substantially all of UETA in s. 668.50, F.S. Under s. 668.50, F.S., information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct the transaction electronically.<sup>23</sup> Whether the parties have agreed to conduct the transaction electronically is determined from the context and the parties' conduct.<sup>24</sup>

Section 668.50(8)(b), F.S., provides that if another provision of law requires a record to be sent by a specified manner, the record can be sent electronically if it complies with the posting, transmittal, and content requirements of the other statute. However, s. 668.50(8)(b), F.S., does not specify that the parties must agree to conduct the transaction electronically.

If it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies does not require both parties consent to conduct the transaction electronically, then the bill's provision allowing electronic delivery of certain commercial policies without the consent of the insured likely complies with UETA and the bill is likely not preempted by E-SIGN. If, however, it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies simply specifies additional requirements for these specific types of transactions and the consent requirements of s. 668.50, F.S., also apply, then the electronic delivery of policies without the consent of the insured may not comply with UETA and may be preempted by E-SIGN.

---

<sup>19</sup> Office of Insurance Regulation, *Bill Analysis: SB 262* (Jan. 23, 2013) (on file with the Senate Committee on Commerce and Tourism).

<sup>20</sup> 15 U.S.C. 7001(c)(1).

<sup>21</sup> 15 U.S.C. 7002(a)(1).

<sup>22</sup> *Id.*

<sup>23</sup> See ss. 668.50(8)(a); 668.50(7)(c), (d); 668.50(5)(b), F.S.

<sup>24</sup> Section 668.50(5)(b), F.S.

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

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

**CS by Banking and Insurance on April 2, 2013:**

The CS allows an insurer to transmit a policy electronically for certain types of specified commercial risks. The CS provides that electronic transmission of a policy constitutes delivery to the insured or to the person entitled to delivery for the following types of coverage:

- Workers' compensation and employers' liability;
- Commercial automobile liability;
- Commercial automobile physical damage;
- Commercial lines residential property;
- Commercial nonresidential property;
- Farm owners insurance; and
- The types of commercial lines risks that are not subject to the rating requirements of s. 627.062(a) and (f), F.S.

**B. Amendments:**

None.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-15-13

Meeting Date

Topic Ecdelivery

Bill Number CS/SB 262  
*(if applicable)*

Name Meredith Snowden

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Consultant

Address 215 S. Monroe St., Suite 701

Phone 510-9257

Fall FL 32301

E-mail msnowden@cflaw.com

City

State

Zip

Speaking:  For  Against  Information

Representing FCCI Insurance Group

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 Commerce and Tourism

**BILL:** CS/SB 418

**INTRODUCER:** Commerce and Tourism Committee and Senator Detert

**SUBJECT:** Insurance

**DATE:** April 16, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	<b>Favorable</b>
2.	Malcolm	Hrdlicka	CM	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 418 allows insurers to post certain insurance policies not containing policyholder personal identifiable information on the insurer’s website instead of mailing the policy to the insured. If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer’s website and posted in a format that allows the policy to be saved and printed by the policyholder for free. An insurer posting policies online must archive and make all of its expired policies available to policyholders online for at least 5 years after the policy expires. Insurers must also notify each policyholder of his or her right to obtain a paper or electronic copy of the policy and any forms or endorsements without charge.

This bill amends s. 627.421, F.S.

## II. Present Situation:

Section 627.421, F.S., requires every insurance policy<sup>1</sup> to be mailed or delivered to the insured within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

### **Applicability of Federal and State Law Relating to Electronic Transactions**

#### ***E-SIGN***

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>2</sup> Insurance is specifically included in E-SIGN.<sup>3</sup> E-SIGN provides that a signature, contract, or other record will not be denied legal effect solely because it is in electronic format or because electronic signatures or records were used in its formation.<sup>4</sup> E-SIGN states that it does not require any person to agree to use or accept electronic records or signatures, other than a governmental record.<sup>5</sup> E-SIGN provides that information required by law to be in writing can be made available electronically to a consumer only if:

- The consumer has affirmatively consented to receive the information electronically and has not withdrawn that consent;
- The consumer has been provided a “clear and conspicuous statement”:
  - Informing the consumer of any right to receive the record in paper format;
  - Informing the consumer of the right to withdraw the consent;
  - Informing the consumer whether the consent applies only to the particular transaction or identified categories of records;
  - Describing the procedures for the consumer to withdraw consent;
  - Informing the consumer of how a paper copy may be obtained; and
  - Informing the consumer whether a fee will be charged for the paper copy.
- The consumer has been provided a statement of the hardware and software needed to access and retain the electronic records;
- The consumer consents electronically, reasonably demonstrating the ability to access the information; and
- If a change in the hardware or software requirements creates a material risk that the consumer will not be able to access or retain records, the provider of the records must:
  - Provide the consumer with a statement of the revised hardware and software that would be needed; and
  - Provide the consumer with a statement of the right to withdraw consent without the imposition of any fees or other consequence that was not specified in the initial disclosures.<sup>6</sup>

---

<sup>1</sup> Section 627.402(1), F.S., defines “policy” to include endorsements, riders, and clauses. However, reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered pursuant to s. 627.421, F.S. See s. 627.401, F.S.

<sup>2</sup> See Section 101, Pub. L. No. 106-229, 106th Cong. (June 30, 2000).

<sup>3</sup> 15 U.S.C. s. 7001(i).

<sup>4</sup> 15 U.S.C. s. 7001(a)(2).

<sup>5</sup> 15 U.S.C. s. 7001(b)(2).

<sup>6</sup> 15 U.S.C. s. 7001(c)(1).

While federal law generally preempts state law, E-SIGN allows states to be exempt from federal preemption by conforming state legislation to one of two options.<sup>7</sup> First, a state may avoid federal preemption by E-SIGN if the state enacts the Uniform Electronic Transaction Act (UETA) as approved by the National Conference of Commissioners on Uniform State Laws in 1999.<sup>8</sup> If, however, the state enactment makes any exception to the scope of UETA, it will be preempted to the extent that the exception is inconsistent with E-SIGN.<sup>9</sup> Second, a state may avoid federal preemption by E-SIGN if the state enacts legislation that specifies alternative procedures for the use and determination of legal validity of electronic transactions that: (1) are consistent with E-SIGN; (2) do not give greater legal status to specific types of technologies or security measures; and (3) specifically reference E-SIGN in the state statute.<sup>10</sup>

### **FUETA**

In 2000, Florida adopted the substantive provisions of UETA, with minor differences added to reflect Florida law, as Florida's Uniform Electronic Transaction Act (FUETA).<sup>11</sup> FUETA contains a number of provisions regarding the use of electronic records and signatures in a transaction. The goal of FUETA is to make sure that transactions that are finalized electronically are as enforceable as transactions memorialized on paper with manual signatures.<sup>12</sup>

FUETA does not require a record to be sent, communicated, received, or used electronically.<sup>13</sup> It applies only to transactions in which each party has agreed to conduct the transaction electronically.<sup>14</sup> Whether the parties have agreed to conduct the transaction electronically is determined from the context, the surrounding circumstances, and the parties' conduct.<sup>15</sup> If a party agrees to conduct a transaction electronically, that party may refuse to conduct other transactions electronically.<sup>16</sup> If the parties have agreed to conduct a transaction electronically and a provision of law requires the delivery of information in writing, that requirement is satisfied by an electronic transmission.<sup>17</sup> However, if another provision of law requires a record to be sent in a specified manner, the record must comply with the posting, transmittal, and content requirements of the other statute.<sup>18</sup>

<sup>7</sup> 15 U.S.C. 7002(a).

<sup>8</sup> 15 U.S.C. 7002(a)(1).

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

<sup>10</sup> 15 USC s. 7002(a)(2).

<sup>11</sup> Chapter 2000-164, s. 1, L.O.F.; s. 668.50, F.S.; see Final Staff Analysis for CS/CS/SB 1334 by the House Committee on Utilities & Communications, 10, available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode= Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode= Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334) (last visited April 9, 2013) (indicating that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements."); Uniform Electronic Transactions Act (1999), available at [http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf) (last visited April 9, 2013); National Conference of State Legislatures, *Uniform Electronic Transactions Act*, available at <http://www.ncsl.org/issuesresearch/telecom/uniformelectronic-transactions-acts.aspx> (last visited April 9, 2013). Although FUETA has been amended five times since adoption in 2000, none of the amendments were substantive.

<sup>12</sup> Uniform Law Commission, *Electronic Transactions Act Summary*, available at <http://www.uniformlaws.org/ActSummary.aspx?title=Electronic%20Transactions%20Act> (last visited April 9, 2013). See s. 668.50(7), F.S.

<sup>13</sup> Section 668.50(5)(a), F.S.

<sup>14</sup> Section 668.50(5)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 668.50(5)(c), F.S.

<sup>17</sup> Section 668.50(8)(a), F.S.

<sup>18</sup> Section 668.50(8)(b), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 627.421, F.S., to allow insurers to post certain insurance policies not containing policyholder personal identifiable information on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for property and casualty insurance are allowed to be posted online. Policyholder consent is not required for an insurer to post an insurance policy online.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be saved and printed by the policyholder free of charge. An insurer posting policies online must archive and make all of its expired policies and endorsements available to policyholders online for at least 5 years after the policy or endorsement expires.

Insurers posting policies on their website must notify each policyholder of his or her right to request and obtain a paper or electronic copy of the policy and any forms or endorsements without charge. Insurers must also notify policyholders of this right if the insurer changes or renews a policy. If an insurer posts policies online, the policy declarations page provided to the policyholder must clearly identify the exact policy form and endorsements purchased by the policyholder.

**Section 2** provides that the bill takes effect July 1, 2013.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers posting policies online may save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to post policies online and how many policyholders will choose to obtain their policies online rather than by mail.

Insurers may incur costs associated with posting policies online, and any increased costs may be passed through to policyholders.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

Because the bill does not allow insurers to post policies or endorsements that contain personally identifiable information, the policies and endorsements posted online may be of limited value to the insured. The policy declarations page, which contains personal information about the policyholder and the policy, likely could not be posted online under the bill and instead may have to be provided to the policyholder in another manner, usually by mail.

**VII. Related Issues:**

The Office of Insurance Regulation recently stated that a similar bill may be preempted by E-SIGN because it may conflict with FUETA.<sup>19</sup> Under E-SIGN, the consumer must affirmatively consent to receive information electronically before that transaction can be recognized as valid.<sup>20</sup> However, E-SIGN allow states to be exempt from federal preemption by conforming state legislation to the Uniform Electronic Transaction Act (UETA).<sup>21</sup> If, however, the state enactment makes any exception to the scope of UETA, the state law will be preempted to the extent that the exception is inconsistent with E-SIGN.<sup>22</sup>

As explained above, Florida adopted substantially all of UETA in s. 668.50, F.S. Under s. 668.50, F.S., information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct the transaction electronically.<sup>23</sup> Whether the parties have agreed to conduct the transaction electronically is determined from the context and the parties' conduct.<sup>24</sup>

Section 668.50(8)(b), F.S., provides that if another provision of law requires a record to be sent by a specified manner, the record can be sent electronically if it complies with the posting, transmittal, and content requirements of the other statute. However, s. 668.50(8)(b), F.S., does not specify that the parties must agree to conduct the transaction electronically.

If it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies does not require both parties consent to conduct the transaction electronically, then the bill's provision allowing electronic posting of certain insurance policies and endorsement without the consent of the insured likely complies with UETA and the bill is likely not preempted by E-SIGN. If, however,

---

<sup>19</sup> See Office of Insurance Regulation, *Bill Analysis: SB 262* (Jan. 23, 2013) (on file with the Senate Committee on Commerce and Tourism).

<sup>20</sup> 15 U.S.C. 7001(c)(1).

<sup>21</sup> 15 U.S.C. 7002(a)(1).

<sup>22</sup> *Id.*

<sup>23</sup> See ss. 668.50(8)(a); 668.50(7)(c), (d); 668.50(5)(b), F.S.

<sup>24</sup> Section 668.50(5)(b), F.S.

it is interpreted that a transaction for which s. 668.50(8)(b), F.S., applies simply specifies additional requirements for these specific types of transactions and the consent requirements of s. 668.50, F.S., also apply, then the electronic posting of policies without the consent of the insured may not comply with UETA and may be preempted by E-SIGN.

**VIII. Additional Information:**

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

**CS by Commerce and Tourism Committee on April 15, 2013:**

The committee substitute:

- Clarifies that only property and casualty insurance policies may be posted online;
- Clarifies that insurance policies posted online must be easily accessible on the insurer's website; and
- Clarifies that all expired insurance policies and endorsements must be archived and available on the insurer's website for at least 5 years after expiration of the policy or endorsement.

- B. **Amendments:**

None.



494772

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2013	.	
	.	
	.	
	.	

---

---

The Committee on Commerce and Tourism (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 627.421, Florida Statutes, is amended to  
read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of  
premium, every policy shall be mailed or delivered to the  
insured or to the person entitled thereto within ~~not later than~~  
60 days after the effectuation of coverage.

(2) If ~~In the event~~ the original policy is delivered or is



494772

13 ~~so~~ required to be delivered to or for deposit with a ~~any~~ vendor,  
14 mortgagee, or pledgee of any motor vehicle, and in which policy  
15 any interest of the vendee, mortgagor, or pledgor in or with  
16 reference to such vehicle is insured, a duplicate of the ~~such~~  
17 policy setting forth the name and address of the insurer,  
18 insurance classification of vehicle, type of coverage, limits of  
19 liability, premiums for the respective coverages, and duration  
20 of the policy, or memorandum thereof containing the same ~~such~~  
21 information, shall be delivered by the vendor, mortgagee, or  
22 pledgee to each ~~such~~ vendee, mortgagor, or pledgor named in the  
23 policy or coming within the group of persons designated in the  
24 policy to be so included. If the policy does not provide  
25 coverage of legal liability for injury to persons or damage to  
26 the property of third parties, a statement of that ~~such~~ fact  
27 shall be printed, written, or stamped conspicuously on the face  
28 of the ~~such~~ duplicate policy or memorandum. This subsection does  
29 not apply to inland marine floater policies.

30 (3) An ~~Any~~ automobile liability or physical damage policy  
31 must ~~shall~~ contain on the front page a summary of major  
32 coverages, conditions, exclusions, and limitations contained in  
33 that policy. ~~Any~~ Such summary must ~~shall~~ state that the issued  
34 policy should be referred to for the actual contractual  
35 governing provisions. The company may, in lieu of the summary,  
36 provide a readable policy.

37 (4) Notwithstanding subsections (1) and (2), property and  
38 casualty insurance policies and endorsements that do not contain  
39 personally identifiable information may be posted on the  
40 insurer's Internet website. If the insurer elects to post  
41 insurance policies and endorsements on its website in lieu of



494772

42 mailing or delivery to insureds, the insurer must comply with  
43 the following:

44 (a) Each policy and endorsement must be easily accessible  
45 on the insurer's website for as long as the policy and  
46 endorsement remain in force.

47 (b) The insurer must archive and make all of its expired  
48 policies and endorsements available to an insured on its website  
49 for at least 5 years after expiration of the policy and  
50 endorsement.

51 (c) Each policy and endorsement must be posted in a manner  
52 that enables the insured to print and save the policy and  
53 endorsement using a program or application that is widely  
54 available on the Internet without charge.

55 (d) When the insurer issues an initial policy or upon  
56 renewal, the insurer must notify the insured, in the manner the  
57 insurer customarily uses to communicate with the insured, that  
58 the insured has the right to request and obtain without charge a  
59 paper or electronic copy of the insured's policy and  
60 endorsements.

61 (e) On each declarations page issued to the insured, the  
62 insurer must clearly identify the exact policy form and  
63 endorsement form purchased by the insured.

64 (f) If the insurer changes a policy form or endorsement,  
65 the insurer must notify the insured, in the manner the insurer  
66 customarily uses to communicate with the insured, that the  
67 insured has the right to request and obtain without charge a  
68 paper or electronic copy of such form or endorsement.

69 Section 2. This act shall take effect July 1, 2013.

70



494772

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

72 And the title is amended as follows:

73 Delete everything before the enacting clause

74 and insert:

75 A bill to be entitled

76 An act relating to the delivery of insurance policies;

77 amending s. 627.421, F.S.; authorizing the posting of

78 specified types of insurance policies and endorsements

79 on an insurer's Internet website in lieu of mailing or

80 delivery to the insured if the insurer complies with

81 certain conditions; providing an effective date.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Webposting of Ins. Policies

Bill Number 418  
*(if applicable)*

Name Doug Bell

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 215 S. Monroe St.

Phone 222-3533

Tallahassee FL  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Progressive Ins

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 Commerce and Tourism

**BILL:** CS/SB 550

**INTRODUCER:** Banking and Insurance Committee and Senator Simpson

**SUBJECT:** Worthless Checks, Drafts, or Orders of Payment

**DATE:** April 15, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 550 expands civil actions to collect three times the face value of a refused check, draft, or order of payment, to include debit card orders and electronic funds transfers (“payment instrument”).

Under current law, before filing a civil action, the payee must mail written notice to the maker of the payment instrument and provide the maker 30-days to cure the payment instrument by paying:

- The face value of the payment instrument; and
- A service fee based on the face value of the payment instrument.

The bill creates an alternative to the current method to collect on payment instruments. The payee is authorized to collect the following from the maker of a payment instrument that has been refused:

- The face value of the payment instrument;
- A service fee based on the face value of the payment instrument; and

- Bank fees incurred by the payee in the course of tendering payment.

This bill substantially amends s. 68.065, F.S.

## II. Present Situation:

### Civil Actions to Collect Worthless Check, Drafts, or Orders of Payment

Section 68.065, F.S., governs civil actions brought for the purpose of collecting a check, draft, or order of payment (hereinafter “bad check”) refused due to a lack of funds, credit, or an account, or where the maker of the check stops payment with intent to defraud. The statute details a two-stage process for civil recovery. In the initial stage, the payee must send a written demand notice<sup>1</sup> to the maker of the bad check advising that the bad check has been dishonored and requesting the face value of the check and the statutory service fee<sup>2</sup> that must be tendered to the payee. The notice must also state that if the face amount of the check plus the statutory service fee is not paid within 30 days, the maker of the bad check may be subject to a civil action for three times the value of the check plus court costs, reasonable fees, and any bank fees incurred by the payee. The matter is deemed resolved and the payee does not have a civil cause of action, if the maker of the bad check pays:

- The face amount of the bad check; and
- The statutory service fee, which is the greater of:
  - 5 percent of the amount of the bad check; or
  - \$25 if the bad check amount is \$50 or less.
  - \$30 if the bad check amount is greater than \$50 but less than or equal to \$300.
  - \$40 if the bad check amount is greater than \$300.<sup>3</sup>

If the maker of the check fails to make payment as indicated above within 30 days of receiving the written demand letter, the payee may file a civil action seeking recovery of three times the face value of the check plus court costs, reasonable attorney fees, and any bank fees incurred by the payee. Once the second stage of the action commences, the maker of the bad check may cure prior to the hearing by paying the face value of the check and statutory service charge, plus the payee’s court costs, attorney’s fees, and incurred bank fees. The court or jury may waive all or part of the statutory damages if the maker failed to satisfy the dishonored check due to economic hardship.

## III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 68.065, F.S., to define the term “payment instruments” to include debit card transactions and electronic funds transfers.

---

<sup>1</sup> The written demand must be in a form contained in s. 68.065(3), F.S., and must be delivered by certified or registered mail, evidenced by return receipt or by first class mail, evidenced by an affidavit of service of mail.

<sup>2</sup> The payee service charge is limited by s. 68.065(2), F.S., to the greater of a range between \$25 to \$40, based on the face value of the bad check, or 5 percent of the bad check’s face value.

<sup>3</sup> The service fee of 5 percent will exceed the \$40 service fee when the amount of the bad check exceeds \$800.

The bill also provides an alternative collection process that allows a payee<sup>4</sup> to collect on payment instruments without having to file a civil action. Specifically, if the payment is refused or the maker has stopped payment on the payment instrument with intent to defraud, the payee may collect:

- Bank fees actually incurred by the payee in the course of tendering payment; and
- A service charge which is the greater of:
  - 5 percent of the amount of the payment instrument; or
  - \$25 if the payment amount is \$50 or less.
  - \$30 if the payment instrument amount is greater than \$50 but less than or equal to \$300.
  - \$40 if the payment instrument amount is greater than \$300.

The alternative collection process does not prevent the payee from bringing a civil action to collect three times the face value of the payment instrument, plus costs, attorney fees, and bank fees. To do so, however, the payee will need to provide written notice to the maker of the payment instrument and allow the maker 30 days to cure by paying the face value of the payment instrument and the statutorily defined service fee.

**Section 2** provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The makers of payment instruments that are denied will be subject to collection activity that seeks the payment of bank fees incurred by the payee, plus the face value of the instrument and a service fee defined by statute. Under current law, the maker of a denied

---

<sup>4</sup> Payee also includes state and local agencies permitted to prosecute worthless checks under ch. 832, F.S.

bad check may avoid liability for bank fees by tendering the face value of the check and the statutorily defined service fee within 30 days of receiving written notice.

Payees will incur fewer costs and likely obtain greater recovery in collection activity under s. 68.065, F.S. Payees will have statutory authorization to engage in collection activity without having to make a written demand via return-receipt mail or by executing an affidavit of service. Payees will also receive the bank fees they incur in addition to a service charge, as provided under current law.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The statute may allow payees to continue collection activities to collect bank fees even if the maker of a denied payment instrument tenders the face value of the instrument and the statutory service fee as required by statute within 30 days of receiving written notice. Though tendering those monies prevents the payee from bringing a civil action to collect on the denied payment instrument, s.68.065(2), F.S., created in the bill, states the payee has the right to collect bank fees without bringing a civil action. Thus, the payee could continue to attempt to collect those bank fees, but would be unable to bring a civil action to enforce collection.

Section 68.065(2), F.S., created in the bill, does not specifically provide that the bank fees and services fees that the payee may collect is in addition to the amount owing upon the dishonored payment instrument.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Banking and Insurance on April 2, 2013:**

The CS strikes the entirety of the bill as filed, which authorized notice to bring a civil action to collect three times the face value of a bad check by posting a notice of potential liability at the point of sale or printing it on an invoice sent before payment for goods or services. Instead, the CS expands civil actions to collect three times the face value of a refused check, draft, or order of payment, to include debit card orders and electronic funds transfers (“payment instrument”). The CS also creates an alternative to a civil action that authorizes the payee to collect from the maker of a payment instrument that has been refused the face value of the payment instrument, a service fee based on the face value of the payment instrument, and bank fees incurred by the payee in the course of tendering payment.

B. Amendments:

None.

---

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

---



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR WILTON SIMPSON**

18th District

**COMMITTEES:**

Community Affairs, *Chair*  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Environmental Preservation and Conservation

**JOINT COMMITTEE:**

Joint Legislative Auditing Committee

April 2, 2013

Senator Nancy C. Detert, Chair  
Committee on Commerce and Tourism  
310 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Senator Detert,

Please place Senate Bill 550, relating to worthless bank checks, on the next Commerce and Tourism Committee agenda.

Please contact my office with any questions.  
Regards,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Senator Wilton Simpson, 18<sup>th</sup> District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-15-13

Meeting Date

Topic \_\_\_\_\_

Bill Number 550  
*(if applicable)*

Name Lance Lozano

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Chief Operating Officer

Address 116 S. Monroe St.  
*Street*  
Tallahassee FL 32301  
*City State Zip*

Phone 850-681-6265

E-mail llozano@fuba.org

Speaking:  For  Against  Information

Representing Florida United Businesses Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/15/13

Meeting/Date

Topic \_\_\_\_\_

Bill Number 550  
*(if applicable)*

Name Pablo Diaz

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Director

Address \_\_\_\_\_  
*Street*

Phone 850-681-0416

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing National Federation of Independent Business

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)

4/15/13  
Meeting Date

Topic Worthless Checks

Bill Number 550  
*(if applicable)*

Name Melissa Joiner

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director of Gov't Affairs

Address 227 Adams St.

Phone 850-570-0269

Tallahassee Fl.  
City State Zip

E-mail Melissa@frf.org

Speaking:  For  Against  Information

Representing Florida Retail 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.**

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)

4/15/13

*Meeting Date*

Topic Collection of Worthless Payments

Bill Number 550  
*(if applicable)*

Name Brewster Bevis

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior Vice President

Address 516 N. Adams St  
*Street*  
Tallahassee FL 32301  
*City State Zip*

Phone 850-224-7173

E-mail bbevis@aif.com

Speaking:  For  Against  Information

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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 Commerce and Tourism

**BILL:** CS/SB 814

**INTRODUCER:** Banking and Insurance Committee and Senator Brandes

**SUBJECT:** Registration of Branch Offices Conducting Securities Transactions

**DATE:** April 12, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 814 requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business. The notice filing is effective upon the OFR's receipt of the filing and a filing fee of \$100. Current law requires an application for registration for each branch office, effective upon approval by the OFR. As under current law, it is unlawful for a securities dealer or investment adviser to conduct business from a branch office that has not filed with the OFR.

The bill provides for suspension or revocation of a branch office notice filing under certain circumstances. It also permits a dealer or investment adviser to terminate a branch office notice filing.

The bill provides that all fees collected for branch office notice filings become state revenue except for assessments under s. 517.131, F.S., until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

The effective date of the bill is October 1, 2013.

This bill creates s. 517.1202, F.S.

This bill amends ss. 517.12, 517.1205, 517.121, 517.161, 517.1611, and 517.211, F.S.

## II. Present Situation:

### Regulation of Securities

The securities industry is subject to both federal and state law and to the state and federal regulatory agencies that implement statutory law. The primary federal regulator is the Securities and Exchange Commission (SEC), which oversees the key participants in the securities industry such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.<sup>1</sup> The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The Office of Financial Regulation (OFR), through the Division of Securities, regulates the sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms to determine compliance with Florida law. A securities dealer or investment adviser is prohibited from conducting business from a branch office in Florida unless the branch office is registered with the OFR.<sup>2</sup> A “branch office” is “any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.”<sup>3</sup> A branch office also includes any location that is held out as a place where such actions occur.

The Financial Industry Regulatory Authority (FINRA) is an independent, not-for-profit regulator of securities firms.<sup>4</sup> FINRA performs a number of functions, including registering and educating securities industry participants. FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registering, reporting, and disclosing information within the securities industry.

### Registration of Securities Branch Offices

To register a branch office, the securities dealer must file the required form<sup>5</sup> and pay an application fee.<sup>6</sup> The branch office must resubmit an updated form upon any changes in personnel or any material fact that render the registration inaccurate.<sup>7</sup> Branch office registration is effective upon OFR approval, after a review that the registration complies with Florida law.

---

<sup>1</sup> See SEC, “The Investor’s Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation,” available at <http://www.sec.gov/about/whatwedo.shtml> (last accessed 4/11/2013).

<sup>2</sup> Section 517.12(5), F.S.

<sup>3</sup> Section 517.021(4), F.S.

<sup>4</sup> See FINRA, “More About FINRA,” available at <http://www.finra.org/AboutFINRA/P125239> (last accessed 4/11/2013).

<sup>5</sup> The OFR requires the filing of Form BR, Uniform Branch Office Registration Form (adopted 2005) as authorized under s. 517.12(15)(a)1., F.S.

<sup>6</sup> See s. 517.12(10), F.S., and 69W-600.004(3), F.A.C.

<sup>7</sup> See s. 517.12(13), F.S., and 69W-600.004(3)(c), F.A.C.

According to representatives of the Office of Financial Regulation, since July 1, 2012, the average amount of time for the OFR to process and approve a broker-dealer branch office is 5 days upon receipt of registration and 6 days for an investment adviser branch office. Approximately 15 percent of branch office registration applications, however, contain deficiencies that delay the approval date and operation of the branch location.<sup>8</sup>

### III. Effect of Proposed Changes:

**Section 2** creates s. 517.1202, F.S., to provide notice filing requirements for branch offices.

#### Notice Filing

The “notice filing” of a branch office is effective upon receipt of the filing and required fee by the OFR. Each dealer and each investment adviser must pay a filing fee of \$100 for each branch office in the state. A notice filing consists of a form the Financial Services Commission may prescribe by rule.

As under current law, it is unlawful for a securities dealer or investment adviser to conduct business from a branch office that has not filed with the OFR, the only difference being the bill’s requirement of a notice filing. A key difference between the notice filing process of the bill and registration under current law is that registration of a branch office is only effective after the OFR has reviewed the registration and approved it.

#### Renewal

Each notice filing expires on December 31 of the year the filing was made, unless the filing is renewed on or before that date. A branch office notice is renewed when the dealer or securities adviser furnishes to the OFR any required information, a \$100 renewal fee, and any amount due and owing the office pursuant to an agreement with the OFR. If a branch office notice expires, the dealer or investment adviser may request reinstatement on or before the January 31 following expiration by providing requested information, the \$100 renewal fee, and a \$100 late fee. A branch office reinstatement is effective retroactive to January 1 of that year. The bill authorizes the Financial Services Commission to require, by rule, a dealer or investment adviser to file amendments to a branch office notice filing.

#### Suspension and Revocation

The OFR must summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information. The summary suspension is effective until the notice filer submits the requested information to the OFR, pays an administrative fine pursuant to s. 517.221(3), F.S.,<sup>9</sup> and a final order is entered. For purposes of emergency suspension of licenses failure to provide all information required pursuant to branch office notice filing is grounds for the emergency suspension of a license under s. 120.60(6), F.S., because such failure constitutes an immediate and serious danger to the public health, safety, and welfare.

---

<sup>8</sup> OFR, 2013 Bill Analysis – SB 814 CS, April 10, 2013 (On file with the Senate Commerce and Tourism Committee).

<sup>9</sup> An administrative fine may not exceed \$10,000.

A notice filing must be revoked by the OFR if the notice filer fails to provide all requested information within 90 days. The OFR may revoke a branch office notice if the notice filer makes a payment to the OFR via check or electronic funds transmission (EFT) that is dishonored. A dealer or investment adviser may terminate a branch office notice filing by filing a notice of termination with the OFR, the effective date of which is either as specified in the notice of termination or upon receipt by the OFR if the notice does not specify an effective date.

### **Fees**

All fees collected for branch office notice filings become state revenue except for assessments under s. 517.131, F.S., until the Securities Guaranty Fund satisfies the statutory limits. Fees are not returnable if a branch office notice filing is withdrawn.

Under current law, fines imposed under s. 517.221(3), F.S., for violations of ch. 517, F.S., an administrative rule, or an agreement entered into with the OFR must be deposited in the Anti-Fraud Trust Fund.

**Sections 1, 3, 4, 5, 6 and 7** make conforming changes to ss. 517.12, 517.1205, 517.121, 517.161, 517.1611, and 517.211, F.S., related to the bill requiring branch office notice filings instead of registration.

**Section 8** provides an effective date of October 1, 2013.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None. The notice filing fee and renewal fee created in the bill are the same as the fees under current law.

### **B. Private Sector Impact:**

Proponents of the bill from the securities industry assert delays in the current registration process sometimes adversely affect dealers and investment advisors. A dealer or

investment advisor may not conduct business from a branch office that is not properly registered with the OFR. Accordingly, unanticipated delays in the registration process may require the suspension of business activities until the OFR approves the branch registration. Notice filing for branch offices may resolve this issue.

C. **Government Sector Impact:**

The computer programming changing the OFR's online registration and licensing system can be accomplished within existing resources and are insignificant.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of Financial Regulation states in its analysis of the CS that it "believes the enforcement provisions included in the committee substitute provide needed consumer protections." The CS authorizes remedies for branch office filings that are inaccurate or do not comply with state law. However, the OFR also states that it "believes the greatest protection to citizens of Florida is to maintain the current branch office registration process. Removal of the current registration process would lead to the Office losing its ability to minimize a firm's expansion if systemic supervisory issues or ongoing enforcement actions were present."<sup>11</sup>

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Banking and Insurance on April 9, 2013:**

- Strikes the entire original bill.
- Requires each securities dealer and investment adviser to submit to the Office of Financial Regulation (OFR) a notice filing of each branch office from which the dealer or adviser conducts business.
- Makes a notice filing effective upon OFR receipt of the filing and a filing fee of \$100.
- Requires the OFR to summarily suspend a branch office notice filing if the notice filer fails to provide to the OFR all information required as part of a filing within 30 days after the OFR makes a written request for such information.
- Allows reinstatement of form filings under certain circumstances.
- Requires revocation of a form filing by the OFR if the notice filer fails to provide all requested information within 90 days.
- Provides that all branch office filing fees become state revenue, except for an administrative fine under s. 517.221(3), F.S., for failure to timely provide information requested by the OFR, until the Securities Guaranty Fund satisfies the statutory limits.

<sup>10</sup> OFR, 2013 Bill Analysis – SB 814 CS, April 10, 2013 (On file with the Senate Commerce and Tourism Committee).

<sup>11</sup> OFR, 2013 Bill Analysis – SB 814 CS.

B. Amendments:

None.

---

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

---



The Florida Senate

## Committee Agenda Request

RECEIVED

APR 09 2013

COMMERCE

**To:** Senator Nancy Detert, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** April 9, 2013

---

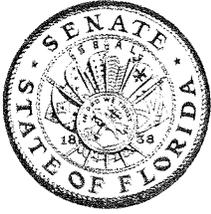
I respectfully request that **Senate Bill #814**, relating to Registration of Branch Offices Conducting Securities Transactions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 22

Cc: Jennifer Hrdlicka



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Transportation, *Chair*  
Agriculture  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Education  
Health Policy

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act

**SENATOR JEFF BRANDES**

22nd District

April 15, 2013

Senator Nancy Detert, Chair  
416 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

RECEIVED

APR 15 2013

COMMERCE

Dear Senator Detert:

I respectfully request that my legislative assistant, Caitlin Murray, be permitted to present my bill, SB 814 regarding branch offices conducting security transactions, before the Commerce and Tourism Committee today, April 15, 2013 at 3:30 in my absence.

I appreciate your consideration of this request; please contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Brandes".

Jeff Brandes

CC: Jennifer Hrdlicka

**REPLY TO:**

- 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/15/13

Meeting Date

Topic Branch Offices

Bill Number 814  
*(if applicable)*

Name Greg Black

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 215 S. Monroe St, Suite 505

Phone 205-9050

Street

TLH

City

FL

State

32301

Zip

E-mail greg.black@metzlaw.com

Speaking:  For  Against  Information

Representing Securities Industry & Financial Markets Association (SIFMA)

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)

4-15-2013

Meeting Date

Topic Branch Office Registration

Bill Number 814  
*(if applicable)*

Name Sean Stafford

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 115 E. Park Avenue  
*Street*

Phone 727-5000

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Financial Services Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

**BILL:** CS/SB 1408

**INTRODUCER:** Banking and Insurance Committee and Senator Richter

**SUBJECT:** Captive Insurance

**DATE:** April 15, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burgess</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 1408 strikes the reference to “satisfactory non-approved reinsurer” from the definition of a qualifying reinsurer parent company, and replaces it with a reference to “trusteed reinsurer,” as being considered a qualifying reinsurer parent company. The bill removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

The bill allows an industrial insured captive insurance company to insure risks of its stockholders or members, and affiliates thereof, or the stockholders or affiliates of the parent corporation of the captive insurance company. The bill allows an industrial insured captive insurance company with unencumbered capital and surplus of at least \$20 million to be licensed to provide workers’ compensation and employer’s liability insurance in excess of \$25 million in the annual aggregate.

The bill exempts captive insurance company from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance. A pure captive insurance company must submit to the Office of Insurance Regulation its standards to ensure a parent or affiliated company is able to exercise control of the risk management

function of any controlled unaffiliated business that is to be insured by the pure captive insurance company. The bill deletes the current authorization for the Financial Services Commission to adopt rules establishing such standards.

This bill substantially amends the following ss. 628.901, 628.905, 628.907, 628.909, 628.9142, 628.915, 628.917, and 628.919, F.S.

## II. Present Situation:

A captive insurance company is one that is created to insure the risks of its owners.<sup>1</sup> A captive insurance company acts similarly to a commercial insurer in that it will issue an insurance policy and in exchange, the insured entity will pay an insurance premium.<sup>2</sup>

Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a “captive insurance company” as a domestic insurer established under part V, and includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,<sup>3</sup> meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.<sup>4</sup>

An “industrial insured captive insurance company”<sup>5</sup> is defined as a captive insurance company that provides insurance only to industrial insureds<sup>6</sup> that are its stockholders or members, or affiliates of the stockholders or members, or to the stockholders of its parent corporation, or their affiliates. An industrial insured captive insurance company can also provide reinsurance, but only on risks written by a direct insurer for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company, or to the stockholders of the parent corporation, or their affiliates, of the industrial insured captive insurance company.

A “captive reinsurance company”<sup>7</sup> is defined as a stock corporation reinsurer formed under part V of ch. 628, F.S., that is wholly owned by a qualifying reinsurance parent company. A “qualifying reinsurance parent company”<sup>8</sup> is defined as a reinsurer that:

---

<sup>1</sup> Insurance Information Institute, *Captives and Other Risk Financing Options* (April 2013), available at [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last visited Apr. 12, 2013).

<sup>2</sup> Theriault, Patrick. *What to Consider When Establishing and Operating Captives*, 3 (2008), available at <http://www.captive.com/service/WilmingtonTrust/images%20and%20pdf/captive101whitepaper.pdf> (last visited Apr. 12, 2013).

<sup>3</sup> *Id* at 9.

<sup>4</sup> Section 628.901(12), F.S.

<sup>5</sup> Section 628.901(9), F.S.

<sup>6</sup> Section 628.901(8), F.S., defines an industrial insured as an insured that has gross assets in excess of \$50 million, procures insurance through a full-time employee of the insured who acts as an insurance manager or buyer or through a person licensed as a property and casualty insurance agent, broker or consultant, has at least 100 full-time employees, and pays annual premiums in excess of specified amounts.

<sup>7</sup> Section 628.901(3), F.S.

<sup>8</sup> Section 628.901(13), F.S.

- Holds a certificate of authority or a letter of eligibility; or
- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.

A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurance company, and the coverages involved. Some benefits of captive insurance may include:

- Lower insurance cost.<sup>9</sup> Two elements that an arm's length insurer must recover are acquisition cost (often in the form of agent commissions and advertising) and profit. A captive insurance company would not need to factor these elements into the premium it charges.
- Potential tax savings.<sup>10</sup> The premium paid by the insured entity is a deductible expense for federal income tax purposes and; under some circumstances, a portion of the captive insurance company's income from the collected premium may not be recognized as taxable. Further, a captive insurance company may be domiciled in a country where its investment income may receive more favorable tax treatment than in the United States.
- More tailored insurance plan.<sup>11</sup> A captive insurance company may be able to create overall savings through coverage and policy provisions that are unique to the individual business being insured.
- Cohesion of interest. Because the control of the insured and the insurer would reside in a single entity, there could be a reduction in some of the areas of potential disagreement over claim verification, investigation, and valuation.

Potential disadvantages of a captive insurance arrangement may include:

- Administrative Costs.<sup>12</sup> Forming a captive insurance company may require extra personnel and management as well as time and attention that can distract from the core business of the parent company or companies. Administering a possible acquisition or merger may also become more complicated when a captive is involved. Regulatory compliance is an additional component that may impose added administrative costs.
- Long-term Financial Risks.<sup>13</sup> The formation of a captive insurance company is a long-term investment with benefits that often are not realized immediately. Captive insurance companies may also expose a company to increased risk and exposure to volatile capital and reinsurance markets. The financial commitment to a captive insurance company is less flexible than the simple purchase of an annual policy through a commercial insurer.

---

<sup>9</sup> Captive.com, *Reasons to Form a Captive*, available at <http://captive.com/service/SCG/ProsAndCons.html> (last visited Apr. 12, 2013).

<sup>10</sup> *Id.*

<sup>11</sup> Captive Insurance Council of the District of Columbia, *Frequently Asked Questions*, available at <http://www.dccaptives.org/i4a/pages/index.cfm?pageid=3382> (last visited Apr. 12, 2013).

<sup>12</sup> *Reasons to Form a Captive*.

<sup>13</sup> *Id.*

In 2012, the Legislature passed and the Governor signed CS/CS/HB 1101 into law,<sup>14</sup> which made significant changes to Florida's captive insurance statute. These changes were intended to modernize the statute and make Florida more attractive to companies seeking to domicile captive insurance companies in the state, which could help generate new jobs and revenues. Among its numerous provisions, the law:

- Adopted new definitions for pure captive insurance companies, special purpose captive insurance companies, and industrial insured captive insurance companies;
- Allowed the formation and incorporation of different varieties of captive insurance and reinsurance companies;
- Substantially reduced the capital and surplus requirements for industrial insured and pure captive insurance companies;
- Established new procedures for licensure of captive insurance or reinsurance companies by the OIR;
- Fixed annual reporting requirements applicable to captive insurance companies;
- Provided net asset requirements for nonprofit captive insurance companies formed as pure captive and special purpose captive insurance companies;
- Required the Financial Services Commission to set standards ensuring that a parent or affiliated company exercises risk management control of any unaffiliated business to be insured by a pure captive insurance company; and
- Restricted the allowable coverage a captive insurance or reinsurance company may provide. Prior to CS/CS/HB 1101, an industrial insured captive insurance company was permitted to provide workers' compensation and employer's liability insurance in excess of \$25 million in the annual aggregate. CS/CS/HB 1101 removed that provision. This provision negatively affected the ability of at least one currently existing captive insurance company to write new policies for workers' compensation and excess employer liability coverage.

### III. Effect of Proposed Changes:

**Section 1** amends s. 628.901, F.S., to revise the definition of "qualifying reinsurer parent company" by replacing "satisfactory non-approved" reinsurer with "trusteed" insurer as an entity that is considered to be a qualifying reinsurer parent company. The bill also removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

**Section 2** amends s. 628.905, F.S., to allow an industrial insured captive insurance company to insure risks of its stockholders or members, and affiliates thereof, or the stockholders or affiliates of the parent corporation of the captive insurance company. The bill also allows an industrial insured captive insurance company with unencumbered capital and surplus of at least \$20 million to be licensed to provide workers' compensation and employer's liability insurance in excess of \$25 million in the annual aggregate. Such firms must maintain unencumbered capital and surplus of at least \$20 million to continue writing excess workers' compensation insurance.

---

<sup>14</sup> Sections 19 – 34, ch. 2012-151, L.O.F.

**Section 4** amends s. 628.909, F.S., to exempt captive insurance companies from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

**Sections 3, 5, 6, and 7** conform language in and make technical amendments language to ss. 628.907, 628.9142, 628.915, and 628.917, F.S., related to captive insurance companies.

**Section 8** amends s. 628.919, F.S., to remove the authority of the Financial Services Commission to adopt rules establishing the standards for risk management control. The bill requires a pure captive insurance company to submit standards to the Office of Insurance Regulation that ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business that is to be insured by the pure captive insurance company.

**Section 9** provides an effective date of July 1, 2013.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

**CS by Banking and Insurance on April 9, 2013:**

The CS removes the original bill's redefinition of "captive insurance company," and the bill's new definitions for "incorporated protected cell," "participant," "protected cell," "incorporated protected cell, and" "protected cell subsidiary company."

The CS removes the original bill's provision to allow that a protected cell subsidiary company can insure or reinsure risks.

The CS removes the original bill's provision to provide that a protected cell subsidiary company must possess and maintain unimpaired paid-in capital of at least \$200,000 and unimpaired surplus of at least \$300,000.

The CS removes the original bill's provision to make conforming changes to add protected cell subsidiary companies to the applicability of specific provisions of the Insurance Code.

The CS removes the original bill's provision to provide that a protected cell subsidiary company must be incorporated as a stock insurer with its capital divided into shares that are held by its industrial insured captive insurance company parent.

The CS removes the original bill's provision to provide that a ceding captive insurance company can reinsure risks with an assuming insurer for the limited purpose of assuming risk from a protected cell subsidiary company with respect to one or more protected cells.

The CS removes the original bill's provision to remove current language that provides that an industrial insured captive insurer is prohibited from joining or from receiving any benefit from a joint underwriting association or guaranty fund.

The CS removes the original bill's creation of new s. 628.921, F.S., governing the establishment of protected cells, the formation of and requirements for protected cell subsidiary companies, defining the term "incorporated protected cell," and establishing provisions for the formation of and requirements for incorporated protected cells.

The CS amends the definition of "qualifying reinsurer parent company," to delete a reference to a "satisfactory non-approved reinsurer," and replace it with a reference to "trusteed reinsurer."

The CS removes the current allowance for a qualifying reinsurer parent company to hold a letter of eligibility as an acceptable alternative to holding a certificate of authority.

The CS requires that an industrial insured captive insurer must have unencumbered capital and surplus of at least \$20 million to provide workers' compensation and employer's liability insurance in excess of \$25 million in the annual aggregate.

The CS exempts captive insurers from the statutory trust deposit required as a condition of obtaining a certificate of authority to transact insurance.

The CS requires a pure captive insurance company to submit to the OIR for approval its standards to ensure a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business that is to be insured by the pure captive insurance company. The CS deletes the current authorization for the Financial Services Commission to adopt rules establishing these standards.

**B. Amendments:**

None.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

#### COMMITTEES:

Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

#### JOINT COMMITTEE:

Joint Legislative Budget Commission

April 9, 2013

The Honorable Nancy Detert, Chair  
Committee on Commerce & Tourism  
310 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Detert:

Senate Bill 1408 relating to Captive Insurance has been reported favorably out of the committee on Banking and Insurance. The next committee of reference is Commerce and Tourism. I would appreciate the placing of this bill on your next committee agenda.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Jennifer Hrdlicka, Staff Director

#### REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Commerce & Tourism

Case:  
Judge:

Type:

Started: 4/15/2013 3:33:45 PM

Ends: 4/15/2013 3:59:33 PM Length: 00:25:49

3:33:46 PM CS/SB 262- Sen. Smith  
3:34:47 PM Sen. Simpson Question  
3:34:58 PM Sen. Hukill Question  
3:35:30 PM Sen. Hukill Question  
3:35:50 PM Close  
3:36:29 PM SB 814- Sen. Brandes  
3:37:26 PM Close  
3:38:07 PM Roll Call  
3:38:24 PM SB 418- Sen. Detert  
3:38:59 PM Amendment Barcode 494772  
3:39:31 PM Sen. Hays Question  
3:40:34 PM Sen. Thompson Question  
3:41:05 PM Sen. Hukill Question  
3:41:29 PM Sen. Hukill Question  
3:42:17 PM Sen. Hukill Question  
3:42:17 PM **Sen. Hukill Question**  
3:43:39 PM Sen. Hukill Question  
3:45:01 PM Sen. Bean Question  
3:45:22 PM Sen. Margolis Question  
3:46:51 PM Sen. Margolis Question  
3:49:30 PM Sen. Margolis Comment  
3:49:43 PM Sen. Hukill Question  
3:51:17 PM Close  
3:52:17 PM Roll Call  
3:53:04 PM CS/SB 550- Sen. Simpson  
3:55:19 PM Roll Call  
3:55:57 PM SB 1408- Sen. Richter  
3:57:38 PM Roll Call