SB 244 by **Dean**; (Identical to H 0495) Volunteer Firefighting

679442	D	S	L	RCS	BI, Hukill	Delete everything after	03/23 04:05 PM

SB 860 by **Garcia**; (Similar to CS/H 0555) Pharmacy

299520	D	S	L	RCS	BI, Montford	Delete everything after	03/23 04:05 PM

SB 1006 by **Flores**; (Similar to H 1087) Depopulation of Citizens Property Insurance Corporation

552246	D	S			BI, Negron	Delete everything after	03/20 01:15 PM
259236	SD	S		RCS	BI, Negron	Delete everything after	03/23 04:05 PM

SB 1314 by **Bradley**; (Similar to CS/H 0961) Electronic Noticing of Trust Accounts

203012	A	S		RCS	BI, Richter	Delete L.33 - 114:	03/23 04:05 PM

SB 1088 by **Brandes**; (Similar to CS/H 1197) Civil Remedies Against Insurers

SB 968 by **Detert**; (Similar to CS/CS/H 0731) Employee Health Care Plans

195386	A	S		RCS	BI, Detert	Delete L.1002 - 1015:	03/23 04:05 PM

SB 1064 by **Hukill**; (Compare to CS/CS/H 0669) Assignment of Post-loss Insurance Policy Benefits

396478	D	S		RCS	BI, Hukill	Delete everything after	03/23 04:05 PM
656174	AA	S	L	RCS	BI, Negron	Delete L.23 - 36:	03/23 04:05 PM

SB 1298 by **Simmons**; (Compare to H 0757) Insurance for Short-term Rental and Transportation Network Companies

SB 830 by **Simmons**; (Similar to CS/H 0405) Regulation of Corporation Not for Profit Self-insurance Funds

259754	A	S	L	RCS	BI, Simmons	Delete L.10 - 27:	03/23 04:05 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 23, 2015
TIME: 1:30 —3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, Margolis, Montford, Negron, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 244** Dean (Identical H 495)	Volunteer Firefighting; Specifying that the provisions of the chapter and rules of the Division of State Fire Marshal relating to fire standards and training and the Florida Firefighters Occupational Safety and Health Act do not apply to a fire service provider or firefighter employer that is a municipality or county with a specified population if utilizing a volunteer firefighter or volunteer fire department, and do not apply to a volunteer firefighter who is being utilized by such a provider or an employer, etc. BI 03/23/2015 Fav/CS CA FP	Fav/CS Yeas 9 Nays 0
2	**SB 860** Garcia (Similar CS/H 555)	Pharmacy; Providing requirements for contracts between pharmacy benefit managers and contracted pharmacies; requiring a pharmacy benefit manager to ensure that a prescription drug has met certain requirements to be placed on a maximum allowable cost pricing list; requiring the pharmacy benefit manager to disclose certain information to a plan sponsor, etc. BI 03/23/2015 Fav/CS HP AP	Fav/CS Yeas 10 Nays 0
3	**SB 1006** Flores (Similar H 1087)	Depopulation of Citizens Property Insurance Corporation; Requiring the corporation to provide specified notice to a policyholder and to receive specified written consent from such policyholder before the removal of the policyholder's residential property insurance policy from the corporation by an insurer; prohibiting an insurer that removes a policy from the corporation from annually increasing the rate for the renewal of a replacement policy by more than a specified amount for a specified number of terms, etc. BI 03/23/2015 Fav/CS AGG AP	Fav/CS Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1314** Bradley (Similar CS/H 961)	Electronic Noticing of Trust Accounts; Authorizing a sender to post a document to an electronic account or website upon the authorization of a recipient; requiring a sender to provide notice of the beginning of a limitations period and authority of a recipient to revoke authorization for electronic posting; establishing burdens of proof for purposes of determining whether proper notifications were provided, etc. BI 03/23/2015 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
5	**SB 1088** Brandes (Similar H 1197)	Civil Remedies Against Insurers; Requiring an insured, a claimant, or a person acting on behalf of an insured's or a claimant's behalf, to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common law action for a third-party bad faith action for failure to settle an insurance claim; providing that an insurer is not liable for such claim if certain conditions are met; reenacting provisions relating to bad faith actions, to incorporate the amendment made to s. 624.155, F.S., in a reference thereto, etc. BI 03/23/2015 Temporarily Postponed JU RC	Temporarily Postponed
6	**SB 968** Detert (Similar CS/CS/H 731)	Employee Health Care Plans; Removing provisions requiring certain insurance carriers to provide semiannual reports to the Office of Insurance Regulation; repealing requirements that certain insurance carriers offer standard, basic, high deductible, and limited health benefit plans; making conforming changes; authorizing certain small employer insurance policies to provide stop-loss coverage; providing requirements for such policies, etc. BI 03/23/2015 Fav/CS CM AP	Fav/CS Yeas 10 Nays 0
7	**SB 1064** Hukill (Compare CS/H 669)	Assignment of Post-loss Insurance Policy Benefits; Providing that the post-loss benefits under a policy may be assignable or not assignable as provided by the terms of the policy, etc. BI 03/23/2015 Fav/CS JU RC	Fav/CS Yeas 8 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1298** Simmons (Compare H 757)	Insurance for Short-term Rental and Transportation Network Companies; Establishing insurance requirements for short-term rental and transportation network companies and participating drivers during certain timeframes; prohibiting the personal insurance policy of a participating lessor of a short-term rental property from providing specified coverage during certain timeframes except under specified circumstances; prohibiting the personal motor vehicle insurance policy of a participating driver from providing specified coverage during certain timeframes except under specified circumstances, etc. BI 03/23/2015 Favorable JU AP	Favorable Yeas 10 Nays 0
9	**SB 830** Simmons (Similar CS/H 405)	Regulation of Corporation Not for Profit Self-insurance Funds; Revising the requirements for a participating member of a corporation not for profit self-insurance fund, etc. BI 03/04/2015 Temporarily Postponed BI 03/10/2015 Temporarily Postponed BI 03/17/2015 Temporarily Postponed BI 03/23/2015 Fav/CS CM FP	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

679442

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete everything after the enacting clause

4 and insert:

5 Section 1. Subsection (36) is added to section 633.102,

6 Florida Statutes, to read:

7 633.102 Definitions.—As used in this chapter, the term:

8 (36) “Volunteer rural firefighter” means an individual who

9 holds a current and valid Volunteer Rural Firefighter

10 Certificate of Completion issued by the division under s.

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11 633.408 and provides fire extinguishment or fire prevention
12 services through a fire service provider that:
13 (a) Is in existence on July 1, 2015, or that was in
14 existence at any time between July 1, 2000 and July 1, 2015, and
15 is subsequently reestablished after July 1, 2015; and
16 (b) Provides services in a municipality with a population
17 of fewer than 12,000 or a county with a population of fewer than
18 150,000.
19 Section 2. Paragraph (h) is added to subsection (1) of
20 section 633.406, Florida Statutes, to read:
21 633.406 Classes of certification.—
22 (1) The division may award one or more of the following
23 certificates:
24 (h) Volunteer Rural Firefighter Certificate of Completion.-
25 A Volunteer Rural Firefighter Certificate of Completion may be
26 awarded to a person who has satisfactorily completed the
27 training requirements as prescribed by rule for a volunteer
28 rural firefighter.
29 Section 3. Paragraph (c) is added to subsection (1) of
30 section 633.408, Florida Statutes, present paragraph (c) of that
31 subsection is redesignated as paragraph (d), and subsection (5),
32 is amended, to read:
33 633.408 Firefighter and volunteer firefighter training and
34 certification.—
35 (1) The division shall establish by rule:
36 (a) A Minimum Standards Course and course examination to
37 provide the training required to obtain a Firefighter
38 Certificate of Compliance.
39 (b) Courses and course examinations to provide training

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40 required to obtain a Volunteer Firefighter Certificate of
41 Completion or a Special Certificate of Compliance.
42 (c) Courses and course examinations to provide training
43 required to obtain a Volunteer Rural Firefighter Certificate of
44 Completion. The required courses may not exceed 160 hours and
45 must include emergency medical responder training. The division
46 shall award credit toward a certificate under this paragraph, as
47 provided by rule adopted by the division, for any approved
48 course successfully completed on or after July 1, 1970, which
49 was creditable at the time of completion toward a certification
50 under this chapter.
51 (5) The division shall issue a:
52 (a) Volunteer Firefighter Certificate of Completion to any
53 individual who satisfactorily completes the course established
54 under paragraph (1)(b).
55 (b) Volunteer Rural Firefighter Certificate of Completion
56 to any individual who satisfactorily completes the course
57 established under paragraph (1)(c).
58 Section 4. Subsection (3) is added to section 633.412,
59 Florida Statutes, to read:
60 633.412 Firefighters; qualifications for certification.—
61 (3) The requirements of paragraphs (1)(e) and (1)(f) do not
62 apply to an individual applying for certification as a volunteer
63 rural firefighter.
64 Section 5. Subsection (3) is added to section 633.414,
65 Florida Statutes, present subsections (3) and (5) of that
66 section are redesignated as subsections (4) and (6), and present
67 subsection (4) is amended, to read:
68 633.414 Retention of firefighter certification.—

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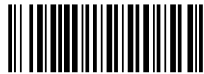
69 (3) In order for a volunteer rural firefighter to retain
70 her or his Volunteer Rural Firefighter Certificate of
71 Completion, every 4 years he or she must:
72 (a) Be active as a volunteer rural firefighter; or
73 (b) Successfully complete a refresher course consisting of
74 a minimum of 40 hours of training to be prescribed by rule.
75 (5)~~(4)~~ For the purposes of this section, the term "active"
76 means being employed as a firefighter or providing service as a
77 volunteer firefighter or volunteer rural firefighter for a
78 cumulative 6 months within a 4-year period.
79 Section 6. Subsection (2) and paragraph (a) of subsection
80 (4) of section 633.416, Florida Statutes, are amended to read:
81 633.416 Firefighter employment and volunteer firefighter
82 service; saving clause.—
83 (2)(a) A fire service provider may not retain the services
84 of an individual volunteering to extinguish fires for the
85 protection of life or property or to supervise individuals who
86 perform such services unless the individual holds a current and
87 valid Volunteer Firefighter Certificate of Completion.
88 (b) A fire service provider may not retain the services of
89 an individual volunteering to extinguish fires for the
90 protection of life or property or to supervise individuals who
91 perform such services only in a municipality with a population
92 of fewer than 12,000 or a county with a population of fewer than
93 150,000 unless the individual holds a current and valid
94 Volunteer Rural Firefighter Certificate of Completion or a
95 current and valid Volunteer Firefighter Certificate of
96 Completion. This paragraph does not apply to volunteers who
97 provide only support services.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98 (4)(a) A fire service provider must notify the division
99 electronically, as directed by rule by the division, within 10
100 days after:
101 1. The hiring of a firefighter.
102 2. The retention of a volunteer firefighter or a volunteer
103 rural firefighter.
104 3. The cessation of employment of a firefighter.
105 4. A decision not to retain a volunteer firefighter or a
106 volunteer rural firefighter.
107 Section 7. This act shall take effect July 1, 2015.
108
109 ================= T I T L E A M E N D M E N T ================
110 And the title is amended as follows:
111 Delete everything before the enacting clause
112 and insert:
113 A bill to be entitled
114 An act relating to volunteer rural firefighting;
115 amending 633.102, F.S.; defining the term “volunteer
116 rural firefighter”; amending 633.406, F.S.;
117 authorizing the Division of State Fire Marshal within
118 the Department of Financial Services to award a
119 Volunteer Rural Firefighter Certificate of Completion;
120 amending s. 633.408, F.S.; authorizing the division to
121 establish by rule courses and course examinations to
122 provide training required to obtain the certificate;
123 providing requirements for the issuance of the
124 certificate; requiring the division to award credit
125 for certain courses as provided by rule adopted by the
126 division; amending s. 633.412, F.S.; exempting

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127 applicants for certification as a volunteer rural
128 firefighter from certain qualifications for
129 firefighter certification; amending s. 633.414, F.S.;
130 specifying requirements for the retention of the
131 certificate; amending s. 633.416, F.S.; specifying the
132 circumstances under which a fire service provider may
133 retain the services of a volunteer firefighter;
134 requiring a fire service provider to provide notice to
135 the division regarding a decision to retain or not
136 retain a volunteer rural firefighter; providing an
137 effective date.

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 244

INTRODUCER: Banking and Insurance Committee and Senator Dean

SUBJECT: Volunteer Firefighting

DATE: March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.			CA	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 244 creates a volunteer rural firefighter certificate for volunteer firefighters that work for a fire safety provider located within a municipality with a population less than 12,000 or a county with a population less than 150,000. The bill requires the department to establish by rule 160 hours of training for a volunteer rural firefighter certificate including emergency medical responder training.

II. Present Situation:

Division of the State Fire Marshal (State Fire Marshal)

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire

[1] The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS.

Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[2]

The Division of the State Fire Marshal (Division) consists of the following four bureaus: the Bureau of Fire and Arson Investigations, the Bureau of Fire Standards and Training, the Bureau of Forensic Fire and Explosive Analysis, and the Bureau of Fire Prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.[3]

National Fire Protection Association (NFPA)

The National Fire Protection Association (NFPA) is an international nonprofit organization whose mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education. Membership of the NFPA includes more than 70,000 individuals from nearly 100 nations. NFPA is the world's leading advocate of fire prevention and an authoritative source on public safety. NFPA publishes 300 codes and standards that are designed to minimize the risk and effects of fire by establishing criteria for building, processing, design, service, and installation in the United States, as well as many other countries. Its more than 200 technical code and standard-development committees are comprised of over 6,000 volunteer seats. Volunteers vote on proposals and revisions in a process that is accredited by the American National Standards Institute (ANSI).[4]

Firefighters Employment, Standards, and Training Council (Council)

The Council is housed at the Department of Financial Services and consists of 13 members. Two members are fire chiefs appointed by the Florida Fire Chiefs Association, two members are firefighters who are not officers, appointed by the Florida Professional Firefighters Association; two members are firefighter officers who are not fire chiefs, appointed by the State Fire Marshal; one member is appointed by the Florida League of Cities; one member appointed by the Florida Association of Counties; one member appointed by the Florida Association of Special Districts; one member appointed by the Florida Fire Marshal's Association; one member appointed by the State Fire Marshal; and one member is a director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal. To be eligible for appointment as a fire chief member, firefighter officer member, firefighter member, or a director or instructor of a state-certified firefighting facility, a person shall have had at least 4 years' experience in the firefighting profession. The remaining member, who is appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government. Members serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed

[2] s. 633.202(1), F.S.
[3] State Fire Marshal website: http://www.myfloridacfo.com/sfm/ (Last visited March 14, 2015).
[4] http://www.nfpa.org/about-nfpa/nfpa-overview (Last visited March 18, 2015).

meetings unless excused by the chair.[5] Members are appointed for 4-year terms and in no event shall a member serve more than two consecutive terms. Any vacancies are filled in the manner of the original appointment for the remaining time of the term.[6] The council has special powers in connection with the employment and training of firefighters as it:

- Recommends for adoption by the division, uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Recommends for adoption by the division, minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Recommends for adoption by the division, on matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.
- Makes or supports studies on any aspect of firefighting employment, education, and training or recruitment.

Curriculum Requirements for Volunteer Firefighters[7]

Volunteer Firefighter training consists of Part I of the State of Florida Minimum Standards Course as required by ch. 633, F.S., and Florida Administrative Codes 69A-37 and 69A-62. A significant portion of this training can be completed through both on-line and practical skill courses. The on-line courses can be taken in lieu of the traditional classroom lecture and satisfies most of the required academic objectives. The following academic components make up the Part I Minimum Standards Curriculum:

- Firefighter I Curriculum – consists of classroom and live fire based core training.
- National Incident Management System - focuses on the history, features, principles and organizational structure of Incident Command.
- Wildland Firefighter Training–- curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.
- EMS First Responder - curriculum that is an introduction to basic life support and emergency care.

Volunteer Firefighters who have successfully completed the Firefighter Part I training are able to operate in the exclusionary or hot zone[8] and in an Immediately Dangerous to Life or Health environment.

Support Personnel

Other volunteers who do not seek the level of training needed for a Volunteer Firefighters Certificate of Completion may still be members of a Volunteer Fire Department. These

[5] s. 633.402(1), F.S.
[6] s. 633.402(2), F.S.
[7] Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter), Division of the State Fire Marshal, the Florida State Fire College, Revision 1.7, October 2012.
[8] s. 633.102(17), F.S., "Hot zone" means the area immediately around an incident where serious threat of harm exists, which includes the collapse zone for a structure fire.

volunteers are known as Support Personnel. Support Personnel respond with volunteer firefighters and are part of the Volunteer Fire Department roster. Support Personnel serve a critical role in supporting any emergency response as long as they are always in a safe zone and are performing duties for which they have been "trained commensurate to duty." They can perform all activities that a fire service provider (Volunteer Fire Department) has trained an individual to perform safely outside the hot zone of an emergency scene, including pulling hoses, opening and closing fire hydrants, driving and operating apparatus, carrying tools, carrying or moving equipment, directing traffic, manning a resource pool, or similar activities. "Trained commensurate to duty" means that the person must have documented training in the specific task assigned or a combination of skills required to accomplish any series of tasks which may be assigned to that individual, given a set of conditions or circumstances that the individual may undertake. Anticipated special circumstances such as hazardous materials operations, technical rescue, and similar conditions or circumstances require additional training.

Application

After a candidate has completed the required coursework for a Volunteer Firefighter Certificate of Completion they can apply for such certification from the Division provided that they meet all of the following statutory requirements:[9]

- Be a high school graduate or the equivalent as determined by the division.
- Be at least 18 years of age.
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country, or dishonorably discharged from any of the Armed Forces of the United States. "Convicted" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.
- Submit a set of fingerprints to the division with a current processing fee. The fingerprints will be forwarded to the Department of Law Enforcement for state processing and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing.
- Have a good moral character as determined by investigation under procedure established by the division.
- Be in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed to practice in the state pursuant to ch. 458, F.S.; an osteopathic physician, surgeon, or physician assistant licensed to practice in the state pursuant to ch. 459, F.S.; or an advanced registered nurse practitioner licensed to practice in the state pursuant to chapter 464, F.S. Such examination may include, but need not be limited to, the National Fire Protection Association Standard 1582. A medical examination evidencing good physical condition shall be submitted to the division, on a form as provided by rule, before an individual is eligible for admission into a course under s. 633.408, F.S.
- Be a nonuser of tobacco or tobacco products for at least 1 year immediately preceding application, as evidenced by the sworn affidavit of the applicant.
- Pay an application fee.

[9] s. 633.412, F.S.

III. Effect of Proposed Changes:

CS/SB 244 creates a volunteer rural firefighter certificate for volunteer firefighters that provide services for a fire service provider located within a municipality with a population less than 12,000 or a county with a population less than 150,000. The bill requires the department to establish by rule 160 hours of training for a volunteer rural firefighter certificate, including emergency medical responder training. By rule any courses successfully completed after July 1, 1970, which were credited towards a certificate under ch. 633, F.S., can be applied to the 160 hours. The bill exempts volunteer rural firefighter certificate holders from the fitness requirements and tobacco use prohibitions applied to other firefighter certificates under ch. 633, F.S.

Additionally, the bill limits volunteer rural firefighters to only working in volunteer fire departments that are located within a municipality with a population less than 12,000 or a county with a population less than 150,000, and are in existence on July 1, 2015, or that were in existence at any time between July 1, 2000 and July 1, 2015, and subsequently reestablished after July 1, 2015.

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:

Individuals volunteering to work for a fire service provider located within a municipality with a population less than 12,000 or a county with a population less than 150,000 will be able to take less hours of training to be certified. This should result in a cost savings from the current requirements of a volunteer firefighter certificate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.102, 633.406, 633.408, 633.412, 633.414 and 633.416.

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 23, 2015:
The bill makes the following changes:

- Creates a volunteer rural firefighter certificate and limits such volunteer firefighters to working for a fire service provider that is in existence on July 1, 2015, or that was in existence at any time between July 1, 2000 and July 1, 2015, and is subsequently reestablished after July 1, 2015; and located within a municipality with a population less than 12,000 or a county with a population less than 150,000.
- Requires the department to establish by rule 160 hours of training including emergency medical responder training. By rule any courses successfully completed after July 1, 1970, which were credited towards a certificate under ch. 633, F.S., can be applied to the 160 hours. The CS exempts volunteer rural firefighter certificate holders from the fitness requirements and tobacco use prohibitions applied to other firefighter certificates under ch. 633, 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.

By Senator Dean

A bill to be entitled

An act relating to volunteer firefighting; amending s. 633.102, F.S.; redefining the term "volunteer firefighter" to include an individual who provides fire extinguishment or fire prevention services for a municipality or county with a specified population; creating s. 633.103, F.S.; specifying that the provisions of the chapter and rules of the Division of State Fire Marshal relating to fire standards and training and the Florida Firefighters Occupational Safety and Health Act do not apply to a fire service provider or firefighter employer that is a municipality or county with a specified population if utilizing a volunteer firefighter or volunteer fire department, and do not apply to a volunteer firefighter who is being utilized by such a provider or an employer; reenacting s. 627.4107, F.S., relating to the prohibition against the cancellation of a life or health policy or certificate for a government employee exposed to toxic drug chemicals, to incorporate the amendment made to s. 633.102, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (35) of section 633.102, Florida Statutes, is amended to read:

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

(35) "Volunteer firefighter" means an individual who holds

a current and valid Volunteer Firefighter Certificate of Completion issued by the division under s. 633.408 or who provides fire extinguishment or fire prevention services, individually or through a volunteer fire department, for a municipality with a population less than 12,000 or a county with a population less than 175,000.

Section 2. Section 633.103, Florida Statutes, is created to read:

633.103 Applicability to small municipalities and counties.—Parts IV and V of this chapter and rules adopted by the division pursuant to those parts do not apply to:

(1) A fire service provider or firefighter employer as defined under part V of this chapter if the provider or employer is utilizing a volunteer firefighter or volunteer fire department and is a municipality with a population less than 12,000 or a county with a population less than 175,000.

(2) A volunteer firefighter who is utilized by an employer or a provider described under subsection (1).

Section 3. For the purpose of incorporating the amendment made by this act to section 633.102, Florida Statutes, in a reference thereto, section 627.4107, Florida Statutes, is reenacted to read:

627.4107 Government employees exposed to toxic drug chemicals; cancellation of life or health policy or certificate prohibited.—No life or health insurer may cancel or nonrenew a life or health insurance policy or certificate of insurance providing coverage to a state or local law enforcement officer as defined in s. 943.10, firefighter as defined in s. 633.102, emergency medical technician as defined in s. 401.23, or

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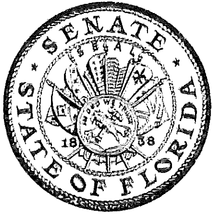
59 paramedic as defined in s. 401.23, a volunteer firefighter as
60 defined in s. 633.102 engaged by state or local government, a
61 law enforcement officer employed by the Federal Government, or
62 any other local, state, or Federal Government employee solely
63 based on the fact that the individual has been exposed to toxic
64 chemicals or suffered injury or disease as a result of the
65 individual's lawful duties arising out of the commission of a
66 violation of chapter 893 by another person. This section does
67 not apply to a person who commits an offense under chapter 893.
68 This section does not prohibit an insurer from canceling or
69 nonrenewing an insurance policy or certificate, as permitted
70 under the applicable state insurance code, based on an act or
71 practice of the policyholder or certificateholder that
72 constitutes fraud or intentional misrepresentation of material
73 fact by the policyholder or certificateholder.
74 Section 4. This act shall take effect July 1, 2015.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

244



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Community Affairs
Ethics and Elections

January 15, 2015

The Honorable Lizabeth Benacquisto
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

I respectfully request you place Senate Bill 244, relating to Volunteer Firefighting, on your Banking and Insurance Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: James Knudson, Staff Director

REPLY TO:
❐ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❐ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❐ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

ANDY GARDINER
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)

3-23-15
Meeting Date

SB 244
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Volunteer Firefighter

Name EDWARD FESSENDEN, JR

Job Title LT MONTICELLO VFD

Address 73 ROSE HILL LANE
Street

MONTICELLO FL 32344
City State Zip

Phone 850-997-4280

Email ZEFIREINFLANDAY@GMAIL.COM

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

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

Representing SELF

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-22-
Meeting Date

~~48~~ 244
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Volunteer ~~Figh~~ Fire Fighter

Name: Chris Doolin

Job Title: Consultant -- Small County Coalition

Address: 1118-B-Thomasville Road (Street)

Tallahassee (City), Fla. (State), 32303 (Zip)

Phone: 5085492

Email: cdoolin@nettally.com

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

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

Representing: Small County Coalition

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 465.1862, Florida Statutes, is created
6 to read:
7 465.1862 Pharmacy benefit managers.—
8 (1) As used in this section, the term:
9 (a) "Contracted pharmacy" means a pharmacy or network of
10 pharmacies which has executed a contract that includes maximum

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11 allowable cost pricing requirements with a pharmacy benefit
12 manager that acts on behalf of a plan sponsor.
13 (b) "Maximum allowable cost" means the upper limit or
14 maximum amount that a plan sponsor will pay for a generic
15 prescription drug or a brand-name prescription drug with an
16 available generic version, which is included on a list of
17 products generated by the pharmacy benefit manager.
18 (c) "Pharmacy benefit manager" means a person, business, or
19 other entity that provides administrative services related to
20 processing and paying prescription claims for pharmacy benefit
21 and coverage programs. Such services may include, but are not
22 limited to, contracting with a pharmacy or network of
23 pharmacies; establishing payment levels for pharmacies;
24 dispensing prescription drugs to plan sponsor beneficiaries;
25 negotiating discounts and rebate arrangements with drug
26 manufacturers; developing and managing prescription formularies,
27 preferred drug lists, and prior authorization programs; ensuring
28 audit compliance; and providing management reports.
29 (d) "Plan sponsor" means a health maintenance organization,
30 an insurer, except for an insurer that issues casualty insurance
31 as defined in s. 624.605, a Medicaid managed care plan as
32 defined in s. 409.962(9), a prepaid limited health service
33 organization, or other entity contracting for pharmacy benefit
34 manager services.
35 (2) A contract between a pharmacy benefit manager and a
36 contracted pharmacy must require the pharmacy benefit manager to
37 update the maximum allowable cost pricing information at least
38 every 7 calendar days and must establish a reasonable process
39 for the prompt notification of any pricing update to the

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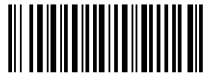
40 contracted pharmacy.
41 (3) A pharmacy benefit manager, to place a prescription
42 drug on a maximum allowable cost pricing list, at a minimum,
43 must ensure that the drug has at least two or more nationally
44 available, therapeutically equivalent, multiple-source generic
45 drugs that:
46 (a) Have a significant cost difference.
47 (b) Are listed as therapeutically and pharmaceutically
48 equivalent or “A” or “AB” rated in the Orange Book: Approved
49 Drug Products with Therapeutic Equivalence Evaluations published
50 by the United States Food and Drug Administration as of July 1,
51 2015.
52 (c) Are available for purchase from national or regional
53 wholesalers without limitation by all pharmacies in the state.
54 (d) Are not obsolete or temporarily unavailable.
55 (4) In a contract between a pharmacy benefit manager and a
56 plan sponsor, the pharmacy benefit manager must disclose to the
57 plan sponsor whether the pharmacy benefit manager uses a maximum
58 allowable cost pricing list for drugs dispensed at retail but
59 does not use such a list for drugs dispensed by mail order. If
60 such practice is adopted after a contract is executed, the
61 pharmacy benefit manager shall disclose such practice to the
62 plan sponsor within 21 business days after implementation of the
63 practice.
64 (5)(a) Each contract between a pharmacy benefit manager and
65 a contracted pharmacy must include a process for appeal,
66 investigation, and resolution of disputes regarding maximum
67 allowable cost pricing. The process must:
68 1. Limit the right to appeal to 30 calendar days after an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69 initial claim is made by the contracted pharmacy.
70 2. Require investigation and resolution of a dispute within
71 14 days after an appeal is received by the pharmacy benefit
72 manager.
73 3. Include a telephone number at which a contracted
74 pharmacy may contact the pharmacy benefit manager regarding an
75 appeal.
76 (b) If an appeal is denied, the pharmacy benefit manager
77 shall provide the reasons for denial and shall identify the
78 national drug code for the prescription drug that may be
79 purchased by the contracted pharmacy at a price at or below the
80 disputed maximum allowable cost pricing.
81 (c) If an appeal is upheld, the pharmacy benefit manager
82 shall adjust the maximum allowable cost pricing retroactive to
83 the date that the claim was adjudicated. The pharmacy benefit
84 manager shall apply the adjustment retroactively to any
85 similarly situated contracted pharmacy.
86 Section 2. This act shall take effect July 1, 2015.
87
88 ================= T I T L E A M E N D M E N T ================
89 And the title is amended as follows:
90 Delete everything before the enacting clause
91 and insert:
92 A bill to be entitled
93 An act relating to pharmacy; creating s. 465.1862,
94 F.S.; defining terms; providing requirements for
95 contracts between pharmacy benefit managers and
96 contracted pharmacies; requiring a pharmacy benefit
97 manager to ensure that a prescription drug has met

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98 certain requirements to be placed on a maximum
99 allowable cost pricing list; requiring the pharmacy
100 benefit manager to disclose certain information to a
101 plan sponsor; requiring a contract between a pharmacy
102 benefit manager and a pharmacy to include an appeal
103 process; providing an effective date.

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 860

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Pharmacy

DATE: March 23, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 860 creates provisions regulating activities and contracts of pharmacy benefit managers (PBMs). A PBM contracts with health plan sponsors, such as a health maintenance organization or insurer, to manage the cost and quality of the plans' drug benefits and may provide a variety of related services. The maximum-allowable cost (MAC) is the payment for the unit ingredient costs for off-patent prescription drugs (generics). The PBM, an insurer, or a health maintenance organization may develop a MAC list based on a proprietary survey of wholesale prices and other factors. The purpose of the MAC list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price in the marketplace.

The bill defines the terms, “contracted pharmacy,” “maximum allowable cost,” “pharmacy benefit manager,” and “plan sponsor.” The bill establishes criteria for a PBM to place a particular generic drug on a MAC list, which may result in some drugs being removed from the MAC list and being subject to higher reimbursement rates. The bill creates required disclosures and conditions for contracts between a PBM and a pharmacy, and between a PBM and a plan sponsor related to drug pricing. The bill also requires that each contract between a PBM and a contracted pharmacy must include a process for appeal, investigation, and resolution of disputes regarding MAC pricing.

According to the Division of State Group Insurance of the Department of Management Services, the implementation of this bill would negatively affect the State Employees’ Health

Insurance Trust Fund by approximately $3 million for Fiscal Year 2015-16. According to the Agency for Health Care Administration, the CS has no direct impact on Medicaid. The impact on local governments is indeterminate.

The impact on insurers and private sector employers that use PBMs for providing drug benefits is indeterminate.

II. Present Situation:

Advances in pharmaceuticals have transformed health care over the last several decades. In 2013, retail prescription drug spending totaled $271.1 billion, which was an increase of 2.5 percent from 2012. This increase in 2013 was attributable to price increases for brand name and specialty drugs, increased spending on new medicines, and increased utilization.

Regulation of Pharmacies and Pharmacy Benefit Management Companies

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (act) in chapter 465, F.S. The Board of Pharmacy (board), created under the Department of Health (DOH), adopts rules to implement provisions of the act and takes other actions according to duties conferred on it by the act.[1] Each pharmacy is subject to inspection by the DOH and disciplined for violations of applicable laws relating to a pharmacy.[2]

Pharmacy benefit managers (PBMs) administer the prescription drug part of health plans on behalf of plan sponsors, such as self-insured employers, insurers, and health maintenance organizations (HMOs). Currently, PBMs are not subject to regulation in Florida. Some states, such as Connecticut, Georgia, Kansas, Louisiana, Maryland and South Dakota, require PBMs to either register with state insurance regulators or be licensed as third-party administrators.[3]

Although PBMs are not subject to licensure in Florida, a PBM may obtain accreditation from various impartial, external organizations (accrediting bodies) that determines if certain national standards are being met. Accreditation is an evaluative, rigorous, transparent, and comprehensive process in which a health care organization undergoes an examination of its systems, processes, and performance by an impartial external organization (accrediting body) to ensure that it is conducting business in a manner that meets predetermined criteria and is consistent with national standards. CVS/caremark, the PBM for the State Group Insurance program holds URAC[4] accreditation in the following areas: pharmacy benefit management, drug therapy management, mail service pharmacy, specialty pharmacy, and call center.[5]

Pharmacy Benefit Managers and Pharmacies

While PBMs provide pharmacy claims processing and mail-order pharmacy services to their customers, many provide additional services, including rebate negotiations with drug

[1] Sections 465.005 and 465.022, F.S.
[2] Sections 465.015 and 465.016, F.S.
[3] Wojcik, J., States Try to Regulate Pharmacy Benefit Managers, businessinsurance.com, August 22, 2010.
[4] See URAC website at: https://www.urac.org/accreditation-and-measurement/accreditation-programs/ (last visited March 20, 2015).
[5] Department of Management Services correspondence, March 19, 2015 (one file with Banking and Insurance Committee).

manufacturers, development of pharmacy networks, formulary management, prospective and retrospective drug utilization reviews, generic drug substitutions, and disease management programs. The decision of plan sponsors to use PBMs to control pharmacy benefit costs, however, can shift business away from retail pharmacies.

MAC Pricing List. Contracts between a PBM and health plan sponsors specify how much the health plan sponsors will pay PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price (AWP)[6] for brand-name drugs and at a MAC[7] for generic drugs (and sometimes brand drugs that have generic versions), plus a dispensing fee. The MAC represents the upper limit price that a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands). A MAC pricing list creates a standard reimbursement amount for identical products. A MAC pricing list is a common cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors.

The federal Medicare Part D program and 45 state Medicaid programs use some type of MAC price lists to reduce costs.[8] The MAC price lists are used by many private employer prescription drug plans for retail generic prescriptions.

The purpose of the MAC pricing list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price in the marketplace. If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or in some instances may lose money on that specific purchase. If a pharmacy purchases generic drugs at a more favorable price, they will be more likely to make a profit.

In addition to negotiating rebates with drug manufacturers, PBMs also negotiate with retail pharmacies to obtain various discounts on prescription drug prices. Additionally, PBMs try to assure adequate access for patients enrolled in the various health plans to obtain their prescription drugs. A PBM may also be responsible for the development and management of a drug formulary, which is a list of drugs that a health plan uses to make reimbursement decisions.

Many PBMs offer incentives to their enrollees to select generic instead of brand-name drugs since the generics are less costly than their brand-name counterparts. The use of generic drugs has saved consumers an estimated $1.2 trillion over a decade, but it has adversely affected independent pharmacists according to recent news articles.[9] In 2005, about 50 percent of U.S. retail prescription drug sales were generics. In 2010, generics represented

[6] AWP is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies and others, such as hospitals.
[7] MAC is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.
[8] Medicaid Drug Pricing in State Maximum Allowable Cost Programs, Office of Inspector General, OEI-03-11-00640, August 2013. Available at: https://oig.hhs.gov/oei/reports/oei-03-11-00640.asp (last visited March 18, 2015).
[9] Generic Pharmaceutical Association, Generic Drug Savings in the U.S., 2013 (on file with Banking and Insurance Committee).

about 71 percent of the market.[10] The increasing use of generics is pushing the dollar volume of prescription-drug sales down. In response, drugstores have advocated legislation requiring the PBMs to share pricing information that would help drugstores negotiate bigger reimbursements and avoid dispensing drugs that are not financially feasible.[11]

Federal Pharmacy Benefits Managers Transparency Requirements

On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA. The law[12] requires Medicare Part D plans and qualified health plan issuers who have their own PBM or contract with a PBM to report to the U.S. Department of Health and Human Services (HHS) aggregate information about rebates, discounts, or price concessions that are passed through to the plan sponsor or retained by the PBM. In addition, the plans must report the difference between the amount the plan pays the PBM and the amount that the PBM pays its suppliers (spread pricing). The reported information is confidential, subject to certain limited exceptions.

State Group Health Insurance Program and the PBM Contract

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance (DSGI), administers the state group insurance program providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with Section 125, Internal Revenue Code.

As part of the state group health insurance program, the DMS contracts with a pharmacy benefits manager (PBM), CaremarkPCS Health, L.L.C. (CVS/caremark), to administer the state employees' prescription drug program. The DMS and the State of Florida are not a party to the private business contracts between the PBM and its retail pharmacies. According to DMS, the MAC is the payment for the unit ingredient costs for off-patent drugs (generics) developed by a PBM or an insurance plan. The DMS has contractual provision to require CVS/caremark to provide, upon request, the most recent MAC list.[13]

III. Effect of Proposed Changes:

The bill creates a new section of law titled "Pharmacy benefit managers," under ch. 465, F.S., which is the Florida Pharmacy Act. The bill defines the following terms:

- "Contracted pharmacy" means a pharmacy or network of pharmacies that has executed a contract, which includes maximum allowable cost pricing requirements with a PBM and acts on behalf of a plan sponsor.

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[10] US Pharm. 2013;38(6)(Generic Review suppl):6-10. Accessible at http://www.uspharmacist.com/content/s/253/c/41309/ (last visited March 18, 2015).

[11] Timothy W. Martin, *Drugstores Press for Pricing Data,* Wall Street Journal, March 27, 2013.

[12] 42 U.S.C. s. 1320b-23.

[13] Department of Management Services, 2015 Legislative Bill Analysis, dated March 6, 2015.

- "Maximum allowable cost" means the upper limit or maximum amount that a plan sponsor will pay for generic or brand-name drugs that have generic versions available, which are included on a pharmacy benefit manager-generated list of products.
- "Pharmacy benefit manager" means a person, business, or other entity that provides administrative services related to processing and paying prescription claims for pharmacy benefit and coverage programs. Such services may include contracting with a pharmacy or network of pharmacies; establishing payment levels for provider pharmacies; negotiating discounts and rebate arrangements with drug manufacturers; developing and managing prescription formularies, preferred drug lists, and prior authorization programs; ensuring audit compliance; and providing management reports.
- "Plan sponsor" means a health maintenance organization, an insurer, a Medicaid managed care plan as defined s. 409.962(9), F.S., a prepaid limited health service organization, or other entity contracting for PBM services.

The bill provides that a contract between a PBM and a pharmacy, which includes MAC pricing, must require the PBM to update MAC pricing information at least every 7-calendar days and establish a reasonable process for notice of updates.

In order to place a prescription drug on the MAC list, the PBM must ensure a drug has at least two or more nationally available, therapeutically equivalent, multiple-source generic drugs that:

- Have a significant cost difference;
- Are listed as therapeutically and pharmaceutically equivalent or "A" or "AB" rated in the U. S. Food and Drug Administration's most recent version of the Orange Book as of July 1, 2015;[14]
- Are available for purchase from national or regional wholesalers without limitations by all pharmacies in the state; and
- Are not obsolete or temporarily unavailable.

The bill requires a PBM to disclose in the contract between the PBM and the plan sponsor whether the PBM uses a MAC list for drugs dispensed at retail, but not for drugs dispensed by mail order.

The bill requires that contracts between PBMs and pharmacies contain a process for appealing, investigating, and resolving disputes regarding MAC pricing. The process must limit the right to appeal to 30-calendar days following the initial claim; require the resolution of the dispute within 14 days; and require the PBM to provide contact information of the person who is responsible for processing the appeal. If an appeal is denied, the PBM must provide the reason and identify the national drug code of an alternative that may be purchased at a price at or below the MAC. If an appeal is upheld, the PBM must make an adjustment retroactive to the date the claim was adjudicated and make the adjustment effective for all similarly situated network pharmacies.

[14] The publication, ***Approved Drug Products with Therapeutic Equivalence Evaluations*** (the List, commonly known as the Orange Book), identifies drug products approved on the basis of safety and effectiveness by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic Act (the Act).

The bill has an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under Article VII, section 18(a), Fla. Const., a mandate includes a general bill requiring counties or municipalities to spend funds. Counties and municipalities are not bound by a general law to spend funds or take an action unless the Legislature has determined that such a law fulfills an important state interest and one of the specific exceptions specified in the state constitution applies. The implementation of this bill may require counties and municipalities to spend funds or take actions regarding health insurance programs for their employees because of a decreased number of prescription drugs being capable of being placed on a maximum allowable cost (MAC) pricing list. One of those mandate exceptions is that the law applies to all persons similarly situated, including the state and local governments. This bill may apply to all similarly situated persons, including the state and local governments. Therefore, a finding by the Legislature that the bill fulfills an important state interest would remove the bill from the purview of the constitutional provision.

The new contracting requirements could be an impairment of contracts if any contracts between a PBM and plan sponsor or a PBM and a pharmacy are multi-year contracts. The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[15] The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts. *Cf. Chiles v. United Faculty of Fla.,* 615 So.2d 671 (Fla. 1993). "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[16]

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[15] U.S. Const. art. I, ch. 10; art. I, s. 10, Fla. Const.

[16] *Pomponio v. Claridge of Pompano Condominium, Inc.,* 378 So.2d 774 (Fla. 1980). *See also General Motors Corp. v. Romein,* 503 U.S. 181 (1992).

If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[17] The court will also consider three factors when balancing the impairment of contracts with the important public purpose:

- Whether the law was enacted to deal with a broad economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and,
- Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.[18]

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the Act.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 860 may result in a reduction in the number of drugs subject to the MAC list pricing of a PBM. As a result, a pharmacist may receive a higher reimbursement for dispensed drugs that are removed from the maximum allowable cost (MAC) list and are subject to a reimbursement at a higher brand-like rate.

Due to changes in the criteria for drugs to be eligible for the MAC list, the bill may increase prices for some generic drugs removed from the MAC list and subject them to higher brand-like pricing. Employers and insurers may incur indeterminate additional costs for drugs that are removed from the MAC list. These costs could be shifted to policyholders as an increase in copayments for drugs removed from the MAC list and now subject to brand pricing.

C. Government Sector Impact:

State Group Insurance

According to the Division of State Group Insurance (DSGI) of the Department of Management Services, the implementation of this bill is estimated to result in a negative $3 million fiscal impact to the State Employees' Health Insurance Trust Fund. [19] Any costs incurred by a PBM to administer the provisions of this bill may be passed to the DMS as increased administrative fees. Limiting the generic drugs that can be subject to MAC pricing and affecting the aggressiveness of MAC pricing within pharmacy

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[17] *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.,* 391 So.2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County,* 412 So. 2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton,* 462 U.S. 176 (1983).

[18] *Pomponio v. Cladridge of Pompanio Condo., Inc.,* 378 So.2d 774 (Fla. 1980).

[19] Department of Management Services, 2015 Legislative Bill Analysis, March 6, 2015 (on file with Banking and Insurance Committee).

contracts could increase prescription drug costs for the program. Because of these combined factors, the CVS/caremark anticipates that SB 860 would have an annual negative fiscal impact of $3 million to the State Employees' Health Insurance Trust Fund. The trust fund is funded by contributions paid by state employees and state agency and university employers. The negative fiscal impact of this bill to the trust fund could result in a larger increase in employer and/or employee contributions for health insurance than otherwise might be required.

Additionally, the DSGI notes the bill:

- Requires that, for a drug to be placed on a MAC list the drugs must have a "significant cost difference." A fiscal impact cannot be determined without a definition of this phrase.
- Requires that the drugs are "available for purchase from national or regional wholesalers without limitations by all pharmacies in the state." This language appears overly broad, and some pharmacies in the state may be limited in scope and practice such that a particular drug would not be available to "all pharmacies." Further, it is unclear how a PBM could make such a determination regarding every pharmacy in the state. The DSGI suggests language that would specify the types of pharmacies at which the drug is available for purchase.
- May result in the member (state employee or retiree) paying the brand copayment to correspond to the higher brand pricing that the DSGI would pay.

Medicaid

According to the Agency for Health Care Administration (agency), CS/HB 555, which is similar to CS/SB 860, appears to be tasking the plans to have a State Maximum Allowed Cost (SMAC) similar to the agency's SMAC. The bill does not impact the relationship between the agency and managed care plans participating in the Statewide Medicaid Managed Care program, but rather adds requirements for transparency on pricing for PBMs that are contracting with managed care plans and requirements regarding the relationship between PBM and their contracted pharmacies. As currently written, there is no direct impact on Medicaid.[20]

Division of Risk Management/Department of Financial Services

According to the Division of Risk Management (DRM) of the Department of Financial Services (DFS), the fiscal impact on prescription drug costs for injured state workers is indeterminate at this time.[21] The DRM spends approximately $13 million per year for pharmacy benefits, which is a much lower amount than the costs for the Division of State Group Insurance program. The fiscal impact on prescription drug costs for injured state workers is uncertain. The Division of Risk Management is contracted through January 1, 2017, with a pharmacy benefit manager to manage prescription costs for injured state workers. Due to prohibitions in the state constitution on impairment of contracts, it is

[20] Agency for Health Care Administration correspondence, March 19, 2015 (on file with Banking and Insurance Committee).
[21] Department of Financial Services, 2015 Legislative Bill Analysis, March 19, 2015 (on file with Banking and Insurance Committee).

unlikely any effects of this legislation would occur until expiration of the current contract.

The fiscal impact of SB 860 on prescription costs for injured state workers is probably less of an impact than on group health insurance since s. 440.13(12)(c), F.S., prescribes a reimbursement amount at the average wholesale price plus $4.18 for a dispensing fee unless a lower rate has been negotiated for workers' compensation prescriptions. The current provisions of s. 440.13(12)(c) F.S., operate as a maximum rate with flexibility to negotiate lower rates. Since this section is not addressed by the bill, it is likely that compensation medication would continue to be reimbursed at the statutory amount. Although unlikely, if this legislation is interpreted to disallow reimbursement pursuant to s. 440.13(12)(c) F.S., there is the possibility of undetermined cost increases in compensation claims. Removal of the statutory maximum rate has the potential to increase the negotiated rates depending on the bargaining position of the parties. Although the bill may limit a PBM's ability to negotiate rates below the statutory rate for workers' compensation medications, the MAC likely would apply to many fewer workers' compensation prescriptions than those prescriptions paid under group health insurance.

VI. Technical Deficiencies:

Some of the terms and conditions provided in the bill may be difficult to interpret, implement, or enforce by the stakeholders. For example, the bill provides that in order to place a drug on the MAC list, the drug must have at least two therapeutically equivalent, multiple-source generic drugs, which have a "significant cost difference" and are available for purchase "without limitations" by all pharmacies in the state from national or regional wholesalers. It is unclear how "significant" and "without limitation" would be determined.

The bill creates a new section in ch. 465, F.S., relating to pharmacies. It is unclear whether the Board of Pharmacy or the Department of Health would have the authority to enforce the provisions of the bill. Currently, the Board of Pharmacy and the Department of Health have no regulatory authority over PBMs.

To avoid any issue as to the application of the mandate provision of the state constitution, consideration should be given to adding a statement to the bill that it fulfills an important state interest.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 465.1862 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 23, 2015:

The CS provides the following changes:

- Eliminates the requirement for a pharmacy benefit manager (PBM) to maintain a procedure to eliminate products from the maximum allowable cost (MAC) list or to modify the MAC pricing within 3 days after a change if such products no longer meet the requirements of this section.
- Deletes the requirement that a PBM promptly change the MAC pricing list to reflect any change in the marketplace that affects the cost of a drug.
- Requires a drug have at least two, instead of three, nationally available, therapeutically equivalent, multiple-source generic drugs that meet other specified criteria before it can be placed on the MAC list.
- Removes the requirement that a PBM disclose to a plan sponsor the methodology used to establish a MAC pricing.
- Revises mandatory provisions required for contracts between a pharmacy and a PBM regarding the appeal, investigation, and resolution of MAC pricing disputes.
- 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.

By Senator Garcia

38-00409-15 2015860__

1 A bill to be entitled
2 An act relating to pharmacy; creating s. 465.1862,
3 F.S.; defining terms; providing requirements for
4 contracts between pharmacy benefit managers and
5 contracted pharmacies; requiring a pharmacy benefit
6 manager to ensure that a prescription drug has met
7 certain requirements to be placed on a maximum
8 allowable cost pricing list; requiring the pharmacy
9 benefit manager to disclose certain information to a
10 plan sponsor; requiring a contract between a pharmacy
11 benefit manager and a pharmacy to include an appeal
12 process; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 465.1862, Florida Statutes, is created
17 to read:
18 465.1862 Pharmacy benefit managers.—
19 (1) As used in this section, the term:
20 (a) "Contracted pharmacy" means a pharmacy or network of
21 pharmacies that has executed a contract, which includes maximum
22 allowable cost pricing requirements, with a pharmacy benefit
23 manager and acts on behalf of a plan sponsor.
24 (b) "Maximum allowable cost" means the upper limit or
25 maximum amount that an insurer or managed care plan will pay for
26 generic prescription drugs or brand-name prescription drugs with
27 available generic versions, which are included on a list of
28 products generated by the pharmacy benefit manager.
29 (c) "Pharmacy benefit manager" means a person, business, or

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

38-00409-15 2015860__

30 other entity that provides administrative services related to
31 processing and paying prescription claims for pharmacy benefit
32 and coverage programs. Such services may include, but are not
33 limited to, contracting with a pharmacy or network of
34 pharmacies; establishing payment levels for pharmacies;
35 dispensing prescription drugs to plan sponsor beneficiaries;
36 negotiating discounts and rebate arrangements with drug
37 manufacturers; developing and managing prescription formularies,
38 preferred drug lists, and prior authorization programs; ensuring
39 audit compliance; and providing management reports.
40 (d) "Plan sponsor" means an employer, insurer, managed care
41 organization, prepaid limited health service organization,
42 third-party administrator, or other entity contracting for
43 pharmacy benefit manager services.
44 (2) A contract between a pharmacy benefit manager and a
45 contracted pharmacy must require the pharmacy benefit manager
46 to:
47 (a) Update the maximum allowable cost pricing information
48 at least every 7 calendar days and establish a reasonable
49 process for the prompt notification of any pricing updates to
50 the contracted pharmacy.
51 (b) Maintain a procedure to remain consistent with pricing
52 changes in the marketplace by promptly modifying the maximum
53 allowable cost pricing information or, if necessary, eliminating
54 products from the cost pricing list within 3 calendar days after
55 a change if such products no longer meet the requirements of
56 this section.
57 (3) A pharmacy benefit manager, to place a prescription
58 drug on a maximum allowable cost pricing list, at a minimum,

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

59 must ensure that the drug has at least three or more nationally
60 available, therapeutically equivalent, multiple-source generic
61 drugs that:
62 (a) Have a significant cost difference.
63 (b) Are listed as therapeutically and pharmaceutically
64 equivalent or "A" or "B" rated in the most recent version of
65 Orange Book: Approved Drug Products with Therapeutic Equivalence
66 Evaluations published by the United States Food and Drug
67 Administration.
68 (c) Are available for purchase from national or regional
69 wholesalers without limitation by all pharmacies in the state.
70 (d) Are not obsolete or temporarily unavailable.
71 (4) In a contract between a pharmacy benefit manager and a
72 plan sponsor, the pharmacy benefit manager must disclose the
73 following to the plan sponsor:
74 (a) The basis of the methodology and sources used to
75 establish applicable maximum allowable cost pricing. A pharmacy
76 benefit manager shall promptly update applicable maximum
77 allowable cost pricing lists and provide the plan sponsor with
78 an updated list upon any pricing change.
79 (b) Whether the pharmacy benefit manager uses a maximum
80 allowable cost pricing list for drugs dispensed at retail but
81 does not use such a list for drugs dispensed by mail order. If
82 such practice is adopted after a contract is executed, the
83 pharmacy benefit manager shall disclose such practice to the
84 plan sponsor within 21 business days after implementation of the
85 practice.
86 (c) Whether the pharmacy benefit manager uses an identical
87 maximum allowable cost pricing list to bill the plan sponsor and

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

88 to reimburse a contracted pharmacy. If more than one maximum
89 allowable cost pricing list is used, the pharmacy benefit
90 manager shall disclose to the contracted pharmacy any difference
91 between the amount billed to the plan sponsor and the amount
92 paid as reimbursement to a contracted pharmacy.
93 (5)(a) Each contract between a pharmacy benefit manager and
94 a contracted pharmacy must include a process for appeal,
95 investigation, and resolution of disputes regarding maximum
96 allowable cost pricing. The process must:
97 1. Limit the right to appeal to 90 calendar days after an
98 initial claim is made by the contracted pharmacy.
99 2. Require investigation and resolution of a dispute within
100 7 days after an appeal is received by the pharmacy benefit
101 manager.
102 3. Include a telephone number at which a contracted
103 pharmacy may contact the pharmacy benefit manager regarding an
104 appeal.
105 (b) If an appeal is denied, the pharmacy benefit manager
106 shall provide the reasons for denial and shall identify the
107 national drug code for the prescription drug that may be
108 purchased by the contracted pharmacy at a price at or below the
109 disputed maximum allowable cost pricing.
110 (c) If an appeal is upheld, the pharmacy benefit manager
111 shall adjust the maximum allowable cost pricing retroactive to
112 the date that the claim was adjudicated. The pharmacy benefit
113 manager shall apply the adjustment retroactively to any
114 similarly situated contracted pharmacy.
115 Section 2. This act shall take effect July 1, 2015.

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

860

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García

38th District

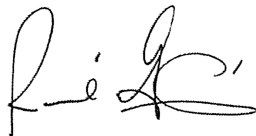
March 2, 2015

The Honorable Senator Lizbeth Benacquisto
Chair, Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Benacquisto:

This letter should serve as a request to have my bill *SB 860: Pharmacy* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,



State Senator René García
District 38
RG:JT

CC: James Knudson, Staff Director

860

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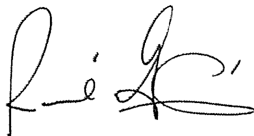

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CC: James Knudson, Staff Director

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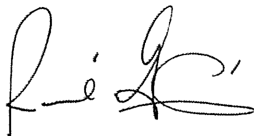

State Senator René García
District 38
RG:JT

CC: James Knudson, Staff Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23
Meeting Date

860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Pharmacy

Name: EVAN POWER

Job Title:

Address: 200 Jefferson St, Suite 18
Street

Tallahassee FL 32301
City State Zip

Phone: 850-519-1062

Email: evanpower@sevenhills.com

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

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

Representing: WALGREENS

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

W
860
Bill Number (if applicable)

Montford
Amendment Barcode (if applicable)

Topic: Pharmacy

Name: Cynthia Henderson

Job Title:

Address: 108 E Jefferson St
Street

Tall FL 32301
City State Zip

Phone: 8502105385

Email: cyhenderson@me.com

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

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

Representing: EPIC Rx (W.)

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

SB 860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MAC Pricing

Name Sarah Reeg

Job Title Pharmacy Intern

Address 1120 Dusk View Dr.
Street

Merritt Island FL 32952
City *State* *Zip*

Phone 321-961-8469

Email sarah.reeg@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/23/2015
Meeting Date

860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: MAC Pricing

Name: Jorge Chamizo

Job Title: Attorney

Address: 108 South Monroe Street
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: (850) 681-0024

Email: jorge@flapartners.com

Speaking: [✓] For [ ] Against [ ] Information

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

Representing: Independent Pharmacy Cooperative

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/23
Meeting Date

SB 860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Pharmacy - MAC Pricing

Name: Larry Gonzalez

Job Title: General Counsel

Address: 223 S. Gadsden St
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 570-6307

Email: lawgonz@earthlink.net

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

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

Representing: Florida Society of Health-System Pharmacists

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: MAC PRICING

Name: MICHAEL JACKSON

Job Title: EVP & CFO

Address: 610 N. ADAMS ST
Street

TALLAHASSEE | FL | 32301
City | State | Zip

Phone: 850 222 2400

Email: MJACKSON@PHARMVIEW.COM

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

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

Representing: FLORIDA PHARMACY ASSOCIATION

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PHARMACY

Name LARRY WILLIAMS

Job Title ATTORNEY

Address 215 SOUTH MONROE ST SUITE 601
Street

TALLAHASSEE FL 32302
City State Zip

Phone (850) 521-1980

Email LWILLIAMS@GUNSTER.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AMERICAN PHARMACY COOPERATIVE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

SB 860

Bill Number (if applicable)

As Amended by LFDE

Amendment Barcode (if applicable)

Topic ______________________

Name Allen Horne

Job Title VP Government Affairs

Address 12004 Uplands Ridge

Street

Austin TX 78738

City State Zip

Phone 512-351-8488

Email allen.horne@cvshealth.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CVS Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

Speak

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ______

Bill Number (if applicable): 860

Amendment Barcode (if applicable): ______

Topic: ______

Name: Michael Fischer

Job Title: ______

Address: PO Box 1197
Street

Tallahassee FL 32302
City State Zip

Phone: 222-6344

Email: mike@redfishcons.com

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

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

Representing: FLORIDA INDEPENDENT PHARMACISTS

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

HB860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PHARMACY SURVIVAL - MAC PRICING

Name PRESTON McDONALD

Job Title PHARMACIST OWNER

Address 5740 WESTMONT ROAD
Street

MILTON, FL 32583
City, State, Zip

Phone 850-982-9087

Email mcpharm@mchsi.com

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

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

Representing PHARMACY PROFESSION - SMALL BUSINESS OWNERS

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 860
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MAC pricing

Name Mohammed Abdul-wahhab

Job Title Chief pharmacy Intern

Address 11135 Lost creek terrace Apt201
Street

Phone 321-604-9768

Bradenton FL 34211
City State Zip

Email MohammedAbdulwahhab@rx.lecom.edu

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

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

Representing Family care discount pharmacy - Bradenton

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

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

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

S-001 (10/14/14)

552246

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

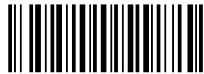
1 **Senate Amendment (with title amendment)**

2

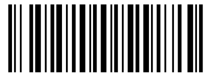
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (c) of subsection (6) of section
6 627.351, Florida Statutes, is amended to read:
7 627.351 Insurance risk apportionment plans.—
8 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
9 (c) The corporation's plan of operation:
10 1. Must provide for adoption of residential property and

552246

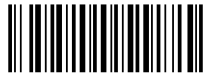
11 casualty insurance policy forms and commercial residential and
12 nonresidential property insurance forms, which must be approved
13 by the office before use. The corporation shall adopt the
14 following policy forms:
15 a. Standard personal lines policy forms that are
16 comprehensive multiperil policies providing full coverage of a
17 residential property equivalent to the coverage provided in the
18 private insurance market under an HO-3, HO-4, or HO-6 policy.
19 b. Basic personal lines policy forms that are policies
20 similar to an HO-8 policy or a dwelling fire policy that provide
21 coverage meeting the requirements of the secondary mortgage
22 market, but which is more limited than the coverage under a
23 standard policy.
24 c. Commercial lines residential and nonresidential policy
25 forms that are generally similar to the basic perils of full
26 coverage obtainable for commercial residential structures and
27 commercial nonresidential structures in the admitted voluntary
28 market.
29 d. Personal lines and commercial lines residential property
30 insurance forms that cover the peril of wind only. The forms are
31 applicable only to residential properties located in areas
32 eligible for coverage under the coastal account referred to in
33 sub-subparagraph (b)2.a.
34 e. Commercial lines nonresidential property insurance forms
35 that cover the peril of wind only. The forms are applicable only
36 to nonresidential properties located in areas eligible for
37 coverage under the coastal account referred to in sub-
38 subparagraph (b)2.a.
39 f. The corporation may adopt variations of the policy forms


552246

40 listed in sub-subparagraphs a.-e. which contain more restrictive
41 coverage.
42 g. Effective January 1, 2013, the corporation shall offer a
43 basic personal lines policy similar to an HO-8 policy with
44 dwelling repair based on common construction materials and
45 methods.
46 2. Must provide that the corporation adopt a program in
47 which the corporation and authorized insurers enter into quota
48 share primary insurance agreements for hurricane coverage, as
49 defined in s. 627.4025(2)(a), for eligible risks, and adopt
50 property insurance forms for eligible risks which cover the
51 peril of wind only.
52 a. As used in this subsection, the term:
53 (I) "Quota share primary insurance" means an arrangement in
54 which the primary hurricane coverage of an eligible risk is
55 provided in specified percentages by the corporation and an
56 authorized insurer. The corporation and authorized insurer are
57 each solely responsible for a specified percentage of hurricane
58 coverage of an eligible risk as set forth in a quota share
59 primary insurance agreement between the corporation and an
60 authorized insurer and the insurance contract. The
61 responsibility of the corporation or authorized insurer to pay
62 its specified percentage of hurricane losses of an eligible
63 risk, as set forth in the agreement, may not be altered by the
64 inability of the other party to pay its specified percentage of
65 losses. Eligible risks that are provided hurricane coverage
66 through a quota share primary insurance arrangement must be
67 provided policy forms that set forth the obligations of the
68 corporation and authorized insurer under the arrangement,


552246

69 clearly specify the percentages of quota share primary insurance
70 provided by the corporation and authorized insurer, and
71 conspicuously and clearly state that the authorized insurer and
72 the corporation may not be held responsible beyond their
73 specified percentage of coverage of hurricane losses.
74 (II) "Eligible risks" means personal lines residential and
75 commercial lines residential risks that meet the underwriting
76 criteria of the corporation and are located in areas that were
77 eligible for coverage by the Florida Windstorm Underwriting
78 Association on January 1, 2002.
79 b. The corporation may enter into quota share primary
80 insurance agreements with authorized insurers at corporation
81 coverage levels of 90 percent and 50 percent.
82 c. If the corporation determines that additional coverage
83 levels are necessary to maximize participation in quota share
84 primary insurance agreements by authorized insurers, the
85 corporation may establish additional coverage levels. However,
86 the corporation's quota share primary insurance coverage level
87 may not exceed 90 percent.
88 d. Any quota share primary insurance agreement entered into
89 between an authorized insurer and the corporation must provide
90 for a uniform specified percentage of coverage of hurricane
91 losses, by county or territory as set forth by the corporation
92 board, for all eligible risks of the authorized insurer covered
93 under the agreement.
94 e. Any quota share primary insurance agreement entered into
95 between an authorized insurer and the corporation is subject to
96 review and approval by the office. However, such agreement shall
97 be authorized only as to insurance contracts entered into


552246

98 between an authorized insurer and an insured who is already
99 insured by the corporation for wind coverage.
100 f. For all eligible risks covered under quota share primary
101 insurance agreements, the exposure and coverage levels for both
102 the corporation and authorized insurers shall be reported by the
103 corporation to the Florida Hurricane Catastrophe Fund. For all
104 policies of eligible risks covered under such agreements, the
105 corporation and the authorized insurer must maintain complete
106 and accurate records for the purpose of exposure and loss
107 reimbursement audits as required by fund rules. The corporation
108 and the authorized insurer shall each maintain duplicate copies
109 of policy declaration pages and supporting claims documents.
110 g. The corporation board shall establish in its plan of
111 operation standards for quota share agreements which ensure that
112 there is no discriminatory application among insurers as to the
113 terms of the agreements, pricing of the agreements, incentive
114 provisions if any, and consideration paid for servicing policies
115 or adjusting claims.
116 h. The quota share primary insurance agreement between the
117 corporation and an authorized insurer must set forth the
118 specific terms under which coverage is provided, including, but
119 not limited to, the sale and servicing of policies issued under
120 the agreement by the insurance agent of the authorized insurer
121 producing the business, the reporting of information concerning
122 eligible risks, the payment of premium to the corporation, and
123 arrangements for the adjustment and payment of hurricane claims
124 incurred on eligible risks by the claims adjuster and personnel
125 of the authorized insurer. Entering into a quota sharing
126 insurance agreement between the corporation and an authorized

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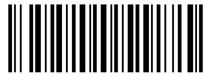
127 insurer is voluntary and at the discretion of the authorized
128 insurer.
129 3. May provide that the corporation may employ or otherwise
130 contract with individuals or other entities to provide
131 administrative or professional services that may be appropriate
132 to effectuate the plan. The corporation may borrow funds by
133 issuing bonds or by incurring other indebtedness, and shall have
134 other powers reasonably necessary to effectuate the requirements
135 of this subsection, including, without limitation, the power to
136 issue bonds and incur other indebtedness in order to refinance
137 outstanding bonds or other indebtedness. The corporation may
138 seek judicial validation of its bonds or other indebtedness
139 under chapter 75. The corporation may issue bonds or incur other
140 indebtedness, or have bonds issued on its behalf by a unit of
141 local government pursuant to subparagraph (q)2. in the absence
142 of a hurricane or other weather-related event, upon a
143 determination by the corporation, subject to approval by the
144 office, that such action would enable it to efficiently meet the
145 financial obligations of the corporation and that such
146 financings are reasonably necessary to effectuate the
147 requirements of this subsection. The corporation may take all
148 actions needed to facilitate tax-free status for such bonds or
149 indebtedness, including formation of trusts or other affiliated
150 entities. The corporation may pledge assessments, projected
151 recoveries from the Florida Hurricane Catastrophe Fund, other
152 reinsurance recoverables, policyholder surcharges and other
153 surcharges, and other funds available to the corporation as
154 security for bonds or other indebtedness. In recognition of s.
155 10, Art. I of the State Constitution, prohibiting the impairment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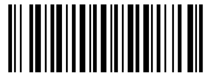
156 of obligations of contracts, it is the intent of the Legislature
157 that no action be taken whose purpose is to impair any bond
158 indenture or financing agreement or any revenue source committed
159 by contract to such bond or other indebtedness.
160 4. Must require that the corporation operate subject to the
161 supervision and approval of a board of governors consisting of
162 nine individuals who are residents of this state and who are
163 from different geographical areas of the state, one of whom is
164 appointed by the Governor and serves solely to advocate on
165 behalf of the consumer. The appointment of a consumer
166 representative by the Governor is in addition to the
167 appointments authorized under sub-subparagraph a.
168 a. The Governor, the Chief Financial Officer, the President
169 of the Senate, and the Speaker of the House of Representatives
170 shall each appoint two members of the board. At least one of the
171 two members appointed by each appointing officer must have
172 demonstrated expertise in insurance and be deemed to be within
173 the scope of the exemption provided in s. 112.313(7)(b). The
174 Chief Financial Officer shall designate one of the appointees as
175 chair. All board members serve at the pleasure of the appointing
176 officer. All members of the board are subject to removal at will
177 by the officers who appointed them. All board members, including
178 the chair, must be appointed to serve for 3-year terms beginning
179 annually on a date designated by the plan. However, for the
180 first term beginning on or after July 1, 2009, each appointing
181 officer shall appoint one member of the board for a 2-year term
182 and one member for a 3-year term. A board vacancy shall be
183 filled for the unexpired term by the appointing officer. The
184 Chief Financial Officer shall appoint a technical advisory group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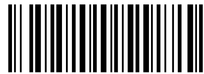
185 to provide information and advice to the board in connection
186 with the board’s duties under this subsection. The executive
187 director and senior managers of the corporation shall be engaged
188 by the board and serve at the pleasure of the board. Any
189 executive director appointed on or after July 1, 2006, is
190 subject to confirmation by the Senate. The executive director is
191 responsible for employing other staff as the corporation may
192 require, subject to review and concurrence by the board.
193 b. The board shall create a Market Accountability Advisory
194 Committee to assist the corporation in developing awareness of
195 its rates and its customer and agent service levels in
196 relationship to the voluntary market insurers writing similar
197 coverage.
198 (I) The members of the advisory committee consist of the
199 following 11 persons, one of whom must be elected chair by the
200 members of the committee: four representatives, one appointed by
201 the Florida Association of Insurance Agents, one by the Florida
202 Association of Insurance and Financial Advisors, one by the
203 Professional Insurance Agents of Florida, and one by the Latin
204 American Association of Insurance Agencies; three
205 representatives appointed by the insurers with the three highest
206 voluntary market share of residential property insurance
207 business in the state; one representative from the Office of
208 Insurance Regulation; one consumer appointed by the board who is
209 insured by the corporation at the time of appointment to the
210 committee; one representative appointed by the Florida
211 Association of Realtors; and one representative appointed by the
212 Florida Bankers Association. All members shall be appointed to
213 3-year terms and may serve for consecutive terms.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214 (II) The committee shall report to the corporation at each
215 board meeting on insurance market issues which may include rates
216 and rate competition with the voluntary market; service,
217 including policy issuance, claims processing, and general
218 responsiveness to policyholders, applicants, and agents; and
219 matters relating to depopulation.
220 5. Must provide a procedure for determining the eligibility
221 of a risk for coverage, as follows:
222 a. Subject to s. 627.3517, with respect to personal lines
223 residential risks, if the risk is offered coverage from an
224 authorized insurer at the insurer's approved rate under a
225 standard policy including wind coverage or, if consistent with
226 the insurer's underwriting rules as filed with the office, a
227 basic policy including wind coverage, for a new application to
228 the corporation for coverage, the risk is not eligible for any
229 policy issued by the corporation unless the premium for coverage
230 from the authorized insurer is more than 15 percent greater than
231 the premium for comparable coverage from the corporation.
232 Whenever an offer of coverage for a personal lines residential
233 risk is received for a policyholder of the corporation at
234 renewal from an authorized insurer, if the offer is equal to or
235 less than the corporation's renewal premium for comparable
236 coverage, the risk is not eligible for coverage with the
237 corporation. If the risk is not able to obtain such offer, the
238 risk is eligible for a standard policy including wind coverage
239 or a basic policy including wind coverage issued by the
240 corporation; however, if the risk could not be insured under a
241 standard policy including wind coverage regardless of market
242 conditions, the risk is eligible for a basic policy including

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243 wind coverage unless rejected under subparagraph 8. However, a
244 policyholder removed from the corporation through an assumption
245 agreement remains eligible for coverage from the corporation
246 until the end of the assumption period. The corporation shall
247 determine the type of policy to be provided on the basis of
248 objective standards specified in the underwriting manual and
249 based on generally accepted underwriting practices.
250 (I) If the risk accepts an offer of coverage through the
251 market assistance plan or through a mechanism established by the
252 corporation other than a plan established by s. 627.3518, before
253 a policy is issued to the risk by the corporation or during the
254 first 30 days of coverage by the corporation, and the producing
255 agent who submitted the application to the plan or to the
256 corporation is not currently appointed by the insurer, the
257 insurer shall:
258 (A) Pay to the producing agent of record of the policy for
259 the first year, an amount that is the greater of the insurer’s
260 usual and customary commission for the type of policy written or
261 a fee equal to the usual and customary commission of the
262 corporation; or
263 (B) Offer to allow the producing agent of record of the
264 policy to continue servicing the policy for at least 1 year and
265 offer to pay the agent the greater of the insurer’s or the
266 corporation’s usual and customary commission for the type of
267 policy written.
268
269 If the producing agent is unwilling or unable to accept
270 appointment, the new insurer shall pay the agent in accordance
271 with sub-sub-sub-subparagraph (A).

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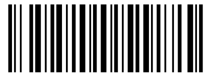
272 (II) If the corporation enters into a contractual agreement
273 for a take-out plan, the producing agent of record of the
274 corporation policy is entitled to retain any unearned commission
275 on the policy, and the insurer shall:
276 (A) Pay to the producing agent of record, for the first
277 year, an amount that is the greater of the insurer's usual and
278 customary commission for the type of policy written or a fee
279 equal to the usual and customary commission of the corporation;
280 or
281 (B) Offer to allow the producing agent of record to
282 continue servicing the policy for at least 1 year and offer to
283 pay the agent the greater of the insurer's or the corporation's
284 usual and customary commission for the type of policy written.
285
286 If the producing agent is unwilling or unable to accept
287 appointment, the new insurer shall pay the agent in accordance
288 with sub-sub-sub-subparagraph (A).
289 b. With respect to commercial lines residential risks, for
290 a new application to the corporation for coverage, if the risk
291 is offered coverage under a policy including wind coverage from
292 an authorized insurer at its approved rate, the risk is not
293 eligible for a policy issued by the corporation unless the
294 premium for coverage from the authorized insurer is more than 15
295 percent greater than the premium for comparable coverage from
296 the corporation. Whenever an offer of coverage for a commercial
297 lines residential risk is received for a policyholder of the
298 corporation at renewal from an authorized insurer, if the offer
299 is equal to or less than the corporation's renewal premium for
300 comparable coverage, the risk is not eligible for coverage with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301 the corporation. If the risk is not able to obtain any such
302 offer, the risk is eligible for a policy including wind coverage
303 issued by the corporation. However, a policyholder removed from
304 the corporation through an assumption agreement remains eligible
305 for coverage from the corporation until the end of the
306 assumption period.
307 (I) If the risk accepts an offer of coverage through the
308 market assistance plan or through a mechanism established by the
309 corporation other than a plan established by s. 627.3518, before
310 a policy is issued to the risk by the corporation or during the
311 first 30 days of coverage by the corporation, and the producing
312 agent who submitted the application to the plan or the
313 corporation is not currently appointed by the insurer, the
314 insurer shall:
315 (A) Pay to the producing agent of record of the policy, for
316 the first year, an amount that is the greater of the insurer’s
317 usual and customary commission for the type of policy written or
318 a fee equal to the usual and customary commission of the
319 corporation; or
320 (B) Offer to allow the producing agent of record of the
321 policy to continue servicing the policy for at least 1 year and
322 offer to pay the agent the greater of the insurer’s or the
323 corporation’s usual and customary commission for the type of
324 policy written.
325
326 If the producing agent is unwilling or unable to accept
327 appointment, the new insurer shall pay the agent in accordance
328 with sub-sub-sub-subparagraph (A).
329 (II) If the corporation enters into a contractual agreement

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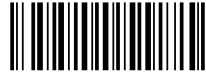
330 for a take-out plan, the producing agent of record of the
331 corporation policy is entitled to retain any unearned commission
332 on the policy, and the insurer shall:
333 (A) Pay to the producing agent of record, for the first
334 year, an amount that is the greater of the insurer's usual and
335 customary commission for the type of policy written or a fee
336 equal to the usual and customary commission of the corporation;
337 or
338 (B) Offer to allow the producing agent of record to
339 continue servicing the policy for at least 1 year and offer to
340 pay the agent the greater of the insurer's or the corporation's
341 usual and customary commission for the type of policy written.
342
343 If the producing agent is unwilling or unable to accept
344 appointment, the new insurer shall pay the agent in accordance
345 with sub-sub-sub-subparagraph (A).
346 c. For purposes of determining comparable coverage under
347 sub-subparagraphs a. and b., the comparison must be based on
348 those forms and coverages that are reasonably comparable. The
349 corporation may rely on a determination of comparable coverage
350 and premium made by the producing agent who submits the
351 application to the corporation, made in the agent's capacity as
352 the corporation's agent. A comparison may be made solely of the
353 premium with respect to the main building or structure only on
354 the following basis: the same coverage A or other building
355 limits; the same percentage hurricane deductible that applies on
356 an annual basis or that applies to each hurricane for commercial
357 residential property; the same percentage of ordinance and law
358 coverage, if the same limit is offered by both the corporation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359 and the authorized insurer; the same mitigation credits, to the
360 extent the same types of credits are offered both by the
361 corporation and the authorized insurer; the same method for loss
362 payment, such as replacement cost or actual cash value, if the
363 same method is offered both by the corporation and the
364 authorized insurer in accordance with underwriting rules; and
365 any other form or coverage that is reasonably comparable as
366 determined by the board. If an application is submitted to the
367 corporation for wind-only coverage in the coastal account, the
368 premium for the corporation's wind-only policy plus the premium
369 for the ex-wind policy that is offered by an authorized insurer
370 to the applicant must be compared to the premium for multiperil
371 coverage offered by an authorized insurer, subject to the
372 standards for comparison specified in this subparagraph. If the
373 corporation or the applicant requests from the authorized
374 insurer a breakdown of the premium of the offer by types of
375 coverage so that a comparison may be made by the corporation or
376 its agent and the authorized insurer refuses or is unable to
377 provide such information, the corporation may treat the offer as
378 not being an offer of coverage from an authorized insurer at the
379 insurer's approved rate.
380 6. Must include rules for classifications of risks and
381 rates.
382 7. Must provide that if premium and investment income for
383 an account attributable to a particular calendar year are in
384 excess of projected losses and expenses for the account
385 attributable to that year, such excess shall be held in surplus
386 in the account. Such surplus must be available to defray
387 deficits in that account as to future years and used for that

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388 purpose before assessing assessable insurers and assessable
389 insureds as to any calendar year.
390 8. Must provide objective criteria and procedures to be
391 uniformly applied to all applicants in determining whether an
392 individual risk is so hazardous as to be uninsurable. In making
393 this determination and in establishing the criteria and
394 procedures, the following must be considered:
395 a. Whether the likelihood of a loss for the individual risk
396 is substantially higher than for other risks of the same class;
397 and
398 b. Whether the uncertainty associated with the individual
399 risk is such that an appropriate premium cannot be determined.
400
401 The acceptance or rejection of a risk by the corporation shall
402 be construed as the private placement of insurance, and the
403 provisions of chapter 120 do not apply.
404 9. Must provide that the corporation make its best efforts
405 to procure catastrophe reinsurance at reasonable rates, to cover
406 its projected 100-year probable maximum loss as determined by
407 the board of governors.
408 10. The policies issued by the corporation must provide
409 that if the corporation or the market assistance plan obtains an
410 offer from an authorized insurer to cover the risk at its
411 approved rates, the risk is no longer eligible for renewal
412 through the corporation, except as otherwise provided in this
413 subsection.
414 11. Corporation policies and applications must include a
415 notice that the corporation policy could, under this section, be
416 replaced with a policy issued by an authorized insurer which

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417 does not provide coverage identical to the coverage provided by
418 the corporation. The notice must also specify that acceptance of
419 corporation coverage creates a conclusive presumption that the
420 applicant or policyholder is aware of this potential.
421 12. May establish, subject to approval by the office,
422 different eligibility requirements and operational procedures
423 for any line or type of coverage for any specified county or
424 area if the board determines that such changes are justified due
425 to the voluntary market being sufficiently stable and
426 competitive in such area or for such line or type of coverage
427 and that consumers who, in good faith, are unable to obtain
428 insurance through the voluntary market through ordinary methods
429 continue to have access to coverage from the corporation. If
430 coverage is sought in connection with a real property transfer,
431 the requirements and procedures may not provide an effective
432 date of coverage later than the date of the closing of the
433 transfer as established by the transferor, the transferee, and,
434 if applicable, the lender.
435 13. Must provide that, with respect to the coastal account,
436 any assessable insurer with a surplus as to policyholders of $25
437 million or less writing 25 percent or more of its total
438 countrywide property insurance premiums in this state may
439 petition the office, within the first 90 days of each calendar
440 year, to qualify as a limited apportionment company. A regular
441 assessment levied by the corporation on a limited apportionment
442 company for a deficit incurred by the corporation for the
443 coastal account may be paid to the corporation on a monthly
444 basis as the assessments are collected by the limited
445 apportionment company from its insureds, but a limited

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446 apportionment company must begin collecting the regular
447 assessments not later than 90 days after the regular assessments
448 are levied by the corporation, and the regular assessments must
449 be paid in full within 15 months after being levied by the
450 corporation. A limited apportionment company shall collect from
451 its policyholders any emergency assessment imposed under sub-
452 subparagraph (b)3.d. The plan must provide that, if the office
453 determines that any regular assessment will result in an
454 impairment of the surplus of a limited apportionment company,
455 the office may direct that all or part of such assessment be
456 deferred as provided in subparagraph (q)4. However, an emergency
457 assessment to be collected from policyholders under sub-
458 subparagraph (b)3.d. may not be limited or deferred.
459 14. Must provide that the corporation appoint as its
460 licensed agents only those agents who also hold an appointment
461 as defined in s. 626.015(3) with an insurer who at the time of
462 the agent's initial appointment by the corporation is authorized
463 to write and is actually writing personal lines residential
464 property coverage, commercial residential property coverage, or
465 commercial nonresidential property coverage within the state.
466 15. Must provide a premium payment plan option to its
467 policyholders which, at a minimum, allows for quarterly and
468 semiannual payment of premiums. A monthly payment plan may, but
469 is not required to, be offered.
470 16. Must limit coverage on mobile homes or manufactured
471 homes built before 1994 to actual cash value of the dwelling
472 rather than replacement costs of the dwelling.
473 17. Must provide coverage for manufactured or mobile home
474 dwellings. Such coverage must also include the following

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475 attached structures:
476 a. Screened enclosures that are aluminum framed or screened
477 enclosures that are not covered by the same or substantially the
478 same materials as those of the primary dwelling;
479 b. Carports that are aluminum or carports that are not
480 covered by the same or substantially the same materials as those
481 of the primary dwelling; and
482 c. Patios that have a roof covering that is constructed of
483 materials that are not the same or substantially the same
484 materials as those of the primary dwelling.
485
486 The corporation shall make available a policy for mobile homes
487 or manufactured homes for a minimum insured value of at least
488 $3,000.
489 18. May provide such limits of coverage as the board
490 determines, consistent with the requirements of this subsection.
491 19. May require commercial property to meet specified
492 hurricane mitigation construction features as a condition of
493 eligibility for coverage.
494 20. Must provide that new or renewal policies issued by the
495 corporation on or after January 1, 2012, which cover sinkhole
496 loss do not include coverage for any loss to appurtenant
497 structures, driveways, sidewalks, decks, or patios that are
498 directly or indirectly caused by sinkhole activity. The
499 corporation shall exclude such coverage using a notice of
500 coverage change, which may be included with the policy renewal,
501 and not by issuance of a notice of nonrenewal of the excluded
502 coverage upon renewal of the current policy.
503 21. As of January 1, 2012, must require that the agent

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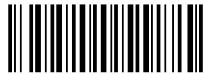
504 obtain from an applicant for coverage from the corporation an
505 acknowledgment signed by the applicant, which includes, at a
506 minimum, the following statement:
507
508 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
509 AND ASSESSMENT LIABILITY:
510
511 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
512 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
513 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
514 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
515 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
516 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
517 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
518 LEGISLATURE.
519 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
520 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
521 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO
522 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
523 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
524 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
525 ARE REGULATED AND APPROVED BY THE STATE.
526 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
527 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
528 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
529 FLORIDA LEGISLATURE.
530 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
531 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
532 STATE OF FLORIDA.

 552246

533 a. The corporation shall maintain, in electronic format or
534 otherwise, a copy of the applicant's signed acknowledgment and
535 provide a copy of the statement to the policyholder as part of
536 the first renewal after the effective date of this subparagraph.
537 b. The signed acknowledgment form creates a conclusive
538 presumption that the policyholder understood and accepted his or
539 her potential surcharge and assessment liability as a
540 policyholder of the corporation.
541 22. Must provide that before an insurer may remove a policy
542 from the corporation under a takeout agreement, the agreement
543 must:
544 a. Be approved by the Office of Insurance Regulation.
545 b. Require that the insurer provide information to the
546 policyholder explaining the differences in coverage and rate
547 between the corporation policy and the policy offered.
548 c. Require that the corporation obtain affirmative consent
549 from the policyholder which indicates that the policyholder
550 approves of the removal.
551 d. Require that an insurer may not implement an annual rate
552 increase that exceeds 10 percent, excluding coverage changes and
553 assessments, for each of the first three 1-year terms of renewal
554 of any single policy removed from the corporation.
555
556 ================= T I T L E A M E N D M E N T ================
557 And the title is amended as follows:
558 Delete everything before the enacting clause
559 and insert:
560 A bill to be entitled
561 An act relating to the depopulation of the Citizens

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562 Property Insurance Corporation; amending s. 627.351,
563 F.S.; requiring takeout agreements to be approved by
564 the Office of Insurance Regulation; requiring the
565 corporation to provide information to a policyholder
566 and to obtain affirmative consent from such
567 policyholder indicating approval; prohibiting an
568 insurer that removes a policy from the corporation
569 from annually increasing the rate for the renewal of a
570 replacement policy by more than a specified amount for
571 a specified number of terms; providing an effective
572 date.

259236

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Substitute for Amendment (552246) (with title**
2 **amendment)**
3
4 Delete everything after the enacting clause
5 and insert:
6 Section 1. Paragraph (c) of subsection (6) of section
7 627.351, Florida Statutes, is amended to read:
8 627.351 Insurance risk apportionment plans.—
9 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
10 (c) The corporation's plan of operation:

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11 1. Must provide for adoption of residential property and
12 casualty insurance policy forms and commercial residential and
13 nonresidential property insurance forms, which must be approved
14 by the office before use. The corporation shall adopt the
15 following policy forms:
16 a. Standard personal lines policy forms that are
17 comprehensive multiperil policies providing full coverage of a
18 residential property equivalent to the coverage provided in the
19 private insurance market under an HO-3, HO-4, or HO-6 policy.
20 b. Basic personal lines policy forms that are policies
21 similar to an HO-8 policy or a dwelling fire policy that provide
22 coverage meeting the requirements of the secondary mortgage
23 market, but which is more limited than the coverage under a
24 standard policy.
25 c. Commercial lines residential and nonresidential policy
26 forms that are generally similar to the basic perils of full
27 coverage obtainable for commercial residential structures and
28 commercial nonresidential structures in the admitted voluntary
29 market.
30 d. Personal lines and commercial lines residential property
31 insurance forms that cover the peril of wind only. The forms are
32 applicable only to residential properties located in areas
33 eligible for coverage under the coastal account referred to in
34 sub-subparagraph (b)2.a.
35 e. Commercial lines nonresidential property insurance forms
36 that cover the peril of wind only. The forms are applicable only
37 to nonresidential properties located in areas eligible for
38 coverage under the coastal account referred to in sub-
39 subparagraph (b)2.a.

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40 f. The corporation may adopt variations of the policy forms
41 listed in sub-subparagraphs a.-e. which contain more restrictive
42 coverage.
43 g. Effective January 1, 2013, the corporation shall offer a
44 basic personal lines policy similar to an HO-8 policy with
45 dwelling repair based on common construction materials and
46 methods.
47 2. Must provide that the corporation adopt a program in
48 which the corporation and authorized insurers enter into quota
49 share primary insurance agreements for hurricane coverage, as
50 defined in s. 627.4025(2)(a), for eligible risks, and adopt
51 property insurance forms for eligible risks which cover the
52 peril of wind only.
53 a. As used in this subsection, the term:
54 (I) "Quota share primary insurance" means an arrangement in
55 which the primary hurricane coverage of an eligible risk is
56 provided in specified percentages by the corporation and an
57 authorized insurer. The corporation and authorized insurer are
58 each solely responsible for a specified percentage of hurricane
59 coverage of an eligible risk as set forth in a quota share
60 primary insurance agreement between the corporation and an
61 authorized insurer and the insurance contract. The
62 responsibility of the corporation or authorized insurer to pay
63 its specified percentage of hurricane losses of an eligible
64 risk, as set forth in the agreement, may not be altered by the
65 inability of the other party to pay its specified percentage of
66 losses. Eligible risks that are provided hurricane coverage
67 through a quota share primary insurance arrangement must be
68 provided policy forms that set forth the obligations of the

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69 corporation and authorized insurer under the arrangement,
70 clearly specify the percentages of quota share primary insurance
71 provided by the corporation and authorized insurer, and
72 conspicuously and clearly state that the authorized insurer and
73 the corporation may not be held responsible beyond their
74 specified percentage of coverage of hurricane losses.
75 (II) “Eligible risks” means personal lines residential and
76 commercial lines residential risks that meet the underwriting
77 criteria of the corporation and are located in areas that were
78 eligible for coverage by the Florida Windstorm Underwriting
79 Association on January 1, 2002.
80 b. The corporation may enter into quota share primary
81 insurance agreements with authorized insurers at corporation
82 coverage levels of 90 percent and 50 percent.
83 c. If the corporation determines that additional coverage
84 levels are necessary to maximize participation in quota share
85 primary insurance agreements by authorized insurers, the
86 corporation may establish additional coverage levels. However,
87 the corporation’s quota share primary insurance coverage level
88 may not exceed 90 percent.
89 d. Any quota share primary insurance agreement entered into
90 between an authorized insurer and the corporation must provide
91 for a uniform specified percentage of coverage of hurricane
92 losses, by county or territory as set forth by the corporation
93 board, for all eligible risks of the authorized insurer covered
94 under the agreement.
95 e. Any quota share primary insurance agreement entered into
96 between an authorized insurer and the corporation is subject to
97 review and approval by the office. However, such agreement shall

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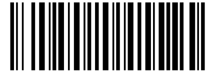
98 be authorized only as to insurance contracts entered into
99 between an authorized insurer and an insured who is already
100 insured by the corporation for wind coverage.
101 f. For all eligible risks covered under quota share primary
102 insurance agreements, the exposure and coverage levels for both
103 the corporation and authorized insurers shall be reported by the
104 corporation to the Florida Hurricane Catastrophe Fund. For all
105 policies of eligible risks covered under such agreements, the
106 corporation and the authorized insurer must maintain complete
107 and accurate records for the purpose of exposure and loss
108 reimbursement audits as required by fund rules. The corporation
109 and the authorized insurer shall each maintain duplicate copies
110 of policy declaration pages and supporting claims documents.
111 g. The corporation board shall establish in its plan of
112 operation standards for quota share agreements which ensure that
113 there is no discriminatory application among insurers as to the
114 terms of the agreements, pricing of the agreements, incentive
115 provisions if any, and consideration paid for servicing policies
116 or adjusting claims.
117 h. The quota share primary insurance agreement between the
118 corporation and an authorized insurer must set forth the
119 specific terms under which coverage is provided, including, but
120 not limited to, the sale and servicing of policies issued under
121 the agreement by the insurance agent of the authorized insurer
122 producing the business, the reporting of information concerning
123 eligible risks, the payment of premium to the corporation, and
124 arrangements for the adjustment and payment of hurricane claims
125 incurred on eligible risks by the claims adjuster and personnel
126 of the authorized insurer. Entering into a quota sharing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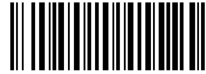
127 insurance agreement between the corporation and an authorized
128 insurer is voluntary and at the discretion of the authorized
129 insurer.
130 3. May provide that the corporation may employ or otherwise
131 contract with individuals or other entities to provide
132 administrative or professional services that may be appropriate
133 to effectuate the plan. The corporation may borrow funds by
134 issuing bonds or by incurring other indebtedness, and shall have
135 other powers reasonably necessary to effectuate the requirements
136 of this subsection, including, without limitation, the power to
137 issue bonds and incur other indebtedness in order to refinance
138 outstanding bonds or other indebtedness. The corporation may
139 seek judicial validation of its bonds or other indebtedness
140 under chapter 75. The corporation may issue bonds or incur other
141 indebtedness, or have bonds issued on its behalf by a unit of
142 local government pursuant to subparagraph (q)2. in the absence
143 of a hurricane or other weather-related event, upon a
144 determination by the corporation, subject to approval by the
145 office, that such action would enable it to efficiently meet the
146 financial obligations of the corporation and that such
147 financings are reasonably necessary to effectuate the
148 requirements of this subsection. The corporation may take all
149 actions needed to facilitate tax-free status for such bonds or
150 indebtedness, including formation of trusts or other affiliated
151 entities. The corporation may pledge assessments, projected
152 recoveries from the Florida Hurricane Catastrophe Fund, other
153 reinsurance recoverables, policyholder surcharges and other
154 surcharges, and other funds available to the corporation as
155 security for bonds or other indebtedness. In recognition of s.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156 10, Art. I of the State Constitution, prohibiting the impairment
157 of obligations of contracts, it is the intent of the Legislature
158 that no action be taken whose purpose is to impair any bond
159 indenture or financing agreement or any revenue source committed
160 by contract to such bond or other indebtedness.
161 4. Must require that the corporation operate subject to the
162 supervision and approval of a board of governors consisting of
163 nine individuals who are residents of this state and who are
164 from different geographical areas of the state, one of whom is
165 appointed by the Governor and serves solely to advocate on
166 behalf of the consumer. The appointment of a consumer
167 representative by the Governor is in addition to the
168 appointments authorized under sub-subparagraph a.
169 a. The Governor, the Chief Financial Officer, the President
170 of the Senate, and the Speaker of the House of Representatives
171 shall each appoint two members of the board. At least one of the
172 two members appointed by each appointing officer must have
173 demonstrated expertise in insurance and be deemed to be within
174 the scope of the exemption provided in s. 112.313(7)(b). The
175 Chief Financial Officer shall designate one of the appointees as
176 chair. All board members serve at the pleasure of the appointing
177 officer. All members of the board are subject to removal at will
178 by the officers who appointed them. All board members, including
179 the chair, must be appointed to serve for 3-year terms beginning
180 annually on a date designated by the plan. However, for the
181 first term beginning on or after July 1, 2009, each appointing
182 officer shall appoint one member of the board for a 2-year term
183 and one member for a 3-year term. A board vacancy shall be
184 filled for the unexpired term by the appointing officer. The

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185 Chief Financial Officer shall appoint a technical advisory group
186 to provide information and advice to the board in connection
187 with the board's duties under this subsection. The executive
188 director and senior managers of the corporation shall be engaged
189 by the board and serve at the pleasure of the board. Any
190 executive director appointed on or after July 1, 2006, is
191 subject to confirmation by the Senate. The executive director is
192 responsible for employing other staff as the corporation may
193 require, subject to review and concurrence by the board.
194 b. The board shall create a Market Accountability Advisory
195 Committee to assist the corporation in developing awareness of
196 its rates and its customer and agent service levels in
197 relationship to the voluntary market insurers writing similar
198 coverage.
199 (I) The members of the advisory committee consist of the
200 following 11 persons, one of whom must be elected chair by the
201 members of the committee: four representatives, one appointed by
202 the Florida Association of Insurance Agents, one by the Florida
203 Association of Insurance and Financial Advisors, one by the
204 Professional Insurance Agents of Florida, and one by the Latin
205 American Association of Insurance Agencies; three
206 representatives appointed by the insurers with the three highest
207 voluntary market share of residential property insurance
208 business in the state; one representative from the Office of
209 Insurance Regulation; one consumer appointed by the board who is
210 insured by the corporation at the time of appointment to the
211 committee; one representative appointed by the Florida
212 Association of Realtors; and one representative appointed by the
213 Florida Bankers Association. All members shall be appointed to

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214 3-year terms and may serve for consecutive terms.
215 (II) The committee shall report to the corporation at each
216 board meeting on insurance market issues which may include rates
217 and rate competition with the voluntary market; service,
218 including policy issuance, claims processing, and general
219 responsiveness to policyholders, applicants, and agents; and
220 matters relating to depopulation.
221 5. Must provide a procedure for determining the eligibility
222 of a risk for coverage, as follows:
223 a. Subject to s. 627.3517, with respect to personal lines
224 residential risks, if the risk is offered coverage from an
225 authorized insurer at the insurer's approved rate under a
226 standard policy including wind coverage or, if consistent with
227 the insurer's underwriting rules as filed with the office, a
228 basic policy including wind coverage, for a new application to
229 the corporation for coverage, the risk is not eligible for any
230 policy issued by the corporation unless the premium for coverage
231 from the authorized insurer is more than 15 percent greater than
232 the premium for comparable coverage from the corporation.
233 Whenever an offer of coverage for a personal lines residential
234 risk is received for a policyholder of the corporation at
235 renewal from an authorized insurer, if the offer is equal to or
236 less than the corporation's renewal premium for comparable
237 coverage, the risk is not eligible for coverage with the
238 corporation. If the risk is not able to obtain such offer, the
239 risk is eligible for a standard policy including wind coverage
240 or a basic policy including wind coverage issued by the
241 corporation; however, if the risk could not be insured under a
242 standard policy including wind coverage regardless of market

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243 conditions, the risk is eligible for a basic policy including
244 wind coverage unless rejected under subparagraph 8. However, a
245 policyholder removed from the corporation through an assumption
246 agreement remains eligible for coverage from the corporation
247 until the end of the assumption period. The corporation shall
248 determine the type of policy to be provided on the basis of
249 objective standards specified in the underwriting manual and
250 based on generally accepted underwriting practices.
251 (I) If the risk accepts an offer of coverage through the
252 market assistance plan or through a mechanism established by the
253 corporation other than a plan established by s. 627.3518, before
254 a policy is issued to the risk by the corporation or during the
255 first 30 days of coverage by the corporation, and the producing
256 agent who submitted the application to the plan or to the
257 corporation is not currently appointed by the insurer, the
258 insurer shall:
259 (A) Pay to the producing agent of record of the policy for
260 the first year, an amount that is the greater of the insurer’s
261 usual and customary commission for the type of policy written or
262 a fee equal to the usual and customary commission of the
263 corporation; or
264 (B) Offer to allow the producing agent of record of the
265 policy to continue servicing the policy for at least 1 year and
266 offer to pay the agent the greater of the insurer’s or the
267 corporation’s usual and customary commission for the type of
268 policy written.
269
270 If the producing agent is unwilling or unable to accept
271 appointment, the new insurer shall pay the agent in accordance

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272 with sub-sub-sub-subparagraph (A).
273 (II) If the corporation enters into a contractual agreement
274 for a take-out plan, the producing agent of record of the
275 corporation policy is entitled to retain any unearned commission
276 on the policy, and the insurer shall:
277 (A) Pay to the producing agent of record, for the first
278 year, an amount that is the greater of the insurer’s usual and
279 customary commission for the type of policy written or a fee
280 equal to the usual and customary commission of the corporation;
281 or
282 (B) Offer to allow the producing agent of record to
283 continue servicing the policy for at least 1 year and offer to
284 pay the agent the greater of the insurer’s or the corporation’s
285 usual and customary commission for the type of policy written.
286
287 If the producing agent is unwilling or unable to accept
288 appointment, the new insurer shall pay the agent in accordance
289 with sub-sub-sub-subparagraph (A).
290 b. With respect to commercial lines residential risks, for
291 a new application to the corporation for coverage, if the risk
292 is offered coverage under a policy including wind coverage from
293 an authorized insurer at its approved rate, the risk is not
294 eligible for a policy issued by the corporation unless the
295 premium for coverage from the authorized insurer is more than 15
296 percent greater than the premium for comparable coverage from
297 the corporation. Whenever an offer of coverage for a commercial
298 lines residential risk is received for a policyholder of the
299 corporation at renewal from an authorized insurer, if the offer
300 is equal to or less than the corporation’s renewal premium for

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301 comparable coverage, the risk is not eligible for coverage with
302 the corporation. If the risk is not able to obtain any such
303 offer, the risk is eligible for a policy including wind coverage
304 issued by the corporation. However, a policyholder removed from
305 the corporation through an assumption agreement remains eligible
306 for coverage from the corporation until the end of the
307 assumption period.
308 (I) If the risk accepts an offer of coverage through the
309 market assistance plan or through a mechanism established by the
310 corporation other than a plan established by s. 627.3518, before
311 a policy is issued to the risk by the corporation or during the
312 first 30 days of coverage by the corporation, and the producing
313 agent who submitted the application to the plan or the
314 corporation is not currently appointed by the insurer, the
315 insurer shall:
316 (A) Pay to the producing agent of record of the policy, for
317 the first year, an amount that is the greater of the insurer's
318 usual and customary commission for the type of policy written or
319 a fee equal to the usual and customary commission of the
320 corporation; or
321 (B) Offer to allow the producing agent of record of the
322 policy to continue servicing the policy for at least 1 year and
323 offer to pay the agent the greater of the insurer's or the
324 corporation's usual and customary commission for the type of
325 policy written.
326
327 If the producing agent is unwilling or unable to accept
328 appointment, the new insurer shall pay the agent in accordance
329 with sub-sub-sub-subparagraph (A).

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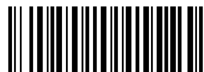
330 (II) If the corporation enters into a contractual agreement
331 for a take-out plan, the producing agent of record of the
332 corporation policy is entitled to retain any unearned commission
333 on the policy, and the insurer shall:
334 (A) Pay to the producing agent of record, for the first
335 year, an amount that is the greater of the insurer's usual and
336 customary commission for the type of policy written or a fee
337 equal to the usual and customary commission of the corporation;
338 or
339 (B) Offer to allow the producing agent of record to
340 continue servicing the policy for at least 1 year and offer to
341 pay the agent the greater of the insurer's or the corporation's
342 usual and customary commission for the type of policy written.
343
344 If the producing agent is unwilling or unable to accept
345 appointment, the new insurer shall pay the agent in accordance
346 with sub-sub-sub-subparagraph (A).
347 c. For purposes of determining comparable coverage under
348 sub-subparagraphs a. and b., the comparison must be based on
349 those forms and coverages that are reasonably comparable. The
350 corporation may rely on a determination of comparable coverage
351 and premium made by the producing agent who submits the
352 application to the corporation, made in the agent's capacity as
353 the corporation's agent. A comparison may be made solely of the
354 premium with respect to the main building or structure only on
355 the following basis: the same coverage A or other building
356 limits; the same percentage hurricane deductible that applies on
357 an annual basis or that applies to each hurricane for commercial
358 residential property; the same percentage of ordinance and law

 259236

359 coverage, if the same limit is offered by both the corporation
360 and the authorized insurer; the same mitigation credits, to the
361 extent the same types of credits are offered both by the
362 corporation and the authorized insurer; the same method for loss
363 payment, such as replacement cost or actual cash value, if the
364 same method is offered both by the corporation and the
365 authorized insurer in accordance with underwriting rules; and
366 any other form or coverage that is reasonably comparable as
367 determined by the board. If an application is submitted to the
368 corporation for wind-only coverage in the coastal account, the
369 premium for the corporation’s wind-only policy plus the premium
370 for the ex-wind policy that is offered by an authorized insurer
371 to the applicant must be compared to the premium for multiperil
372 coverage offered by an authorized insurer, subject to the
373 standards for comparison specified in this subparagraph. If the
374 corporation or the applicant requests from the authorized
375 insurer a breakdown of the premium of the offer by types of
376 coverage so that a comparison may be made by the corporation or
377 its agent and the authorized insurer refuses or is unable to
378 provide such information, the corporation may treat the offer as
379 not being an offer of coverage from an authorized insurer at the
380 insurer’s approved rate.
381 6. Must include rules for classifications of risks and
382 rates.
383 7. Must provide that if premium and investment income for
384 an account attributable to a particular calendar year are in
385 excess of projected losses and expenses for the account
386 attributable to that year, such excess shall be held in surplus
387 in the account. Such surplus must be available to defray

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388 deficits in that account as to future years and used for that
389 purpose before assessing assessable insurers and assessable
390 insureds as to any calendar year.
391 8. Must provide objective criteria and procedures to be
392 uniformly applied to all applicants in determining whether an
393 individual risk is so hazardous as to be uninsurable. In making
394 this determination and in establishing the criteria and
395 procedures, the following must be considered:
396 a. Whether the likelihood of a loss for the individual risk
397 is substantially higher than for other risks of the same class;
398 and
399 b. Whether the uncertainty associated with the individual
400 risk is such that an appropriate premium cannot be determined.
401
402 The acceptance or rejection of a risk by the corporation shall
403 be construed as the private placement of insurance, and the
404 provisions of chapter 120 do not apply.
405 9. Must provide that the corporation make its best efforts
406 to procure catastrophe reinsurance at reasonable rates, to cover
407 its projected 100-year probable maximum loss as determined by
408 the board of governors.
409 10. The policies issued by the corporation must provide
410 that if the corporation or the market assistance plan obtains an
411 offer from an authorized insurer to cover the risk at its
412 approved rates, the risk is no longer eligible for renewal
413 through the corporation, except as otherwise provided in this
414 subsection.
415 11. Corporation policies and applications must include a
416 notice that the corporation policy could, under this section, be

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417 replaced with a policy issued by an authorized insurer which
418 does not provide coverage identical to the coverage provided by
419 the corporation. The notice must also specify that acceptance of
420 corporation coverage creates a conclusive presumption that the
421 applicant or policyholder is aware of this potential.
422 12. May establish, subject to approval by the office,
423 different eligibility requirements and operational procedures
424 for any line or type of coverage for any specified county or
425 area if the board determines that such changes are justified due
426 to the voluntary market being sufficiently stable and
427 competitive in such area or for such line or type of coverage
428 and that consumers who, in good faith, are unable to obtain
429 insurance through the voluntary market through ordinary methods
430 continue to have access to coverage from the corporation. If
431 coverage is sought in connection with a real property transfer,
432 the requirements and procedures may not provide an effective
433 date of coverage later than the date of the closing of the
434 transfer as established by the transferor, the transferee, and,
435 if applicable, the lender.
436 13. Must provide that, with respect to the coastal account,
437 any assessable insurer with a surplus as to policyholders of $25
438 million or less writing 25 percent or more of its total
439 countrywide property insurance premiums in this state may
440 petition the office, within the first 90 days of each calendar
441 year, to qualify as a limited apportionment company. A regular
442 assessment levied by the corporation on a limited apportionment
443 company for a deficit incurred by the corporation for the
444 coastal account may be paid to the corporation on a monthly
445 basis as the assessments are collected by the limited

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446 apportionment company from its insureds, but a limited
447 apportionment company must begin collecting the regular
448 assessments not later than 90 days after the regular assessments
449 are levied by the corporation, and the regular assessments must
450 be paid in full within 15 months after being levied by the
451 corporation. A limited apportionment company shall collect from
452 its policyholders any emergency assessment imposed under sub-
453 subparagraph (b)3.d. The plan must provide that, if the office
454 determines that any regular assessment will result in an
455 impairment of the surplus of a limited apportionment company,
456 the office may direct that all or part of such assessment be
457 deferred as provided in subparagraph (q)4. However, an emergency
458 assessment to be collected from policyholders under sub-
459 subparagraph (b)3.d. may not be limited or deferred.
460 14. Must provide that the corporation appoint as its
461 licensed agents only those agents who also hold an appointment
462 as defined in s. 626.015(3) with an insurer who at the time of
463 the agent’s initial appointment by the corporation is authorized
464 to write and is actually writing personal lines residential
465 property coverage, commercial residential property coverage, or
466 commercial nonresidential property coverage within the state.
467 15. Must provide a premium payment plan option to its
468 policyholders which, at a minimum, allows for quarterly and
469 semiannual payment of premiums. A monthly payment plan may, but
470 is not required to, be offered.
471 16. Must limit coverage on mobile homes or manufactured
472 homes built before 1994 to actual cash value of the dwelling
473 rather than replacement costs of the dwelling.
474 17. Must provide coverage for manufactured or mobile home

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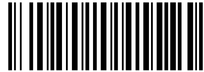
475 dwellings. Such coverage must also include the following
476 attached structures:
477 a. Screened enclosures that are aluminum framed or screened
478 enclosures that are not covered by the same or substantially the
479 same materials as those of the primary dwelling;
480 b. Carports that are aluminum or carports that are not
481 covered by the same or substantially the same materials as those
482 of the primary dwelling; and
483 c. Patios that have a roof covering that is constructed of
484 materials that are not the same or substantially the same
485 materials as those of the primary dwelling.
486
487 The corporation shall make available a policy for mobile homes
488 or manufactured homes for a minimum insured value of at least
489 $3,000.
490 18. May provide such limits of coverage as the board
491 determines, consistent with the requirements of this subsection.
492 19. May require commercial property to meet specified
493 hurricane mitigation construction features as a condition of
494 eligibility for coverage.
495 20. Must provide that new or renewal policies issued by the
496 corporation on or after January 1, 2012, which cover sinkhole
497 loss do not include coverage for any loss to appurtenant
498 structures, driveways, sidewalks, decks, or patios that are
499 directly or indirectly caused by sinkhole activity. The
500 corporation shall exclude such coverage using a notice of
501 coverage change, which may be included with the policy renewal,
502 and not by issuance of a notice of nonrenewal of the excluded
503 coverage upon renewal of the current policy.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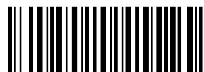
504 21. As of January 1, 2012, must require that the agent
505 obtain from an applicant for coverage from the corporation an
506 acknowledgment signed by the applicant, which includes, at a
507 minimum, the following statement:
508
509 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
510 AND ASSESSMENT LIABILITY:
511
512 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
513 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
514 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
515 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
516 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
517 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
518 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
519 LEGISLATURE.
520 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER
521 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,
522 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO
523 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN
524 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE
525 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES
526 ARE REGULATED AND APPROVED BY THE STATE.
527 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
528 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
529 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
530 FLORIDA LEGISLATURE.
531 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
532 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE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533 STATE OF FLORIDA.
534 a. The corporation shall maintain, in electronic format or
535 otherwise, a copy of the applicant's signed acknowledgment and
536 provide a copy of the statement to the policyholder as part of
537 the first renewal after the effective date of this subparagraph.
538 b. The signed acknowledgment form creates a conclusive
539 presumption that the policyholder understood and accepted his or
540 her potential surcharge and assessment liability as a
541 policyholder of the corporation.
542 22. Must provide that before an insurer may remove a policy
543 from the corporation under a takeout agreement, the agreement
544 must:
545 a. Be approved by the Office of Insurance Regulation.
546 b. Require that the insurer provide information to the
547 policyholder explaining the differences in coverage and rate
548 between the corporation policy and the policy offered.
549 23. Must require the exclusion for 6 months from future
550 takeout agreements by the corporation a policyholder who
551 declines a takeout agreement offer from an authorized insurer
552 and declines to receive additional takeout offers.
553 24. Must allow a policyholder who was removed from the
554 corporation in the previous 36 months by a takeout agreement
555 with an authorized insurer to reapply with the corporation and
556 be considered a renewal under s. 627.3518(5) if the corporation
557 determines that the authorized insurer increased the rate on the
558 policy in excess of the increase allowed for by the corporation
559 under s. 627.351(6)(n)6.
560
561 ================= T I T L E A M E N D M E N T ================

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562 And the title is amended as follows:
563 Delete everything before the enacting clause
564 and insert:
565 A bill to be entitled
566 An act relating to the depopulation of the Citizens
567 Property Insurance Corporation; amending s. 627.351,
568 F.S.; requiring takeout agreements to be approved by
569 the Office of Insurance Regulation; requiring the
570 corporation to provide information to a policyholder
571 and to exempt policyholders from future takeout offers
572 for 6 months under certain circumstances; allowing
573 specified applicants for corporation coverage to be
574 considered renewal policyholders; providing an
575 effective date.

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 1006

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Depopulation of Citizens Property Insurance Corporation

DATE: March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1006 makes changes to Citizens Property Insurance Corporation's plan of operation with regards to take-out agreements made with private insurers. The bill requires that all take-out agreements are subject to Office of Insurance Regulation (OIR) approval and requires private companies to provide in their take-out offer a comparison of coverages and rate between their policy and the Citizens policy. The bill allows a Citizens policyholder who declines a take-out offer the option to be excluded from future take-out agreements for 6 months. Lastly, the bill allows a Citizens policyholder who accepts a take-out offer the ability to reapply with Citizens and be treated as a renewal through the clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate above the 10% increase that is allowed under the Citizens glide path.

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

[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.

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 Governors[3] (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 homeowners, mobile homeowners, dwellings, tenants, 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]

Citizens Clearinghouse

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the legislature in 2013[7]. Under the program new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens rate makes the piolicy ineligible for coverage with

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[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.
[7] s. 10 ch. 2013-60 L.O.F.

Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens rate is ineligible for coverage with Citizens.

Takeout Bonus Agreements

Section 627.3511, F.S., was created by the Legislature in 1995[8] and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens Property Insurance Corporation.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section was in November of 2007.

Takeout Non-Bonus Agreements

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time most takeout agreements between Citizens and private carriers have occurred under this plan. In addition to the requirements of the approved plan the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, until 2009, the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.[9] Additionally, in November of 2013 the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.[10]

Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[11] Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourage policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

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[8] s. 10, ch.95-276, L.O.F.
[9] Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)
[10] Id.
[11] s. 627.351(6), F.S.

In November of 2011, Citizens reported a policy count of 1,472,391 policies insured. As of March 13, 2015, Citizens reports their policy count was at 598,408 policies insured.[12] Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. In the years 2012, 2013, and 2014 a total of 1,059,323 policies were removed from Citizens and placed into the private market through the use of the current takeout agreement process.[13]

III. Effect of Proposed Changes:

The bill amends Citizens Property Insurance Corporations plan of operations with regards to take-out agreements made with private insurers. The bill requires that the Office of Insurance Regulation (OIR) must approve all take-out agreements before policies can be removed from Citizens. This is currently done by the OIR, and this provision will codify such practice in statute.

The bill requires that private companies must provide in their take-out offers to citizens policyholders, a comparison of coverages and rate between their policy and the Citizens policy. The OIR has required this of all take-out agreements reached after November of 2013. This provision again will codify this requirement in statute.

The bill allows a Citizens policyholder who declines a take-out offer to also elect to not receive additional take-out offers for 6 months.

The bill allows a Citizens policyholder who accepts a take-out offer the ability to reapply with Citizens and be treated as a renewal through the Citizens clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate more than what is allowed under the Citizens glide path. This mirrors a similar provision that is applied to policyholders who accept offers of coverage from private insurers though the clearinghouse.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[12] Citizens Policy Inforce Weekly Summary Report March 16, 2015.
[13] Citizens President's Report to the Board of Governors March 18, 2015.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 of the Florida Statute.

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 23, 2015:
CS/SB 1006 made the following changes to the bill:

- Requires that all Citizens take-out agreements be approved by the OIR.
- Requires private companies to provide a comparison of coverages and rate between their policy and the Citizens policy.
- Allows Citizens policyholders a 6 month opt out from being included in any takeout agreements.
- Allows Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

B. Amendments:

None.

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

By Senator Flores

A bill to be entitled

An act relating to the depopulation of Citizens Property Insurance Corporation; amending s. 627.3511, F.S.; requiring the corporation to provide specified notice to a policyholder and to receive specified written consent from such policyholder before the removal of the policyholder’s residential property insurance policy from the corporation by an insurer; prohibiting an insurer that removes a policy from the corporation from annually increasing the rate for the renewal of a replacement policy by more than a specified amount for a specified number of terms; conforming cross-references; amending ss. 627.351 and 627.3517, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (7) of section 627.3511, Florida Statutes, are redesignated as subsections (3) through (8), respectively, a new subsection (2) is added to that section, and present subsection (5) and present paragraph (b) of subsection (6) of that section are amended, to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(2) CONSENT OF POLICYHOLDERS.—Before an insurer may remove a residential property insurance policy from the corporation under this section by issuance of a new policy upon expiration or cancellation of the corporation policy or by assumption of

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

the corporation’s obligations with respect to an in-force policy, the corporation must:

(a) Provide written notice to the policyholder that explains each difference in coverage and rate which exists between the corporation policy and the policy offered by the insurer seeking removal.

(b) Obtain written consent from the policyholder which indicates that the policyholder, after receipt of the notice required under paragraph (a), approves the removal.

(6) ~~(5)~~ APPLICABILITY.—

(a)1. The take-out bonus provided by subsection (3) ~~(2)~~ and the exemption from assessment provided by paragraph (4)(a) ~~(3)(a)~~ apply only if the corporation policy is replaced by a standard policy including wind coverage or, if consistent with the insurer’s underwriting rules filed with the office, a basic policy including wind coverage; however, for risks located in areas where coverage through the coastal account of the corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates, subject to subparagraph 2., on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. If an insurer assumes the corporation’s obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates, subject to subparagraph 2., on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. For each replacement policy canceled or nonrenewed by the insurer

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59 for any reason during the 5-year coverage period, the insurer
60 must remove from the corporation one additional policy covering
61 a risk similar to the risk covered by the canceled or nonrenewed
62 policy. In addition, the corporation must place the bonus moneys
63 in escrow for 5 years; such moneys may be released from escrow
64 only to pay claims. If the policy is canceled or nonrenewed
65 before the end of the 5-year period, the amount of the take-out
66 bonus must be prorated for the time period the policy was
67 insured. A take-out bonus provided by subsection (3) ~~(2)~~ or
68 subsection (7) ~~(6)~~ is not premium income for purposes of taxes
69 and assessments under the Florida Insurance Code and remains the
70 property of the corporation, subject to the prior security
71 interest of the insurer under the escrow agreement until it is
72 released from escrow; after it is released from escrow it is
73 considered an asset of the insurer and credited to the insurer's
74 capital and surplus.
75 2. With respect to the renewal of any single replacement
76 policy, an insurer may not implement an annual increase in the
77 rate which exceeds 10 percent, excluding coverage changes and
78 surcharges, for the first three 1-year terms of renewal.
79 (b) It is the intent of the Legislature that an insurer
80 eligible for the exemption under paragraph (4)(a) ~~(3)(a)~~
81 establish a preference in appointment of agents for those agents
82 who lose a substantial amount of business as a result of risks
83 being removed from the corporation.
84 (7)~~(6)~~ COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—
85 (b) In order for a plan to qualify for approval:
86 1. At least 40 percent of the policies removed from the
87 corporation under the plan must be located in Miami-Dade,

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88 Broward, and Palm Beach Counties, or at least 30 percent of the
89 policies removed from the corporation under the plan must be
90 located in such counties and an additional 50 percent of the
91 policies removed from the corporation must be located in other
92 coastal counties.
93 2.a. The insurer must renew the replacement policy at
94 approved rates, subject to sub-subparagraph b., on substantially
95 similar terms for two additional 1-year terms, unless canceled
96 or nonrenewed by the insurer for a lawful reason other than
97 reduction of hurricane exposure. If an insurer assumes the
98 corporation's obligations for a policy, it must issue a
99 replacement policy for a 1-year term upon expiration of the
100 corporation policy and must renew the replacement policy at
101 approved rates, subject to sub-subparagraph b., on substantially
102 similar terms for two additional 1-year terms, unless canceled
103 by the insurer for a lawful reason other than reduction of
104 hurricane exposure. For each replacement policy canceled or
105 nonrenewed by the insurer for any reason during the 3-year
106 coverage period required by this subparagraph, the insurer must
107 remove from the corporation one additional policy covering a
108 risk similar to the risk covered by the canceled or nonrenewed
109 policy.
110 b. With respect to the renewal of any single replacement
111 policy, an insurer may not implement an annual increase in the
112 rate which exceeds 10 percent, excluding coverage changes and
113 surcharges.
114 Section 2. Paragraph (q) of subsection (6) of section
115 627.351, Florida Statutes, is amended to read:
116 627.351 Insurance risk apportionment plans.—

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117 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
118 (q)1. The corporation shall certify to the office its needs
119 for annual assessments as to a particular calendar year, and for
120 any interim assessments that it deems to be necessary to sustain
121 operations as to a particular year pending the receipt of annual
122 assessments. Upon verification, the office shall approve such
123 certification, and the corporation shall levy such annual or
124 interim assessments. Such assessments shall be prorated as
125 provided in paragraph (b). The corporation shall take all
126 reasonable and prudent steps necessary to collect the amount of
127 assessments due from each assessable insurer, including, if
128 prudent, filing suit to collect the assessments, and the office
129 may provide such assistance to the corporation it deems
130 appropriate. If the corporation is unable to collect an
131 assessment from any assessable insurer, the uncollected
132 assessments shall be levied as an additional assessment against
133 the assessable insurers and any assessable insurer required to
134 pay an additional assessment as a result of such failure to pay
135 shall have a cause of action against such nonpaying assessable
136 insurer. Assessments shall be included as an appropriate factor
137 in the making of rates. The failure of a surplus lines agent to
138 collect and remit any regular or emergency assessment levied by
139 the corporation is considered to be a violation of s. 626.936
140 and subjects the surplus lines agent to the penalties provided
141 in that section.
142 2. The governing body of any unit of local government, any
143 residents of which are insured by the corporation, may issue
144 bonds as defined in s. 125.013 or s. 166.101 from time to time
145 to fund an assistance program, in conjunction with the

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146 corporation, for the purpose of defraying deficits of the
147 corporation. In order to avoid needless and indiscriminate
148 proliferation, duplication, and fragmentation of such assistance
149 programs, any unit of local government, any residents of which
150 are insured by the corporation, may provide for the payment of
151 losses, regardless of whether or not the losses occurred within
152 or outside of the territorial jurisdiction of the local
153 government. Revenue bonds under this subparagraph may not be
154 issued until validated pursuant to chapter 75, unless a state of
155 emergency is declared by executive order or proclamation of the
156 Governor pursuant to s. 252.36 making such findings as are
157 necessary to determine that it is in the best interests of, and
158 necessary for, the protection of the public health, safety, and
159 general welfare of residents of this state and declaring it an
160 essential public purpose to permit certain municipalities or
161 counties to issue such bonds as will permit relief to claimants
162 and policyholders of the corporation. Any such unit of local
163 government may enter into such contracts with the corporation
164 and with any other entity created pursuant to this subsection as
165 are necessary to carry out this paragraph. Any bonds issued
166 under this subparagraph shall be payable from and secured by
167 moneys received by the corporation from emergency assessments
168 under sub-subparagraph (b)3.d., and assigned and pledged to or
169 on behalf of the unit of local government for the benefit of the
170 holders of such bonds. The funds, credit, property, and taxing
171 power of the state or of the unit of local government shall not
172 be pledged for the payment of such bonds.
173 3.a. The corporation shall adopt one or more programs
174 subject to approval by the office for the reduction of both new

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175 and renewal writings in the corporation. Beginning January 1,
176 2008, any program the corporation adopts for the payment of
177 bonuses to an insurer for each risk the insurer removes from the
178 corporation shall comply with s. 627.3511(3) ~~s. 627.3511(2)~~ and
179 may not exceed the amount referenced in s. 627.3511(3) ~~s.~~
180 ~~627.3511(2)~~ for each risk removed. The corporation may consider
181 any prudent and not unfairly discriminatory approach to reducing
182 corporation writings, and may adopt a credit against assessment
183 liability or other liability that provides an incentive for
184 insurers to take risks out of the corporation and to keep risks
185 out of the corporation by maintaining or increasing voluntary
186 writings in counties or areas in which corporation risks are
187 highly concentrated and a program to provide a formula under
188 which an insurer voluntarily taking risks out of the corporation
189 by maintaining or increasing voluntary writings will be relieved
190 wholly or partially from assessments under sub-subparagraph
191 (b)3.a. However, any "take-out bonus" or payment to an insurer
192 must be conditioned on the property being insured for at least 5
193 years by the insurer at rates authorized under s. 627.3511,
194 unless canceled or nonrenewed by the policyholder. If the policy
195 is canceled or nonrenewed by the policyholder before the end of
196 the 5-year period, the amount of the take-out bonus must be
197 prorated for the time period the policy was insured. When the
198 corporation enters into a contractual agreement for a take-out
199 plan, the producing agent of record of the corporation policy is
200 entitled to retain any unearned commission on such policy, and
201 the insurer shall either:
202 (I) Pay to the producing agent of record of the policy, for
203 the first year, an amount which is the greater of the insurer's

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204 usual and customary commission for the type of policy written or
205 a policy fee equal to the usual and customary commission of the
206 corporation; or
207 (II) Offer to allow the producing agent of record of the
208 policy to continue servicing the policy for a period of not less
209 than 1 year and offer to pay the agent the insurer's usual and
210 customary commission for the type of policy written. If the
211 producing agent is unwilling or unable to accept appointment by
212 the new insurer, the new insurer shall pay the agent in
213 accordance with sub-sub-subparagraph (I).
214 b. Any credit or exemption from regular assessments adopted
215 under this subparagraph shall last no longer than the 3 years
216 following the cancellation or expiration of the policy by the
217 corporation. With the approval of the office, the board may
218 extend such credits for an additional year if the insurer
219 guarantees an additional year of renewability for all policies
220 removed from the corporation, or for 2 additional years if the
221 insurer guarantees 2 additional years of renewability for all
222 policies so removed.
223 c. There shall be no credit, limitation, exemption, or
224 deferment from emergency assessments to be collected from
225 policyholders pursuant to sub-subparagraph (b)3.d.
226 4. The plan shall provide for the deferment, in whole or in
227 part, of the assessment of an assessable insurer, other than an
228 emergency assessment collected from policyholders pursuant to
229 sub-subparagraph (b)3.d., if the office finds that payment of
230 the assessment would endanger or impair the solvency of the
231 insurer. In the event an assessment against an assessable
232 insurer is deferred in whole or in part, the amount by which

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such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keepout or take-out offer, to retain his or her

current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right shall not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keepout, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keepout offer, the policyholder shall not be disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies shall not be considered a take-out or keepout offer. Any rule, plan of operation, or plan of depopulation, through keepout, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(5) ~~627.3511(4)~~.

Section 4. This act shall take effect July 1, 2015.

1006

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill #1006**, relating to Depopulation of Citizens Property Insurance Corporation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23
Meeting Date

1006
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Citizens Depopulation

Name Christine Ashburn

Job Title VP of Legislative Affairs

Address 2312 Killearn Center Blvd.
Street

Tallahassee FL 32304
City State Zip

Phone 850-513-3746

Email christine.ashburn@citizensfla.com

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

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

Representing Citizens Property Ins. Corp

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 1006
Bill Number (if applicable)

259236
Amendment Barcode (if applicable)

Topic: Citizens Depop

Name: Corey Mathews

Job Title: CEO

Address: 1390 Timberlane Rd
Street

TLH — FL — 32312
City — State — Zip

Phone: 850/893-8245

Email: corey@piafl.org

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

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

Representing: Professional Insurance Agents of FL

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 3/23/15

Bill Number (if applicable): SB 1006

Amendment Barcode (if applicable):

Topic: Citizens Depopulation

Name: Christian Camara

Job Title: State Director, FL.

Address: PO Box 10577
Street

Tall. FL 32302
City State Zip

Phone: 305 608-4300

Email: ccamara@rstreet.org

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

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

Representing: R. Street Institute

Appearing at request of Chair: [ ] Yes [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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

8/23
Meeting Date

SB 1006
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Citizens Do pop notice

Name: Paul Handerhan

Job Title: Consultant Ramba

Address: 120 South Monroe St
Street

Tallahassee FL 32301
City State Zip

Phone: 561 704 0428

Email: Paul@Rambaconsulting.com

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

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

Representing: Florida Association for Insurance Reform

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1006
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Depopulation of Citizens

Name: Carolyn Johnson

Job Title: Policy Director

Address: 136 S Bronough St
Street

Tallahassee — FL — 32301
City — *State* — *Zip*

Phone: 850-521-1235

Email: cjohnson@flchamber.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing: Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

203012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 33 - 114
4 and insert:
5 (3) In addition to the methods listed in subsection (1) for
6 sending a document, a sender may post a document to a secure
7 electronic account or website where the document can be
8 accessed.
9 (a) Before a document may be posted to an electronic
10 account or website, the recipient must sign a separate written

203012

11 authorization solely for the purpose of authorizing the sender
12 to post documents on the electronic account or website. The
13 written authorization must:
14 1. Enumerate the documents that may be posted in this
15 manner.
16 2. Contain specific instructions for accessing the
17 electronic account or website, including the security procedures
18 required to access the electronic account or website, such as a
19 username and password.
20 3. Advise the recipient that a separate notice will be sent
21 when a document is posted to the electronic account or website
22 and the manner in which the separate notice will be sent.
23 4. Advise the recipient that the authorization to receive
24 documents by electronic posting may be amended or revoked at any
25 time and include specific instructions for revoking or amending
26 the authorization, including the address designated for the
27 purpose of receiving notice of the revocation or amendment.
28 5. Advise the recipient that posting a document on the
29 electronic account or website may commence a limitations period
30 as short as 6 months even if the recipient never actually
31 accesses the electronic account or website or the document.
32 (b) Once the recipient signs the written authorization, the
33 sender must provide a separate notice to the recipient when a
34 document is posted to the electronic account or website. As used
35 in this subsection, the term “separate notice” means a notice
36 sent to the recipient by means other than electronic posting
37 which identifies each document posted to the electronic account
38 or website and provides instructions for accessing the posted
39 document. The separate notice requirement is satisfied if the

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40 recipient accesses the document on the electronic account or
41 website.
42 (c) A document sent by electronic posting is deemed
43 received by the recipient on the earlier of the date that the
44 separate notice is received or the date that the recipient
45 accesses the document on the electronic account or website.
46 (d) At least annually after a recipient signs a written
47 authorization, a sender shall send a notice advising the
48 recipient that posting a document on the electronic account or
49 website may commence a limitations period as short as 6 months
50 even if the recipient never accesses the electronic account or
51 website or the document and that the authorization to receive
52 documents by electronic posting may be amended or revoked at any
53 time. This notice must be given by means other than electronic
54 posting and may not be accompanied by any other written
55 communication. Failure to provide such notice within 380 days
56 after the last notice is deemed to automatically revoke the
57 authorization to receive documents in the manner permitted under
58 this subsection 380 days after the last notice is sent.
59 (e) The notice required in paragraph (d) may be in
60 substantially the following form: "You have authorized receipt
61 of documents through posting to an electronic account or website
62 where the documents can be accessed. This notice is being sent
63 to advise you that a limitations period, which may be as short
64 as 6 months, may be running as to matters disclosed in a trust
65 accounting or other written report of a trustee posted to the
66 electronic account or website even if you never actually access
67 the electronic account or website or the documents. You may
68 amend or revoke the authorization to receive documents by

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69 electronic posting at any time. If you have any questions,
70 please consult your attorney.”
71 (f) A sender may rely on the recipient’s authorization
72 until the recipient amends or revokes the authorization by
73 sending a notice to the address designated for that purpose in
74 the authorization. The recipient, at any time, may amend or
75 revoke an authorization to have documents posted on the
76 electronic account or website.
77 (g) A document provided to a recipient solely through
78 electronic posting must remain accessible to the recipient on
79 the electronic account or website for at least 4 years after the
80 date that the document is deemed received by the recipient. The
81 electronic account or website must allow the recipient to
82 download or print the document. This subsection does not affect
83 or alter the duties of a trustee to keep clear, distinct, and
84 accurate records pursuant to s. 736.0810 or affect or alter the
85 time periods for which the trustee must maintain those records.
86 (h) To be effective, the posting of a document to an
87 electronic account or website must be done in accordance with
88 this subsection. The sender has the burden of
89
90 ================ T I T L E A M E N D M E N T ================
91 And the title is amended as follows:
92 Delete lines 4 - 12
93 and insert:
94 sender to post a document to a secure electronic
95 account or website upon the authorization of a
96 recipient; providing for effective authorization for
97 such posting; requiring a sender to provide a separate

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98 notice once a document is electronically posted;
99 specifying when a document sent electronically is
100 deemed received by the recipient; requiring a sender
101 to provide notice of the beginning of a limitations
102 period and authority of a recipient to amend or revoke

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 1314

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Electronic Noticing of Trust Accounts

DATE: March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 provides a mechanism for trustees to provide electronic notices relating to trust accounts. A trustee has a duty to keep beneficiaries of an irrevocable trust reasonably informed of the trust and its administration. Specifically, the trustee must provide beneficiaries with an accounting of the trust at specified periods, disclosure of documents related to the trust, and notice of specific events related to the administration of the trust.

The Florida Trust Code currently provides that the only permissible methods of sending notice or a document to such persons are by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message. However, for many reasons, some beneficiaries prefer to receive, store, and access correspondence and documents through secured websites and accounts. Trustees also prefer to provide sensitive financial information through secured web accounts rather than through electronic messages which carry greater security risks. Although financial institutions commonly use secure websites for providing statements and other disclosures related to bank or credit accounts, such methods are rarely used for trust accounts due to a perceived lack of authorization within current law.

The bill authorizes a trustee to post required documents to a secure website or account if a beneficiary opts in to receiving electronic documents through a secure website or account. The bill also specifies when notice or the delivery of a document by electronic message or posting is

complete and presumed received by the intended recipient for purposes of commencing a limitations period for breach of trust claims.

II. Present Situation:

"A trust is a fiduciary relationship[1] with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."[2] A trust involves three interest holders: the settlor[3] who establishes the trust; the trustee[4] who holds legal title to the property held for the benefit of the beneficiary; and lastly, the beneficiary[5] who has an equitable interest in property held subject to the trust.

The Florida Trust Code[6] (the "code") requires a trustee to administer the trust "in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [the] code,"[7] and also imposes a duty of loyalty upon the trustee.[8] The violation by a trustee of a duty owed to a beneficiary is a breach of trust.[9]

Disclosure and Notice of Trust Administration

To be able to enforce the trustee's duties, the beneficiary of a trust must know of the existence of the trust and be informed about the administration of the trust:

> If there were no duty to inform and report to the beneficiary, the beneficiary might never become aware of breaches of trust or might be unaware of breaches until it is too late to obtain relief. In addition, providing information to the beneficiary protects the trustee from claims being brought long after events that allegedly constituted a breach, because the statute of limitations or the doctrine of laches will prevent the beneficiary from pursuing stale claims. As a result, the duty to inform and report to the beneficiary is fundamental to the trust relationship.[10]

---

[1] *Brundage v. Bank of America*, 996 So.2d 877, 882 (Fla. 4th D.C.A. 2008) (trustee owes a fiduciary duty to settlor/beneficiary).
[2] 55A FLA. JUR.2D *Trusts* ch. 1.
[3] "Settlor" means a person, including a testator, who creates or contributes property to a trust. Section 736.0103(18), F.S.
[4] "Trustee" means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee. Section 736.0103(18), F.S.
[5] "Beneficiary" means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.
[6] Chapter 736, F.S.
[7] Section 736.0801, F.S.
[8] Section 736.0802(1), F.S.
[9] Section 736.1001(1), F.S.
[10] Kevin D. Millard, *The Trustee's Duty to Inform and Report Under the Uniform Trust Code*, 40 Real Property, Probate and Trust J. 373 (summer 2005), *available at* http://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/V40/02/2005_aba_rpte_journal_v40_no2_summer_master.pdf, (last accessed March 9, 2015).

Accordingly, s. 736.0813, F.S., imposes a duty on a Florida trustee to keep the qualified beneficiaries[11] (hereinafter "beneficiaries") of an irrevocable trust reasonably informed of the trust and its administration. The duty includes, but is not limited to: [12]

- Notice of the existence of the irrevocable trust, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings, and applicability of the fiduciary lawyer-client privilege.
- Notice of the acceptance of the trust, the full name and address of the trustee, and the applicability of the fiduciary lawyer-client privilege.
- Disclosure of a copy of the trust instrument upon reasonable request.
- An annual accounting of the trust to each beneficiary and an accounting on termination of the trust or on change of the trustee. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.[13]
- Disclosure of relevant information about the assets and liabilities of the trust and the particulars relating to administration upon reasonable request.
- Such additional notices and disclosure requirements related to the trust administration as required by the Florida Trust Code.[14]

A beneficiary must bring an action for breach of trust as to any matter adequately disclosed within an accounting or any other written report of the trustee, also known as trust disclosure documents,[15] within 6 months of *receiving* the trust disclosure document or a limitation *notice*[16] from the trustee that applies to that trust disclosure document, whichever occurs later.[17] A limitation notice informs the beneficiary that an action against the trustee for breach of trust based on any matter adequately disclosed in the trust disclosure document may be barred unless the action is commenced within 6 months.

The code prescribes the permissible methods of sending a document or notice for receipt by a beneficiary.

[11] The term "qualified beneficiary" encompasses only a limited subset of all trust beneficiaries. The class is limited to living persons who are current beneficiaries, intermediate beneficiaries, and first-line remainder beneficiaries, whether vested or contingent. Section 736.0103(16), F.S.

[12] Section 736.0813, F.S.

[13] Sections 736.0813 and 736.08135, F.S.

[14] *See, e.g.* Section 736.0108(6), F.S. (notice of a proposed transfer of a trust's principal place of administration); Section 736.04117(4), F.S. (notice of the trustee's exercise of the power to invade the principal of the trust); Section 736.0414(1), F.S. (notice of terminating certain minimally funded trusts); Section 736.0417(1), F.S. (notice prior to combining or dividing trusts); Section 736.0705 (notice of resignation of trustee); Section 736.0802, F.S. (disclose and provide notice of investments in funds owned or controlled by trustee; the identity of the investment instruments, and the identity and relationship to the trustee to any affiliate that owns or controls the investment instruments; and notice to beneficiaries whose share of the trust may be affected by certain legal claims); and Section 736.0902(5), F.S. (notice of the non- application of the prudent investor rule to certain transactions).

[15] "Trust disclosure document" means a trust accounting or any other written report of the trustee. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter. Section 736.1008(4)(a), F.S.

[16] "Limitation notice" means a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.

[17] Section 736.1008(2), F.S.

Methods of Disclosure or Notice

Current law requires that notice or sending a document to a person under the code must be accomplished "in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document."[18] However, s. 736.0109, F.S., specifies that the only permissible manners of providing notice, except notice of a judicial proceeding, or sending a document to a person under the code are:

- First-class mail;
- Personal delivery;
- Delivery to the person's last known place of residence or place of business; or
- A properly directed facsimile or other electronic message.

Notice of a judicial proceeding must be given as provided in the Florida Rules of Civil Procedure.[19]

The current methods of permissible notice or service of documents under the code restricts the ability of trustees to meet increasing beneficiary demands to receive information electronically. Trustees have expressed concern regarding protecting confidential information and the privacy hazards inherent in the delivery of financial information via email.[20] Some trustees, sensitive to these privacy concerns, deliver required documents, such as a trust account statement, to beneficiaries by emailing notice that a trust statement is available to be viewed and downloaded on a secured website or account and providing a password for the beneficiary to access the account.[21] However, it is not clear that by using this method, although more secure than email, the trustee technically complies with the duty to provide a trust accounting under s. 736.0813, F.S., since the document itself is not delivered by email but rather delivers information on how to access the document through a secured website. The failure to provide a trust accounting may be actionable as a breach of trust under the code if a beneficiary denies receipt of statements provided by this method. Further it is not clear that trust documents posted on a secured website have the benefit of the 6 months limitations period for matters adequately disclosed in trust disclosure documents as they are provided in a manner that may not be permissible under the code. If the limitations period does not apply, a trustee may be subject to a breach of trust claim, even if the matters were adequately disclosed in the trust document, for up to 4 years.[22]

Due to the uncertainty regarding when the limitations period runs for notice or trust disclosure documents delivered by electronic message or posted on a secured website and whether attempts to provide trust disclosure documents through a secured website or account technically comply with the statutory duty to provide certain documents to a beneficiary, trustees have little incentive to respond to beneficiary requests for electronic communications. Prudent trustees that offer electronic delivery of trust disclosure documents via email or through a secured website may find it necessary to continue providing physical documents in order to comply with notice

[18] Section 736.0109(1), F.S.
[19] Section 736.0109(4), F.S.
[20] *Subcommittee Report on Electronic Delivery of Trust Statements*, provided by the Florida Banker's Association to the Banking and Insurance Committee staff (on file with the committee).
[21] *Id.*
[22] Section 736.1008(1), F.S provides that the applicable limitations period is determined under ch. 95, F.S. That is, the normal limitations period will be the 4 year period described in s. 95.11(3), F.S.

and disclosure requirements under the code and to secure the protection of the 6 months limitations period for breach of trust claims.

III. Effect of Proposed Changes:

CS/SB 1314 authorizes a trustee to post documents that must be provided to a person under the code to a secure electronic website or account if the person provides written authorization. The website or account must allow the recipient to download or print the posted document. A document provided solely through electronic posting must be retained on the website or account for at least 4 years after the date it is received. The written authorization to provide electronic posting of documents must:

- Be limited solely to posting documents on the electronic account or website.
- Enumerate the documents that may be posted on the electronic website or account.
- Contain specific instructions for accessing the electronic website or account, including any security measures.
- Advise that a separate notice will be sent, and the manner in which it will be sent, when a document is posted to the electronic website or account.
- Advise that the authorization may be amended or revoked at any time and provide instructions to amend or revoke authorization.
- Advise that the posting of a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never access the electronic account, website, or document.

The trustee is required to send a notice to a person receiving trust documents by electronic posting, which notice may be made by any permissible method of notice under the code except electronic posting, at the following intervals:

- Each time a document is posted and the notice must identify each document that has been posted and how the person may access the document.
- Every year (the "annual notice") to advise such persons that posting of a document commences a limitations period as short as 6 months even if the recipient never accesses the website, account, or document. The annual notice must also address the right to amend or revoke a previous authorization to post trust documents on a website or account. The bill provides the suggested form of the annual notice, which is substantially similar to the suggested form of a limitations notice provided in s. 736.1008(4)(c), F.S. The failure of a trustee to provide the annual notice within 380 days of the last noticewill automatically revoke the person’s authorization to post trust documents on an electronic website or account.

A document delivered by electronic posting is deemed received by the recipient on the earlier of the date that notice of the document’s posting is received or the date that the recipient accesses the document on the electronic account or website. The posting of a document to an electronic account or website is only effective if done in compliance with the requirements of this bill. The trustee has the burden of demonstrating compliance with such requirements. If a trustee provides notice or sends a document to person by electronic message, notice or sending of the document is complete when sent and presumed received on the date on which it is sent unless the sender has actual knowledge the electronic message did not reach the recipient.

The bill does not preclude the sending of a document by other permissible means under the code nor does it affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810, F.S., or the time such records must be retained.

The bill specifically delineate that notice and service of documents in a judicial proceeding related to a trust are governed by the Florida Rules of Civil Procedure rather than the code.

This bill takes effect July 1, 2015.

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:

Trustees may see a reduction in stationary, postage, and labor costs by providing required notices and documents electronically to qualified beneficiaries that opt in to receive electronic notices.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 736.0109 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 23, 2015:
The CS clarifies that the website or account where trust documents are posted must be secure. The CS provides that the annual notice must be provided within 380 days of the last notice.

B. Amendments:

None.

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

By Senator Bradley

7-00468B-15 20151314__

1 A bill to be entitled
2 An act relating to electronic noticing of trust
3 accounts; amending s. 736.0109, F.S.; authorizing a
4 sender to post a document to an electronic account or
5 website upon the authorization of a recipient;
6 providing for effective authorization for such
7 posting; requiring a sender to provide a separate
8 notice once a document is electronically posted;
9 specifying when a document sent electronically is
10 deemed received by the recipient; requiring a sender
11 to provide notice of the beginning of a limitations
12 period and authority of a recipient to revoke
13 authorization for electronic posting; providing a form
14 that may be used to effectuate such notice; requiring
15 documents posted to an electronic website to remain
16 accessible to the recipient for a specified period;
17 establishing burdens of proof for purposes of
18 determining whether proper notifications were
19 provided; specifying that electronic messages are
20 deemed received when sent; specifying situations under
21 which electronic messages are not deemed received;
22 specifying that service of documents in a judicial
23 proceeding are governed by the Florida Rules of Civil
24 Procedure; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. Present subsections (3) and (4) of section
29 736.0109, Florida Statutes, are redesignated as subsections (5)

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7-00468B-15 20151314__

30 and (6), respectively, present subsection (4) is amended, and
31 new subsections (3) and (4) are added to that section, to read:
32 736.0109 Methods and waiver of notice.—
33 (3) In addition to the methods listed in subsection (1) for
34 sending a document, a sender may post a document to an
35 electronic account or website where the document can be
36 accessed.
37 (a) Posting a document to an electronic account or website
38 must be authorized by the recipient in a separate written
39 authorization that must be signed by the recipient solely for
40 the purpose of authorizing a sender to post documents on an
41 electronic account or website. The written authorization must:
42 1. Enumerate the documents that may be posted in this
43 manner.
44 2. Contain specific instructions for accessing the
45 electronic account or website, including the security procedures
46 required to access the electronic account or website, such as a
47 username and password.
48 3. Advise the recipient that a separate notice will be sent
49 when a document is posted to the electronic account or website
50 and the manner in which the separate notice will be sent.
51 4. Advise the recipient that the authorization to receive
52 documents by electronic posting may be amended or revoked at any
53 time and include specific instructions for revoking or amending
54 the authorization, including the address designated for the
55 purpose of receiving notice of the revocation or amendment.
56 5. Advise the recipient that posting a document on the
57 electronic account or website may commence a limitations period
58 as short as 6 months even if the recipient never actually

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59 accesses the electronic account or website or the document.
60 (b) Once the recipient signs the written authorization, the
61 sender must provide a separate notice to the recipient when a
62 document is posted to the electronic account or website. As used
63 in this subsection, the term “separate notice” means a notice
64 sent to the recipient by means other than electronic posting
65 which identifies each document posted to the electronic account
66 or website and provides instructions for accessing the posted
67 document. The separate notice requirement is satisfied if the
68 recipient accesses the document on the electronic account or
69 website.
70 (c) A document sent by electronic posting is deemed
71 received by the recipient on the earlier of the date that the
72 separate notice is received or the date that the recipient
73 accesses the document on the electronic account or website.
74 (d) At least annually after a recipient signs a written
75 authorization, a sender shall send a notice advising the
76 recipient that posting a document on the electronic account or
77 website may commence a limitations period as short as 6 months
78 even if the recipient never accesses the electronic account or
79 website or the document and that the authorization to receive
80 documents by electronic posting may be revoked at any time. This
81 notice must be given by means other than electronic posting.
82 Failure to provide such notice within 1 year after the last
83 notice is deemed to automatically revoke the authorization to
84 receive documents in the manner permitted under this subsection
85 1 year after the last notice is sent.
86 (e) The notice required in paragraph (d) may be in
87 substantially the following form: “You have authorized receipt

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

88 of documents through posting to an electronic account or website
89 where the documents can be accessed. This notice is being sent
90 to advise you that a limitations period, which may be as short
91 as 6 months, may be running as to matters disclosed in a trust
92 accounting or other written report of a trustee posted to the
93 electronic account or website even if you never actually access
94 the electronic account or website or the documents. You may
95 revoke the authorization to receive documents by electronic
96 posting at any time. If you have any questions, please consult
97 your attorney.”
98 (f) A sender may rely on the recipient’s authorization
99 until the recipient revokes the authorization by sending a
100 notice to the address designated for that purpose in the
101 authorization. An authorization to have documents posted on the
102 electronic account or website may be revoked at any time.
103 (g) A document provided to a recipient solely through
104 electronic posting must remain accessible to the recipient on
105 the electronic account or website for at least 4 years after the
106 date that the document is deemed received by the recipient. The
107 electronic account or website must allow the recipient to
108 download or print the document. This subsection does not affect
109 or alter the duties of a trustee to keep clear, distinct, and
110 accurate records pursuant to s. 736.0810 or affect or alter the
111 time periods for which the trustee must maintain those records.
112 (h) To be effective, the posting of a document to an
113 electronic account or website must be done in accordance with
114 the provisions of this subsection. The sender has the burden of
115 establishing compliance with this subsection.
116 (i) This subsection does not preclude the sending of a

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117 document by other means.
118 (4) Notice to a person under this code, or the sending of a
119 document to a person under this code by electronic message, is
120 complete when the document is sent.
121 (a) An electronic message is presumed received on the date
122 that the message is sent.
123 (b) If the sender has knowledge that an electronic message
124 did not reach the recipient, the electronic message is deemed to
125 have not been received. The sender has the burden to prove that
126 another copy of the notice or document was sent by electronic
127 message or by other means authorized under this section.
128 (6) ~~(4)~~ Notice and service of documents in ~~of~~ a judicial
129 proceeding are governed by ~~must be given as provided in~~ the
130 Florida Rules of Civil Procedure.
131 Section 2. This act shall take effect July 1, 2015.

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The Florida Senate

Committee Agenda Request

1306✓
1314

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 3, 2015

I respectfully request that **Senate Bill # 1306: Insurance Fraud and 1314; Electronic Noticing of Trust Accounts** be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

W

3/23/15
Meeting Date

1314
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Electronic Noticing of Trust Accounts

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste. 201
Street

Tallahassee FL 32303
City State Zip

Phone 850-224-2265

Email kpratt@floridabankers.com

Speaking: [✓] For [ ] Against [ ] Information

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

Representing Florida Bankers Association

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1088

INTRODUCER: Senator Brandes

SUBJECT: Civil Remedies Against Insurers

DATE: March 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 1088 provides a 45 day window in which an insurer can act to avoid liability for failing to attempt to settle a claim in good faith. A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage. A third-party claim can be brought by the insured, having been held liable for judgment in excess of policy limits by the third-party claimant.

This bill provides that before a third-party bad faith action for failure to settle a liability insurance claim may be filed, the claimant must provide the insurer a written notice of loss. To avoid bad faith liability for failing to attempt to settle a claim in good faith, the insurer must comply with a request for a disclosure statement and, within 45 days after receipt of the written notice of loss, offer to pay the claimant the lesser of the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss or the limits of liability coverage applicable to the claimant's insurance claim. If the insurer complies with these conditions, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

II. Present Situation:

Obligations of Insurer to Insured

A liability insurer generally owes two major contractual duties to its insured in exchange for premium payments—the duty to indemnify and the duty to defend. The duty to indemnify refers to the insurer's obligation to issue payment either to the insured or a beneficiary on a valid claim. The duty to defend refers to the insurer's duty to provide a defense for the insured in court

against a third party with respect to a claim within the scope of the insurance contract.[1] The Florida Supreme Court explained the difference between indemnity policies and liability policies:

> Under indemnity policies, the insured defended the claim and the insurance company simply paid a claim against the insured after the claim was concluded. Under liability policies, however, insurance companies took on the obligation of defending the insured, which, in turn, made insureds dependent on the acts of the insurers; insurers had the power to settle and foreclose an insured's exposure or to refuse to settle and leave the insured exposed to liability in excess of policy limits.[2]

Historically, damages in actions for breaches of insurance contracts were limited to those contemplated by the parties when they entered into the contract.[3] As liability policies began to replace indemnity policies as the standard insurance policy form, courts recognized that insurers owed a duty to act in good faith towards their insureds.[4]

Common Law and Statutory Bad Faith

Florida courts for many years have recognized an additional duty that does not arise directly from the insurance contract, the common law duty of good faith on the part of an insurer to the insured in negotiating settlements with third-party claimants.[5] The common law rule is that a third-party beneficiary who is not a formal party to a contract may sue for damages sustained as the result of the acts of one of the parties to the contract.[6] This is known as a third-party claim of bad faith.

At common law, the insured cannot raise a bad faith claim against the insurer outside of the third-party claim context.[7] In 1982, the Legislature enacted s. 624.155, F.S. Section 624.155, F.S., recognizes a claim for bad faith against an insurer not only in the instance of settlement negotiations with a third party but also for an insured seeking payment from his or her own insurance company. This is known as a first-party claim of bad faith.

Section 624.155, F.S., provides that any party may bring a bad faith civil action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or

[1] *See* 16 Williston on Contracts s. 49:103 (4th Ed.).
[2] *See State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[3] *See State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 58 (Fla. 1995).
[4] *Id.*
[5] *See Auto. Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).
[6] *See Thompson v. Commercial Union Insurance Company*, 250 So.2d 259 (Fla. 1971).
[7] *See Laforet*, 658 So.2d at 58-59.

- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.[8]

In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer 60 days written notice of the alleged violation.[9] The insurer has 60 days after the required notice is filed to pay the damages or correct the circumstances giving rise to the violation.[10] Because first-party claims are only statutory, that cause of action does not exist until the 60-day cure period provided in the statute expires without payment by the insurer.[11] Third-party claims, on the other hand, exist both in statute and at common law, so the insurer cannot guarantee avoidance of a bad faith claim by curing within the statutory period.[12]

In interpreting what it means for an insurer to act fairly toward its insured, Florida courts have held that when the insured's liability is clear and an excess judgment is likely due to the extent of the resulting damage, the insurer has an affirmative duty to initiate settlement negotiations.[13] If a settlement is not reached, the insurer has the burden of showing that there was no realistic possibility of settlement within policy limits.[14] Failure to settle on its own, however, does not mean that an insurer acts in bad faith. Negligent failure to settle does not rise to the level of bad faith. Negligence may be considered by the jury because it is relevant to the question of bad faith but a cause of action based solely on negligence is not allowed.[15]

Third-Party Claims of Bad Faith

A third-party bad faith claim arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.[16] The Florida Supreme Court has described an insurer's duty to its insureds:

> An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured. This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable

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[8] *See* s. 624.155(1)(b)1.-3., F.S.
[9] *See* s. 624.155(3)(a), F.S. The notice must be on a form approved by the Department of Financial Services. If the Department returns the notice for lack of specificity, the day period does not begin until a proper notice is filed. The notice form can be found at https://apps.fldfs.com/CivilRemedy/ (last accessed on March 29, 2014).
[10] *See* s. 624.155(3)(d), F.S.
[11] *See Talat Emterprises vv. Aetna Casualty and Surety Company*, 753 So.2d 1278, 1284 (Fla. 2000).
[12] *See Macola v. Government Employees Insurance Company,* 953 So.2d 451 (Fla. 2006).
[13] *See Powell v. Prudential Property and Casualty Insurance Company*, 584 So.2d 12, 14 (Fla. 3d DCA 1991).
[14] *Id.*
[15] *See DeLaune v. Liberty Mutual Insurance Company*, 314 So.2d 601,603 (Fla. 4th DCA 1975).
[16] *See Opperman v. Nationwide Mutual Fire Insurance Company,* 515 So.2d 263, 265 (Fla. 5th DCA 1987).

> outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. Because the duty of good faith involves diligence and care in the investigation and evaluation of the claim against the insured, negligence is relevant to the question of good faith. The question of failure to act in good faith with due regard for the interests of the insured is for the jury.[17]

In light of this heightened duty on the part of the insurer, Florida courts focus on the actions of the insurer, not the claimant.[18] Whether an insurer acted in bad faith is determined by the totality of the circumstances:

> In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard. Each case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.[19]

The focus in a bad faith case is on the conduct of the insurer but the conduct of the claimant is relevant to whether there was a realistic opportunity for settlement.[20] A court, for example, will look at the terms of a demand for settlement to determine if the insurer was given a reasonable amount of time to investigate the claim and make a decision whether settlement would be appropriate under the circumstances. One court held that dismissal of a bad faith claim was proper where the settlement demand in question gave a 10-day window, pointing out that "[i]n view of the short space of time between the accident and institution of suit, the provision of the offer to settle limiting acceptance to 10 days made it virtually impossible to make an intelligent acceptance."[21] Although in this particular circumstance the court found that 10 days was not enough, it is not clear exactly what time period or other conditions for acceptance would be permissible, because courts look at the facts on a case-by-case basis and the current statute is silent on this point.

In *Berges*, dissenting justices expressed concern that there "is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met."[22] It was argued that it is a "common practice for a party contemplating litigation to submit a settlement offer that remains outstanding for only a finite period and that a person injured by a policyholder may set any deadlines he desires—even an

[17] *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980)(internal citations omitted).
[18] *See Berges v. Infinity Insurance Company*, 896 So.2d 665, 677 (Fla. 2005)(explaining that "the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured").
[19] *See Berges*, 896 So.2d at 680 (internal quotations and citations omitted).
[20] *See Barry v. GEICO General Insurance Company*, 938 So.2d 613, 618 (Fla. 4th DCA 2006).
[21] *DeLaune v. Liberty Mut. Ins. Co.*, 314 So.2d 601, 603 (Fla. 4th DCA 1975).
[22] *Berges*, 896 So.2d at 685 (Wells, J., dissenting).

arbitrary or unreasonable one."[23] Justice Wells concluded that set time periods in which all insurers must make decisions on claims and issue payments are needed.[24]

The majority in *Berges* held that courts must look to the totality of the circumstances. "The question of bad faith in this case extends to [the insurer's] entire conduct in the handling of the claim, including the acts or omissions [of the insurer] in failing to ensure payment of the policy limits within the time demands."[25] Another court argued that setting a "minimum amount of time before any finding of bad faith is possible runs counter to the analysis of ordinary care and prudent business practice… Juries are empaneled to apply the appropriate criteria to the particular facts of a given situation and to decide whether the insurer acted prudently."[26]

Disclosure Statements

Section 627.4137, F.S., requires an insurer to provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

- The name of the insurer.
- The name of each insured.
- The limits of the liability coverage.
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
- A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, must disclose the name and coverage of each known insurer to the claimant and shall forward such request for information on all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

III. Effect of Proposed Changes:

This bill provides that, as a condition precedent to a third-party statutory or common-law bad faith action for failure to settle a liability insurance claim, the insured, the claimant, or anyone on behalf of the insured or the claimant must provide the insurer a written notice of loss. This bill does not change the requirements for first-party bad faith claims.

If the insurer complies with a request for a disclosure statement as described in s. 627.4137, F.S., and, within 45 days after receipt of the written notice of loss, offers to pay the claimant the lesser of the limits of liability coverage applicable to the claimant's insurance claim or the amount that the claimant is willing to accept in exchange for a full release of the insured from any liability

[23] *Id.* at 692 (Cantero, J., dissenting).
[24] *Id.* at 686 (Wells, J., dissenting).
[25] *Berges*, 896 So.2d at 627.
[26] *Snowden ex. rel. Estate of Snowden v. Lumbermans Mutual Casualty Company*, 358 F.Supp.2d 1125, 1129 (N.D. Fla. 2003).

arising from the incident reported in the written notice loss, the insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for bad faith failure to settle.

Current law provides that bad faith is determined based on the totality of the circumstances. This bill would provide that an insurer is not liable for bad faith failure to settle if the insurer complies with the provisions of this bill.

This bill is effective July 1, 2015.

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 private sector fiscal impact of this bill is indeterminate. This bill will create a 45 day window for insurers to avoid bad faith claims.

C. Government Sector Impact:

The government sector fiscal impact is indeterminate. This bill eliminates the requirement that claimants file a civil remedy notice in third-party bad faith cases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.155 of the Florida Statutes.

This bill reenacts section 766.1185 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.

By Senator Brandes

22-00742-15 20151088__

A bill to be entitled

An act relating to civil remedies against insurers; amending s. 624.155, F.S.; requiring an insured, a claimant, or a person acting on behalf of an insured's or a claimant's behalf, to provide an insurer with written notice of loss as a condition precedent to bringing a statutory or common law action for a third-party bad faith action for failure to settle an insurance claim; providing that an insurer is not liable for such claim if certain conditions are met; reenacting s. 766.1185(3), F.S., relating to bad faith actions, to incorporate the amendment made to s. 624.155, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 624.155, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

(3)(a) Except as provided in subsection (10), as a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period does ~~shall~~ not begin until a proper notice is filed.

(10) As a condition precedent to bringing a third-party statutory or common-law bad faith action for failure to settle a

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

22-00742-15 20151088__

liability insurance claim, the insured, the claimant, or any person on behalf of the insured or the claimant must have provided the insurer with a written notice of loss. An insurer does not violate the duty to attempt in good faith to settle the claim and is not liable for a bad faith failure to settle under this section or common law if the insurer:

(a) Complies with a request for a disclosure statement as described in s. 627.4137.

(b) Offers, within 45 days after receipt of the written notice of loss, to pay the claimant the lesser of the amount that the claimant is willing to accept or the limits of liability coverage applicable to the claimant's insurance claim in exchange for a full release of the insured from any liability arising from the incident reported in the written notice of loss.

Section 2. For the purpose of incorporating the amendment made by this act to section 624.155, Florida Statutes, in a reference thereto, subsection (3) of section 766.1185, Florida Statutes, is reenacted to read:

766.1185 Bad faith actions.—In all actions for bad faith against a medical malpractice insurer relating to professional liability insurance coverage for medical negligence, and in determining whether the insurer could and should have settled the claim within the policy limits had it acted fairly and honestly towards its insured with due regard for her or his interest, whether under statute or common law:

(3) The provisions of s. 624.155 shall be applicable in all cases brought pursuant to that section unless specifically controlled by this section.

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

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59 Section 3. This act shall take effect July 1, 2015.

1088

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: February 27, 2015

I respectfully request that **Senate Bill #1088**, relating to **Civil Remedies Against Insurers**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

195386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 1002 - 1015
4 and insert:
5 (1) A self-insured health benefit plan established or
6 maintained by a small employer, as defined in s. 627.6699(3)(v),
7 is exempt from s. 627.6699 and may use a stop-loss insurance
8 policy issued to the employer. For purposes of this subsection,
9 the term “stop-loss insurance policy” means an insurance policy
10 issued to a small employer which covers the small employer’s

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11 obligation for the excess cost of medical care on an equivalent
12 basis per employee provided under a self-insured health benefit
13 plan.
14 (a) A small employer stop-loss insurance policy is
15 considered a health insurance policy and is subject to s.
16 627.6699 if the policy has an aggregate attachment point that is
17 lower than the greatest of:
18 1. Two thousand dollars multiplied by the number of
19 employees;
20 2. One hundred twenty percent of expected claims, as
21 determined by the stop-loss insurer in accordance with actuarial
22 standards of practice; or
23 3. Twenty thousand dollars.
24 (b) Once claims under the small employer health benefit
25 plan reach the aggregate attachment point set forth in paragraph
26 (a), the stop-loss insurance policy authorized under this
27 section must cover 100 percent of all claims that exceed the
28 aggregate attachment point.
29 (2) A self-insured health benefit plan established or
30 maintained by an employer with 51 or more covered employees is
31 considered health insurance if the plan's stop-loss coverage, as
32 defined in s. 627.6482(14), has an aggregate attachment point
33 that is lower than the greater of:
34 (a) One hundred ten percent of expected claims, as
35 determined by the stop-loss insurer in accordance with actuarial
36 standards of practice; or
37 (b) Twenty thousand dollars.
38 (3) Stop-loss insurance carriers shall use a consistent
39 basis for determining the number of an employer's covered

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40 employees. Such basis may include, but is not limited to, the
41 average number of employees employed annually or at a uniform
42 time.
43
44 ================= T I T L E A M E N D M E N T ================
45 And the title is amended as follows:
46 Delete lines 10 - 11
47 and insert:
48 authorizing certain health benefit plans to use a
49 stop-loss insurance policy; defining the term “stop-
50 loss insurance policy”; providing requirements

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 968

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Employee Health Care Plans

DATE: March 23, 2015 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 968 revises and streamlines provisions relating to the 1992 Employee Health Care Access Act (act) which was enacted to promote the availability of health insurance coverage for small employers (fifty or fewer employees) regardless of their claims experience, on a guaranteed issue basis. Many provisions of this act are outdated or conflict with the federal Patient Protection and Affordable Care Act.[1] The bill also amends the stop loss insurance provisions for self-insured small employers and self-insured large employers. The bill removes the following requirements from the act:

- Mandated offer of standard, basic, and high deductible plans to small employers with specified benefits. The PPACA requires health plans to provide coverage for ten essential health benefits and other benefits, which are not included in the standard, basic, or high deductible plans.
- Annual August open enrollment period for one-person employer groups. The PPACA requires continuous open enrollment for small groups.
- Submission by insurers of an annual premium report to the Office of Insurance Regulation (OIR); and
- Submission by insurers of the semiannual rating report to the OIR.

[1] On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA.

II. Present Situation:

The PPACA provided fundamental changes to the U.S. health care system by requiring health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including required benefits, rating and underwriting standards, required review of rate increases, and other requirements.[2]

Essential Health Benefits

The PPACA requires coverage[3] offered in the individual and small group markets to provide the following categories of services (essential health benefits package):

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance abuse disorder services, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care

Rating and Underwriting Standards[4]

The PPACA requires that premiums for individual and small group policies may vary only by:

- Age, up to a maximum ratio of 3 to 1. This means that the rates for older adults cannot be more than three times greater than the rates for younger adults.
- Tobacco, up to a maximum ratio of 1.5 to 1.
- Geographic rating area.
- Whether coverage is for an individual or a family.

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.[5] The Employee Health Care Access Act (act) under s. 627.6699, F.S., requires insurers in the small group market to guarantee the issuance of coverage to any small employer with 1 to 50 employees, including sole proprietors and self-employed individuals, regardless of their health condition.

The act requires small group carriers to offer the standard health benefit plan and the basic health benefit plan to each small employer applying for coverage. The act lists certain benefits that must

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[2] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.

[3] 42 U.S.C. 300gg-6.

[4] 42 U.S.C. 300gg.

[5] Section 20.121(3)(a), F.S.

be included in each of these policies. These plans do not comply with PPACA essential health benefit requirements; therefore, insurers discontinued offering these policies for sale after January 1, 2014. Insurers are required to provide information regarding their standard and basic plans to the OIR on a quarterly basis.

Employers with fewer than two employees, typically referred to as “one-life groups,” are limited to a one-month open enrollment period in August of each year, rather than the year-round guarantee-issue requirement that applies to employers with 2-50 employees. The PPACA requires continuous open enrollment periods for small groups (unless groups strictly comply with market rules and elect to have open enrollment that coincides with open enrollment for the individual market), thus a separate August open enrollment period is no longer necessary.

The Small Employer Health Reinsurance Program was created by this act to facilitate the guaranteed issuance of standard and basic health benefit plans to all small employers by providing optional reinsurance coverage to small employer carriers.[6] The program now operates as the Florida Health Insurance Advisory Board. The board is required to establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The basic reinsurance premium rates must be established by the board, subject to the approval of the OIR, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan.

The act also authorizes the Chief Financial Officer to appoint a health benefit plan committee to make recommendations regarding additional benefits or provisions for the standard and basic health benefit plans.[7] The last report was issued in 2002 and recommendations by the CFO were adopted for all small group coverage effective April 1, 2003.[8]

Insurers are required to file with the OIR an annual premium report for all plans issued to small employers for the prior year.[9] In addition, each small group insurer is required to submit a semiannual report that provides the effects of certain rating factors (modified community rating) in setting premiums for small group employers. Under the act, each carrier is required to submit a semiannual report that shows the effects of certain rating factors in setting premiums.[10] The report allows OIR to compare the actual adjusted aggregate premiums charged to policyholders by each carrier to the premiums that would have been charged if the carrier's approved modified community rates were applied.[11]

A modified community rate allows a carrier to spread financial risk across a large population using separate rating factors such as age, gender, family composition, and tobacco usage.[12] It also permits adjustments to the rate for claims experience, health status, and certain expenses

[6] Section 627.6699(11), F.S.
[7] Section 627.6699(12), F.S.
[8] Florida Department of Financial Services, *Informational Memorandum DFS-03-001M*, Mar. 6, 2003, *available at* www.floir.com/siteDocuments/dfs-03-001m.pdf (last accessed March 20, 2015).
[9] Section 627.6699(5)(e)(4), F.S.
[10] Section 627.6699(6)(b)(5), F.S.
[11] *Id.*
[12] Section 627.6699(3)(o), F.S.

incurred by the carrier.[13] If the aggregate premium actually charged exceeds the premium that would have been charged by applying the modified community rate by 4 percent or more, the carrier is limited in the application of rate adjustments.[14]

While these rating factors are allowed in policies that are grandfathered plans[15] or transitional policies under the PPACA, PPACA compliant policies do not use these rating factors to set premiums levels. Therefore, the usefulness of this report has decreased significantly. The data currently received by the OIR mixes grandfathered or transitional data (modified community rating allowed) with fully-PPACA compliant plans (modified community rating not allowed).

Stop-loss coverage is an arrangement whereby an insurer insures against the risk that any one claim will exceed a specific dollar amount or that an entire self-insurance plan's loss will exceed a specific amount.[16] Employers that self-insure may purchase stop-loss coverage as provided in Rule 69O-149.0025(23), F.A.C., which contains standards for stop-loss coverage purchased by a self-insured employer group and prescribes when such coverage is considered stop-loss coverage and when it is considered health insurance coverage under s. 627.6699, F.S. Rule 69O-149.0025 (23), F.A.C., provides such coverage is considered as a health insurance policy, rather than a stop-loss coverage if the policy:

- Has an attachment point for claims incurred per individual which is lower than $20,000; or
- For insured employer groups with 50 or fewer covered employees, has an aggregate attachment point which is lower than the greater of:
  - $4,000 times the number of employees;
  - 120 percent of expected claims; or
  - $20,000.

Under such a stop-loss arrangement, the self-insured employer is solely responsible for employee health claims below the attachment point and the stop-loss insurer provides coverage for employee health claims above the attachment point. There are no minimum surplus requirements for self-insured employer plans and no guaranty fund protection for the claims obligation of the self-insured employer.

III. Effect of Proposed Changes:

Section 1 removes the following requirements that apply to insurers offering coverage in the small group market: an annual August open enrollment period for one person employer groups; mandatory offering of standard, basic, and high deductible plans to small employers; submission by insurers of information regarding standard and basic plans to the OIR; and the submission by

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[13] Small group carriers are allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status, claims experience, or duration of coverage. The renewal premium can be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these factors.

[14] Section 627.6699(6)(b)(5), F.S.

[15] Pursuant to s. 627.402, F.S., a "grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011, subject to the conditions for maintaining status as a grandfathered health plan specified in regulations adopted by the federal Department of Health and Human Services in 45 C.F.R. s. 147.140. "A nongrandfathered health plan" is a health insurance policy or health maintenance organization contract that is not a grandfathered health plan and does not provide the benefits or coverages specified under s. 627.6561(5)(b)-(e), F.S.

[16] Section 627.6482(14), F.S.

the insurers of small group experience rating report to the OIR. The bill provides conforming changes to eliminate provisions relating to standard, basic, and high-deductible plans.

Section 2 revises requirements for the use of stop-loss insurance policies by small employers, as defined in s. 627.6699, F.S., and large employers. The section provides that a self-insured health benefit plan established or maintained by a small employer is exempt from s. 627.6699, F.S., and may use a stop-loss insurance policy. A "stop-loss insurance policy," means an insurance policy issued to a small employer, which covers the employer's obligations for the excess cost of medical care on an equivalent basis per employee provided under a self-insured health benefit plan.

However, a small employer stop-loss insurance policy is considered a health insurance policy and is subject to s. 627.6699, F.S., if the policy has an aggregate attachment that is lower than the greatest of:
- $2,000 times the number of employees;
- 120 percent of expected claims; or
- $20,000.

Once claims under a small employer benefit plan reach the aggregate attachment point, the stop-loss policy must cover 100 percent of all claims that exceed the aggregate attachment point.

A self-insured health benefit plan established or maintained by a large employer (51 or more employees) is considered health insurance if the plan's stop-loss coverage, as defined in s. 627.6482(14), F.S., has an aggregate attachment point that is lower than the greater of 110 percent of expected claims or $20,000.

Stop-loss insurance carriers are required to use a consistent basis for determining the number of covered employees of an employer. Such basis may include, but is not limited to, the average number of employees employed annually or at a uniform date.

Sections 3- 9 provide technical, conforming changes.

Section 10 provides the bill takes effect July 1, 2015.

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 elimination of the mandatory outdated reports will reduce the regulatory burden of insurers.

C. Government Sector Impact:

The elimination of outdated reports will reduce administrative burden for the OIR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699, 627.642, 627.6475, 627.657, 627.6571, 627.6675, 641.31074, and 641.3922.

This bill creates section 627.66997 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 23, 2015:
The bill revises provisions relating to stop-loss insurance for small and large employers.

B. Amendments:

None.

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

By Senator Detert

28-01017-15 2015968__

A bill to be entitled

An act relating to employee health care plans; amending s. 627.6699, F.S.; revising definitions; removing provisions requiring certain insurance carriers to provide semiannual reports to the Office of Insurance Regulation; repealing requirements that certain insurance carriers offer standard, basic, high deductible, and limited health benefit plans; making conforming changes; creating s. 627.66997, F.S.; authorizing certain small employer insurance policies to provide stop-loss coverage; providing requirements for such policies; amending ss. 627.642, 627.6475, and 627.657, F.S.; conforming cross-references; amending ss. 627.6571, 627.6675, 641.31074, and 641.3922, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 627.6699, Florida Statutes, is amended, present paragraphs (c) through (x) of subsection (3) are redesignated as paragraphs (b) through (w), respectively, and present paragraphs (b) and (o) of that subsection, subsection (5), paragraph (b) of subsection (6), paragraphs (g), (h), (j), and (l) through (o) of subsection (11), subsections (12) through (14), paragraph (k) of subsection (15), and subsections (16) through (18) of that section are amended, to read:

627.6699 Employee Health Care Access Act.—

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(2) PURPOSE AND INTENT.—The purpose and intent of this section is to promote the availability of health insurance coverage to small employers regardless of their claims experience or their employees' health status, to establish rules regarding renewability of that coverage, to establish limitations on the use of exclusions for preexisting conditions~~,~~ ~~to provide for development of a standard health benefit plan and a basic health benefit plan to be offered to all small employers~~, to provide for establishment of a reinsurance program for coverage of small employers, and to improve the overall fairness and efficiency of the small group health insurance market.

(3) DEFINITIONS.—As used in this section, the term:

~~(b) "Basic health benefit plan" and "standard health benefit plan" mean low-cost health care plans developed pursuant to subsection (12).~~

(n) ~~(o)~~ "Modified community rating" means a method used to develop carrier premiums which spreads financial risk across a large population; allows the use of separate rating factors for age, gender, family composition, tobacco usage, and geographic area as determined under paragraph (5)(f) ~~(5)(j)~~; and allows adjustments for: claims experience, health status, or duration of coverage as permitted under subparagraph (6)(b)5.; and administrative and acquisition expenses as permitted under subparagraph (6)(b)5.

(5) AVAILABILITY OF COVERAGE.—

~~(a) Beginning January 1, 1993, every small employer carrier issuing new health benefit plans to small employers in this state must, as a condition of transacting business in this~~

59 ~~state, offer to eligible small employers a standard health~~
60 ~~benefit plan and a basic health benefit plan. Such a small~~
61 ~~employer carrier shall issue a standard health benefit plan or a~~
62 ~~basic health benefit plan to every eligible small employer that~~
63 ~~elects to be covered under such plan, agrees to make the~~
64 ~~required premium payments under such plan, and to satisfy the~~
65 ~~other provisions of the plan.~~
66 (a)~~(b) In the case of~~ A small employer carrier that ~~which~~
67 does not~~, on or after January 1, 1993,~~ offer coverage but renews
68 or continues ~~which does, on or after January 1, 1993, renew or~~
69 ~~continue~~ coverage in force must~~, such carrier shall be required~~
70 ~~to~~ provide coverage to newly eligible employees and dependents
71 on the same basis as small employer carriers that offer ~~which~~
72 ~~are offering~~ coverage ~~on or after January 1, 1993~~.
73 (b)~~(c)~~ Every small employer carrier must, as a condition of
74 transacting business in this state,~~:~~
75 ~~1.~~ offer and issue all small employer health benefit plans
76 on a guaranteed-issue basis to every eligible small employer,
77 with 2 to 50 eligible employees, that elects to be covered under
78 such plan, agrees to make the required premium payments, and
79 satisfies the other provisions of the plan. A rider for
80 additional or increased benefits may be medically underwritten
81 and may only be added to the standard health benefit plan. The
82 increased rate charged for the additional or increased benefit
83 must be rated in accordance with this section.
84 ~~2. In the absence of enrollment availability in the Florida~~
85 ~~Health Insurance Plan, offer and issue basic and standard small~~
86 ~~employer health benefit plans and a high-deductible plan that~~
87 ~~meets the requirements of a health savings account plan or~~

88 ~~health reimbursement account as defined by federal law, on a~~
89 ~~guaranteed-issue basis, during a 31-day open enrollment period~~
90 ~~of August 1 through August 31 of each year, to every eligible~~
91 ~~small employer, with fewer than two eligible employees, which~~
92 ~~small employer is not formed primarily for the purpose of buying~~
93 ~~health insurance and which elects to be covered under such plan,~~
94 ~~agrees to make the required premium payments, and satisfies the~~
95 ~~other provisions of the plan. Coverage provided under this~~
96 ~~subparagraph shall begin on October 1 of the same year as the~~
97 ~~date of enrollment, unless the small employer carrier and the~~
98 ~~small employer agree to a different date. A rider for additional~~
99 ~~or increased benefits may be medically underwritten and may only~~
100 ~~be added to the standard health benefit plan. The increased rate~~
101 ~~charged for the additional or increased benefit must be rated in~~
102 ~~accordance with this section. For purposes of this subparagraph,~~
103 ~~a person, his or her spouse, and his or her dependent children~~
104 ~~constitute a single eligible employee if that person and spouse~~
105 ~~are employed by the same small employer and either that person~~
106 ~~or his or her spouse has a normal work week of less than 25~~
107 ~~hours. Any right to an open enrollment of health benefit~~
108 ~~coverage for groups of fewer than two employees, pursuant to~~
109 ~~this section, shall remain in full force and effect in the~~
110 ~~absence of the availability of new enrollment into the Florida~~
111 ~~Health Insurance Plan.~~
112 ~~3. This paragraph does not limit a carrier’s ability to~~
113 ~~offer other health benefit plans to small employers if the~~
114 ~~standard and basic health benefit plans are offered and~~
115 ~~rejected.~~
116 ~~(d) A small employer carrier must file with the office, in~~

117 ~~a format and manner prescribed by the committee, a standard~~
118 ~~health care plan, a high deductible plan that meets the federal~~
119 ~~requirements of a health savings account plan or a health~~
120 ~~reimbursement arrangement, and a basic health care plan to be~~
121 ~~used by the carrier. The provisions of this section requiring~~
122 ~~the filing of a high deductible plan are effective September 1,~~
123 ~~2004.~~
124 ~~(e) The office at any time may, after providing notice and~~
125 ~~an opportunity for a hearing, disapprove the continued use by~~
126 ~~the small employer carrier of the standard or basic health~~
127 ~~benefit plan on the grounds that such plan does not meet the~~
128 ~~requirements of this section.~~
129 (c) ~~(f)~~ Except as provided in paragraph (d) ~~(g)~~, a health
130 benefit plan covering small employers must comply with
131 preexisting condition provisions specified in s. 627.6561 or,
132 for health maintenance contracts, in s. 641.31071.
133 (d) ~~(g)~~ A health benefit plan covering small employers,
134 issued or renewed on or after January 1, 1994, must comply with
135 the following conditions:
136 1. All health benefit plans must be offered and issued on a
137 guaranteed-issue basis~~, except that benefits purchased through~~
138 ~~riders as provided in paragraph (c) may be medically~~
139 ~~underwritten for the group, but may not be individually~~
140 ~~underwritten as to the employees or the dependents of such~~
141 ~~employees~~. Additional or increased benefits may only be offered
142 by riders.
143 2. ~~The provisions of~~ Paragraph (c) applies ~~(f) apply~~ to
144 health benefit plans issued to a small employer who has two or
145 more eligible employees~~,~~ and to health benefit plans that are

146 issued to a small employer who has fewer than two eligible
147 employees and that cover an employee who has had creditable
148 coverage continually to a date not more than 63 days before the
149 effective date of the new coverage.
150 3. For health benefit plans that are issued to a small
151 employer who has fewer than two employees and that cover an
152 employee who has not been continually covered by creditable
153 coverage within 63 days before the effective date of the new
154 coverage, preexisting condition provisions must not exclude
155 coverage for a period beyond 24 months following the employee’s
156 effective date of coverage and may relate only to:
157 a. Conditions that, during the 24-month period immediately
158 preceding the effective date of coverage, had manifested
159 themselves in such a manner as would cause an ordinarily prudent
160 person to seek medical advice, diagnosis, care, or treatment or
161 for which medical advice, diagnosis, care, or treatment was
162 recommended or received; or
163 b. A pregnancy existing on the effective date of coverage.
164 (e) ~~(h)~~ All health benefit plans issued under this section
165 must comply with the following conditions:
166 1. For employers who have fewer than two employees, a late
167 enrollee may be excluded from coverage for no longer than 24
168 months if he or she was not covered by creditable coverage
169 continually to a date not more than 63 days before the effective
170 date of his or her new coverage.
171 2. Any requirement used by a small employer carrier in
172 determining whether to provide coverage to a small employer
173 group, including requirements for minimum participation of
174 eligible employees and minimum employer contributions, must be

175 applied uniformly among all small employer groups having the
176 same number of eligible employees applying for coverage or
177 receiving coverage from the small employer carrier, except that
178 a small employer carrier that participates in, administers, or
179 issues health benefits pursuant to s. 381.0406 which do not
180 include a preexisting condition exclusion may require as a
181 condition of offering such benefits that the employer has had no
182 health insurance coverage for its employees for a period of at
183 least 6 months. A small employer carrier may vary application of
184 minimum participation requirements and minimum employer
185 contribution requirements only by the size of the small employer
186 group.
187 3. In applying minimum participation requirements with
188 respect to a small employer, a small employer carrier shall not
189 consider as an eligible employee employees or dependents who
190 have qualifying existing coverage in an employer-based group
191 insurance plan or an ERISA qualified self-insurance plan in
192 determining whether the applicable percentage of participation
193 is met. However, a small employer carrier may count eligible
194 employees and dependents who have coverage under another health
195 plan that is sponsored by that employer.
196 4. A small employer carrier shall not increase any
197 requirement for minimum employee participation or any
198 requirement for minimum employer contribution applicable to a
199 small employer at any time after the small employer has been
200 accepted for coverage, unless the employer size has changed, in
201 which case the small employer carrier may apply the requirements
202 that are applicable to the new group size.
203 5. If a small employer carrier offers coverage to a small

204 employer, it must offer coverage to all the small employer's
205 eligible employees and their dependents. A small employer
206 carrier may not offer coverage limited to certain persons in a
207 group or to part of a group, except with respect to late
208 enrollees.
209 6. A small employer carrier may not modify any health
210 benefit plan issued to a small employer with respect to a small
211 employer or any eligible employee or dependent through riders,
212 endorsements, or otherwise to restrict or exclude coverage for
213 certain diseases or medical conditions otherwise covered by the
214 health benefit plan.
215 7. An initial enrollment period of at least 30 days must be
216 provided. An annual 30-day open enrollment period must be
217 offered to each small employer's eligible employees and their
218 dependents. A small employer carrier must provide special
219 enrollment periods as required by s. 627.65615.
220 ~~(i)1. A small employer carrier need not offer coverage or~~
221 ~~accept applications pursuant to paragraph (a):~~
222 ~~a. To a small employer if the small employer is not~~
223 ~~physically located in an established geographic service area of~~
224 ~~the small employer carrier, provided such geographic service~~
225 ~~area shall not be less than a county;~~
226 ~~b. To an employee if the employee does not work or reside~~
227 ~~within an established geographic service area of the small~~
228 ~~employer carrier; or~~
229 ~~c. To a small employer group within an area in which the~~
230 ~~small employer carrier reasonably anticipates, and demonstrates~~
231 ~~to the satisfaction of the office, that it cannot, within its~~
232 ~~network of providers, deliver service adequately to the members~~

~~of such groups because of obligations to existing group contract holders and enrollees.~~

~~2. A small employer carrier that cannot offer coverage pursuant to sub-subparagraph 1.c. may not offer coverage in the applicable area to new cases of employer groups having more than 50 eligible employees or small employer groups until the later of 180 days following each such refusal or the date on which the carrier notifies the office that it has regained its ability to deliver services to small employer groups.~~

~~3.a. A small employer carrier may deny health insurance coverage in the small-group market if the carrier has demonstrated to the office that:~~

~~(I) It does not have the financial reserves necessary to underwrite additional coverage; and~~

~~(II) It is applying this sub-subparagraph uniformly to all employers in the small-group market in this state consistent with this section and without regard to the claims experience of those employers and their employees and their dependents or any health-status-related factor that relates to such employees and dependents.~~

~~b. A small employer carrier, upon denying health insurance coverage in connection with health benefit plans in accordance with sub-subparagraph a., may not offer coverage in connection with group health benefit plans in the small-group market in this state for a period of 180 days after the date such coverage is denied or until the insurer has demonstrated to the office that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. The office may provide for the application of this sub-subparagraph on a service-area-~~

~~specific basis.~~

~~4. The commission shall, by rule, require each small employer carrier to report, on or before March 1 of each year, its gross annual premiums for all health benefit plans issued to small employers during the previous calendar year, and also to report its gross annual premiums for new, but not renewal, standard and basic health benefit plans subject to this section issued during the previous calendar year. No later than May 1 of each year, the office shall calculate each carrier's percentage of all small employer group health premiums for the previous calendar year and shall calculate the aggregate gross annual premiums for new, but not renewal, standard and basic health benefit plans for the previous calendar year.~~

(f)~~(j)~~ The boundaries of geographic areas used by a small employer carrier must coincide with county lines. A carrier may not apply different geographic rating factors to the rates of small employers located within the same county.

(6) RESTRICTIONS RELATING TO PREMIUM RATES.—

(b) For all small employer health benefit plans that are subject to this section and issued by small employer carriers on or after January 1, 1994, premium rates for health benefit plans are subject to the following:

1. Small employer carriers must use a modified community rating methodology in which the premium for each small employer is determined solely on the basis of the eligible employee's and eligible dependent's gender, age, family composition, tobacco use, or geographic area as determined under paragraph (5)(f) ~~(5)(j)~~ and in which the premium may be adjusted as permitted by this paragraph. A small employer carrier is not required to use

291 gender as a rating factor for a nongrandfathered health plan.
292 2. Rating factors related to age, gender, family
293 composition, tobacco use, or geographic location may be
294 developed by each carrier to reflect the carrier’s experience.
295 The factors used by carriers are subject to office review and
296 approval.
297 3. Small employer carriers may not modify the rate for a
298 small employer for 12 months from the initial issue date or
299 renewal date, unless the composition of the group changes or
300 benefits are changed. However, a small employer carrier may
301 modify the rate one time within the 12 months after the initial
302 issue date for a small employer who enrolls under a previously
303 issued group policy that has a common anniversary date for all
304 employers covered under the policy if:
305 a. The carrier discloses to the employer in a clear and
306 conspicuous manner the date of the first renewal and the fact
307 that the premium may increase on or after that date.
308 b. The insurer demonstrates to the office that efficiencies
309 in administration are achieved and reflected in the rates
310 charged to small employers covered under the policy.
311 4. A carrier may issue a group health insurance policy to a
312 small employer health alliance or other group association with
313 rates that reflect a premium credit for expense savings
314 attributable to administrative activities being performed by the
315 alliance or group association if such expense savings are
316 specifically documented in the insurer’s rate filing and are
317 approved by the office. Any such credit may not be based on
318 different morbidity assumptions or on any other factor related
319 to the health status or claims experience of any person covered

320 under the policy. This subparagraph does not exempt an alliance
321 or group association from licensure for activities that require
322 licensure under the insurance code. A carrier issuing a group
323 health insurance policy to a small employer health alliance or
324 other group association shall allow any properly licensed and
325 appointed agent of that carrier to market and sell the small
326 employer health alliance or other group association policy. Such
327 agent shall be paid the usual and customary commission paid to
328 any agent selling the policy.
329 5. Any adjustments in rates for claims experience, health
330 status, or duration of coverage may not be charged to individual
331 employees or dependents. For a small employer’s policy, such
332 adjustments may not result in a rate for the small employer
333 which deviates more than 15 percent from the carrier’s approved
334 rate. Any such adjustment must be applied uniformly to the rates
335 charged for all employees and dependents of the small employer.
336 A small employer carrier may make an adjustment to a small
337 employer’s renewal premium, up to 10 percent annually, due to
338 the claims experience, health status, or duration of coverage of
339 the employees or dependents of the small employer. ~~Semiannually,~~
340 ~~small group carriers shall report information on forms adopted~~
341 ~~by rule by the commission, to enable the office to monitor the~~
342 ~~relationship of aggregate adjusted premiums actually charged~~
343 ~~policyholders by each carrier to the premiums that would have~~
344 ~~been charged by application of the carrier’s approved modified~~
345 ~~community rates.~~ If the aggregate resulting from the application
346 of such adjustment exceeds the premium that would have been
347 charged by application of the approved modified community rate
348 by 4 percent for the current policy term ~~reporting period~~, the

349 carrier shall limit the application of such adjustments only to
350 minus adjustments ~~beginning within 60 days after the report is~~
351 ~~sent to the office~~. For any subsequent policy term ~~reporting~~
352 ~~period~~, if the total aggregate adjusted premium actually charged
353 does not exceed the premium that would have been charged by
354 application of the approved modified community rate by 4
355 percent, the carrier may apply both plus and minus adjustments.
356 A small employer carrier may provide a credit to a small
357 employer's premium based on administrative and acquisition
358 expense differences resulting from the size of the group. Group
359 size administrative and acquisition expense factors may be
360 developed by each carrier to reflect the carrier's experience
361 and are subject to office review and approval.
362 6. A small employer carrier rating methodology may include
363 separate rating categories for one dependent child, for two
364 dependent children, and for three or more dependent children for
365 family coverage of employees having a spouse and dependent
366 children or employees having dependent children only. A small
367 employer carrier may have fewer, but not greater, numbers of
368 categories for dependent children than those specified in this
369 subparagraph.
370 7. Small employer carriers may not use a composite rating
371 methodology to rate a small employer with fewer than 10
372 employees. For the purposes of this subparagraph, the term
373 "composite rating methodology" means a rating methodology that
374 averages the impact of the rating factors for age and gender in
375 the premiums charged to all of the employees of a small
376 employer.
377 8. A carrier may separate the experience of small employer

378 groups with fewer than 2 eligible employees from the experience
379 of small employer groups with 2-50 eligible employees for
380 purposes of determining an alternative modified community
381 rating.
382 a. If a carrier separates the experience of small employer
383 groups, the rate to be charged to small employer groups of fewer
384 than 2 eligible employees may not exceed 150 percent of the rate
385 determined for small employer groups of 2-50 eligible employees.
386 However, the carrier may charge excess losses of the experience
387 pool consisting of small employer groups with less than 2
388 eligible employees to the experience pool consisting of small
389 employer groups with 2-50 eligible employees so that all losses
390 are allocated and the 150-percent rate limit on the experience
391 pool consisting of small employer groups with less than 2
392 eligible employees is maintained.
393 b. Notwithstanding s. 627.411(1), the rate to be charged to
394 a small employer group of fewer than 2 eligible employees,
395 insured as of July 1, 2002, may be up to 125 percent of the rate
396 determined for small employer groups of 2-50 eligible employees
397 for the first annual renewal and 150 percent for subsequent
398 annual renewals.
399 9. A carrier shall separate the experience of grandfathered
400 health plans from nongrandfathered health plans for determining
401 rates.
402 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.—
403 (g) A reinsuring carrier may reinsure with the program
404 coverage of an eligible employee of a small employer, or any
405 dependent of such an employee, subject to each of the following
406 provisions:

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~~1. With respect to a standard and basic health care plan, the program must reinsure the level of coverage provided; and, with respect to any other plan, the program must reinsure the coverage up to, but not exceeding, the level of coverage provided under the standard and basic health care plan.~~

1.~~2.~~ Except in the case of a late enrollee, a reinsuring carrier may reinsure an eligible employee or dependent within 60 days after the commencement of the coverage of the small employer. A newly employed eligible employee or dependent of a small employer may be reinsured within 60 days after the commencement of his or her coverage.

2.~~3.~~ A small employer carrier may reinsure an entire employer group within 60 days after the commencement of the group's coverage under the plan. ~~The carrier may choose to reinsure newly eligible employees and dependents of the reinsured group pursuant to subparagraph 1.~~

3.~~4.~~ The program may not reimburse a participating carrier with respect to the claims of a reinsured employee or dependent until the carrier has paid incurred claims of at least $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for 10 percent of the next $50,000 and 5 percent of the next $100,000 of incurred claims during a calendar year and the program shall reinsure the remainder.

4.~~5.~~ The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical

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component of the "Consumer Price Index for All Urban Consumers" of the Bureau of Labor Statistics of the Department of Labor, unless the board proposes and the office approves a lower adjustment factor.

5.~~6.~~ A small employer carrier may terminate reinsurance for all reinsured employees or dependents on any plan anniversary.

6.~~7.~~ The premium rate charged for reinsurance by the program to a health maintenance organization that is approved by the Secretary of Health and Human Services as a federally qualified health maintenance organization pursuant to 42 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to requirements that limit the amount of risk that may be ceded to the program, which requirements are more restrictive than subparagraph 3. ~~4.~~, shall be reduced by an amount equal to that portion of the risk, if any, which exceeds the amount set forth in subparagraph 3. ~~4.~~ which may not be ceded to the program.

7.~~8.~~ The board may consider adjustments to the premium rates charged for reinsurance by the program for carriers that use effective cost containment measures, including high-cost case management, as defined by the board.

8.~~9.~~ A reinsuring carrier shall apply its case-management and claims-handling techniques, including, but not limited to, utilization review, individual case management, preferred provider provisions, other managed care provisions or methods of operation, consistently with both reinsured business and nonreinsured business.

(h)1. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and

individuals pursuant to this section. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology shall provide for the development of basic reinsurance premium rates, which shall be multiplied by the factors set for them in this paragraph to determine the premium rates for the program. The basic reinsurance premium rates shall be established by the board, subject to the approval of the office~~, and shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard and basic health benefit plan~~. The premium rates set by the board may vary by geographical area, as determined under this section, to reflect differences in cost. The multiplying factors must be established as follows:

a. The entire group may be reinsured for a rate that is 1.5 times the rate established by the board.

b. An eligible employee or dependent may be reinsured for a rate that is 5 times the rate established by the board.

2. The board periodically shall review the methodology established, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the rates which shall be subject to the approval of the office.

(j)1. Before July 1 of each calendar year, the board shall determine and report to the office the program net loss for the previous year, including administrative expenses for that year, and the incurred losses for the year, taking into account

investment income and other appropriate gains and losses.

2. Any net loss for the year shall be recouped by assessment of the carriers, as follows:

a. The operating losses of the program shall be assessed in the following order subject to the specified limitations. The first tier of assessments shall be made against reinsuring carriers in an amount which shall not exceed 5 percent of each reinsuring carrier’s premiums from health benefit plans covering small employers. If such assessments have been collected and additional moneys are needed, the board shall make a second tier of assessments in an amount which shall not exceed 0.5 percent of each carrier’s health benefit plan premiums. Except as provided in paragraph (m) ~~(n)~~, risk-assuming carriers are exempt from all assessments authorized pursuant to this section. The amount paid by a reinsuring carrier for the first tier of assessments shall be credited against any additional assessments made.

b. The board shall equitably assess carriers for operating losses of the plan based on market share. The board shall annually assess each carrier a portion of the operating losses of the plan. The first tier of assessments shall be determined by multiplying the operating losses by a fraction, the numerator of which equals the reinsuring carrier’s earned premium pertaining to direct writings of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of all such premiums earned by reinsuring carriers in the state during that calendar year. The second tier of assessments shall be based on the premiums that all carriers, except risk-

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523 assuming carriers, earned on all health benefit plans written in
524 this state. The board may levy interim assessments against
525 carriers to ensure the financial ability of the plan to cover
526 claims expenses and administrative expenses paid or estimated to
527 be paid in the operation of the plan for the calendar year prior
528 to the association's anticipated receipt of annual assessments
529 for that calendar year. Any interim assessment is due and
530 payable within 30 days after receipt by a carrier of the interim
531 assessment notice. Interim assessment payments shall be credited
532 against the carrier's annual assessment. Health benefit plan
533 premiums and benefits paid by a carrier that are less than an
534 amount determined by the board to justify the cost of collection
535 may not be considered for purposes of determining assessments.
536 c. Subject to the approval of the office, the board shall
537 make an adjustment to the assessment formula for reinsuring
538 carriers that are approved as federally qualified health
539 maintenance organizations by the Secretary of Health and Human
540 Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent,
541 if any, that restrictions are placed on them that are not
542 imposed on other small employer carriers.
543 3. Before July 1 of each year, the board shall determine
544 and file with the office an estimate of the assessments needed
545 to fund the losses incurred by the program in the previous
546 calendar year.
547 4. If the board determines that the assessments needed to
548 fund the losses incurred by the program in the previous calendar
549 year will exceed the amount specified in subparagraph 2., the
550 board shall evaluate the operation of the program and report its
551 findings, including any recommendations for changes to the plan

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552 of operation, to the office within 180 days following the end of
553 the calendar year in which the losses were incurred. The
554 evaluation shall include an estimate of future assessments, the
555 administrative costs of the program, the appropriateness of the
556 premiums charged and the level of carrier retention under the
557 program, and the costs of coverage for small employers. If the
558 board fails to file a report with the office within 180 days
559 following the end of the applicable calendar year, the office
560 may evaluate the operations of the program and implement such
561 amendments to the plan of operation the office deems necessary
562 to reduce future losses and assessments.
563 5. If assessments exceed the amount of the actual losses
564 and administrative expenses of the program, the excess shall be
565 held as interest and used by the board to offset future losses
566 or to reduce program premiums. As used in this paragraph, the
567 term "future losses" includes reserves for incurred but not
568 reported claims.
569 6. Each carrier's proportion of the assessment shall be
570 determined annually by the board, based on annual statements and
571 other reports considered necessary by the board and filed by the
572 carriers with the board.
573 7. Provision shall be made in the plan of operation for the
574 imposition of an interest penalty for late payment of an
575 assessment.
576 8. A carrier may seek, from the office, a deferment, in
577 whole or in part, from any assessment made by the board. The
578 office may defer, in whole or in part, the assessment of a
579 carrier if, in the opinion of the office, the payment of the
580 assessment would place the carrier in a financially impaired

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

condition. If an assessment against a carrier is deferred, in whole or in part, the amount by which the assessment is deferred may be assessed against the other carriers in a manner consistent with the basis for assessment set forth in this section. The carrier receiving such deferment remains liable to the program for the amount deferred and is prohibited from reinsuring any individuals or groups in the program if it fails to pay assessments.

~~(l) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to agents for the sale of basic and standard health benefit plans. In establishing such standards, the board shall take into consideration the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to the small employer, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.~~

(l) ~~(m)~~ The board shall monitor compliance with this section, including the market conduct of small employer carriers, and shall report to the office any unfair trade practices and misleading or unfair conduct by a small employer carrier that has been reported to the board by agents, consumers, or any other person. The office shall investigate all reports and, upon a finding of noncompliance with this section or of unfair or misleading practices, shall take action against the small employer carrier as permitted under the insurance code or chapter 641. The board is not given investigatory or regulatory powers, but must forward all reports of cases or

abuse or misrepresentation to the office.

(m) ~~(n)~~ Notwithstanding paragraph (j), the administrative expenses of the program shall be recouped by assessment of risk-assuming carriers and reinsuring carriers and such amounts shall not be considered part of the operating losses of the plan for the purposes of this paragraph. Each carrier’s portion of such administrative expenses shall be determined by multiplying the total of such administrative expenses by a fraction, the numerator of which equals the carrier’s earned premium pertaining to direct writing of small employer health benefit plans in the state during the calendar year for which the assessment is levied, and the denominator of which equals the total of such premiums earned by all carriers in the state during such calendar year.

(n) ~~(o)~~ The board shall advise the office, the Agency for Health Care Administration, the department, other executive departments, and the Legislature on health insurance issues. Specifically, the board shall:

1. Provide a forum for stakeholders, consisting of insurers, employers, agents, consumers, and regulators, in the private health insurance market in this state.

2. Review and recommend strategies to improve the functioning of the health insurance markets in this state with a specific focus on market stability, access, and pricing.

3. Make recommendations to the office for legislation addressing health insurance market issues and provide comments on health insurance legislation proposed by the office.

4. Meet at least three times each year. One meeting shall be held to hear reports and to secure public comment on the

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639 health insurance market, to develop any legislation needed to
640 address health insurance market issues, and to provide comments
641 on health insurance legislation proposed by the office.
642 5. Issue a report to the office on the state of the health
643 insurance market by September 1 each year. The report shall
644 include recommendations for changes in the health insurance
645 market, results from implementation of previous recommendations,
646 and information on health insurance markets.
647 ~~(12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH~~
648 ~~BENEFIT PLANS.—~~
649 ~~(a)1. The Chief Financial Officer shall appoint a health~~
650 ~~benefit plan committee composed of four representatives of~~
651 ~~carriers which shall include at least two representatives of~~
652 ~~HMOs, at least one of which is a staff model HMO, two~~
653 ~~representatives of agents, four representatives of small~~
654 ~~employers, and one employee of a small employer. The carrier~~
655 ~~members shall be selected from a list of individuals recommended~~
656 ~~by the board. The Chief Financial Officer may require the board~~
657 ~~to submit additional recommendations of individuals for~~
658 ~~appointment.~~
659 ~~2. The plans shall comply with all of the requirements of~~
660 ~~this subsection.~~
661 ~~3. The plans must be filed with and approved by the office~~
662 ~~prior to issuance or delivery by any small employer carrier.~~
663 ~~4. After approval of the revised health benefit plans, if~~
664 ~~the office determines that modifications to a plan might be~~
665 ~~appropriate, the Chief Financial Officer shall appoint a new~~
666 ~~health benefit plan committee in the manner provided in~~
667 ~~subparagraph 1. to submit recommended modifications to the~~

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668 ~~office for approval.~~
669 ~~(b)1. Each small employer carrier issuing new health~~
670 ~~benefit plans shall offer to any small employer, upon request, a~~
671 ~~standard health benefit plan, a basic health benefit plan, and a~~
672 ~~high deductible plan that meets the requirements of a health~~
673 ~~savings account plan as defined by federal law or a health~~
674 ~~reimbursement arrangement as authorized by the Internal Revenue~~
675 ~~Service, that meet the criteria set forth in this section.~~
676 ~~2. For purposes of this subsection, the terms “standard~~
677 ~~health benefit plan,” “basic health benefit plan,” and “high~~
678 ~~deductible plan” mean policies or contracts that a small~~
679 ~~employer carrier offers to eligible small employers that~~
680 ~~contain:~~
681 ~~a. An exclusion for services that are not medically~~
682 ~~necessary or that are not covered preventive health services;~~
683 ~~and~~
684 ~~b. A procedure for preauthorization by the small employer~~
685 ~~carrier, or its designees.~~
686 ~~3. A small employer carrier may include the following~~
687 ~~managed care provisions in the policy or contract to control~~
688 ~~costs:~~
689 ~~a. A preferred provider arrangement or exclusive provider~~
690 ~~organization or any combination thereof, in which a small~~
691 ~~employer carrier enters into a written agreement with the~~
692 ~~provider to provide services at specified levels of~~
693 ~~reimbursement or to provide reimbursement to specified~~
694 ~~providers. Any such written agreement between a provider and a~~
695 ~~small employer carrier must contain a provision under which the~~
696 ~~parties agree that the insured individual or covered member has~~

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697 ~~no obligation to make payment for any medical service rendered~~
698 ~~by the provider which is determined not to be medically~~
699 ~~necessary. A carrier may use preferred provider arrangements or~~
700 ~~exclusive provider arrangements to the same extent as allowed in~~
701 ~~group products that are not issued to small employers.~~
702 ~~b. A procedure for utilization review by the small employer~~
703 ~~carrier or its designees.~~
704
705 ~~This subparagraph does not prohibit a small employer carrier~~
706 ~~from including in its policy or contract additional managed care~~
707 ~~and cost containment provisions, subject to the approval of the~~
708 ~~office, which have potential for controlling costs in a manner~~
709 ~~that does not result in inequitable treatment of insureds or~~
710 ~~subscribers. The carrier may use such provisions to the same~~
711 ~~extent as authorized for group products that are not issued to~~
712 ~~small employers.~~
713 ~~4. The standard health benefit plan shall include:~~
714 ~~a. Coverage for inpatient hospitalization;~~
715 ~~b. Coverage for outpatient services;~~
716 ~~c. Coverage for newborn children pursuant to s. 627.6575;~~
717 ~~d. Coverage for child care supervision services pursuant to~~
718 ~~s. 627.6579;~~
719 ~~e. Coverage for adopted children upon placement in the~~
720 ~~residence pursuant to s. 627.6578;~~
721 ~~f. Coverage for mammograms pursuant to s. 627.6613;~~
722 ~~g. Coverage for handicapped children pursuant to s.~~
723 ~~627.6615;~~
724 ~~h. Emergency or urgent care out of the geographic service~~
725 ~~area; and~~

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726 ~~i. Coverage for services provided by a hospice licensed~~
727 ~~under s. 400.602 in cases where such coverage would be the most~~
728 ~~appropriate and the most cost-effective method for treating a~~
729 ~~covered illness.~~
730 ~~5. The standard health benefit plan and the basic health~~
731 ~~benefit plan may include a schedule of benefit limitations for~~
732 ~~specified services and procedures. If the committee develops~~
733 ~~such a schedule of benefits limitation for the standard health~~
734 ~~benefit plan or the basic health benefit plan, a small employer~~
735 ~~carrier offering the plan must offer the employer an option for~~
736 ~~increasing the benefit schedule amounts by 4 percent annually.~~
737 ~~6. The basic health benefit plan shall include all of the~~
738 ~~benefits specified in subparagraph 4.; however, the basic health~~
739 ~~benefit plan shall place additional restrictions on the benefits~~
740 ~~and utilization and may also impose additional cost containment~~
741 ~~measures.~~
742 ~~7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612,~~
743 ~~627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911~~
744 ~~apply to the standard health benefit plan and to the basic~~
745 ~~health benefit plan. However, notwithstanding said provisions,~~
746 ~~the plans may specify limits on the number of authorized~~
747 ~~treatments, if such limits are reasonable and do not~~
748 ~~discriminate against any type of provider.~~
749 ~~8. The high deductible plan associated with a health~~
750 ~~savings account or a health reimbursement arrangement shall~~
751 ~~include all the benefits specified in subparagraph 4.~~
752 ~~9. Each small employer carrier that provides for inpatient~~
753 ~~and outpatient services by allopathic hospitals may provide as~~
754 ~~an option of the insured similar inpatient and outpatient~~

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~~services by hospitals accredited by the American Osteopathic Association when such services are available and the osteopathic hospital agrees to provide the service.~~

~~(c) If a small employer rejects, in writing, the standard health benefit plan, the basic health benefit plan, and the high deductible health savings account plan or a health reimbursement arrangement, the small employer carrier may offer the small employer a limited benefit policy or contract.~~

~~(d)1. Upon offering coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract for a small employer group, the small employer carrier shall provide such employer group with a written statement that contains, at a minimum:~~

~~a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;~~

~~b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and~~

~~c. An explanation of the primary and preventive care features of the policy or contract.~~

~~Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.~~

~~2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the carrier must obtain from the prospective~~

~~policyholder a signed written statement in which the prospective policyholder:~~

~~a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;~~

~~b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;~~

~~c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and~~

~~d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder rejected that coverage.~~

~~A copy of such written statement must be provided to the prospective policyholder by the time of delivery of the policy or contract, and the original of such written statement must be retained in the files of the small employer carrier for the period of time that the policy or contract remains in effect or for 5 years, whichever is longer.~~

~~3. Any material statement made by an applicant for coverage under a health benefit plan which falsely certifies the applicant’s eligibility for coverage serves as the basis for~~

~~terminating coverage under the policy or contract.~~

~~(c) A small employer carrier may not use any policy, contract, form, or rate under this section, including applications, enrollment forms, policies, contracts, certificates, evidences of coverage, riders, amendments, endorsements, and disclosure forms, until the insurer has filed it with the office and the office has approved it under ss. 627.410 and 627.411 and this section.~~

(12) ~~(13)~~ STANDARDS TO ASSURE FAIR MARKETING.—

(a) Each small employer carrier shall actively market health benefit plan coverage~~, including the basic and standard health benefit plans~~, including any subsequent modifications or additions to those plans, to eligible small employers in the state. ~~Before January 1, 1994, if a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan. Beginning January 1, 1994,~~ Small employer carriers must offer and issue all plans on a guaranteed-issue basis.

(b) A ~~No~~ small employer carrier or agent shall not, directly or indirectly, engage in the following activities:

1. Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

2. Encouraging or directing small employers to seek

coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(c) ~~The provisions of~~ Paragraph (a) does ~~shall~~ not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(d) A ~~No~~ small employer carrier shall not, directly or indirectly, enter into any contract, agreement, or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer except if the compensation arrangement provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

~~(e) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic or standard health benefit plan.~~

(e) ~~(f)~~ A ~~No~~ small employer carrier shall not terminate, fail to renew, or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the agent with the small employer carrier unless the agent consistently engages in

871 practices that violate this section or s. 626.9541.
872 (f) ~~(g)~~ A ~~No~~ small employer carrier or agent shall not
873 induce or otherwise encourage a small employer to separate or
874 otherwise exclude an employee from health coverage or benefits
875 provided in connection with the employee's employment.
876 (g) ~~(h)~~ Denial by a small employer carrier of an application
877 for coverage from a small employer shall be in writing and shall
878 state the reason or reasons for the denial.
879 (h) ~~(i)~~ The commission may establish regulations setting
880 forth additional standards to provide for the fair marketing and
881 broad availability of health benefit plans to small employers in
882 this state.
883 (i) ~~(j)~~ A violation of this section by a small employer
884 carrier or an agent is ~~shall be~~ an unfair trade practice under
885 s. 626.9541 or ss. 641.3903 and 641.3907.
886 (j) ~~(k)~~ If a small employer carrier enters into a contract,
887 agreement, or other arrangement with a third-party administrator
888 to provide administrative, marketing, or other services relating
889 to the offering of health benefit plans to small employers in
890 this state, the third-party administrator shall be subject to
891 this section.
892 (13) ~~(14)~~ DISCLOSURE OF INFORMATION.—
893 (a) In connection with the offering of a health benefit
894 plan to a small employer, a small employer carrier:
895 1. Shall make a reasonable disclosure to such employer, as
896 part of its solicitation and sales materials, of the
897 availability of information described in paragraph (b); and
898 2. Upon request of the small employer, provide such
899 information.

900 (b)1. Subject to subparagraph 3., with respect to a small
901 employer carrier that offers a health benefit plan to a small
902 employer, information described in this paragraph is information
903 that concerns:
904 a. The provisions of such coverage concerning an insurer's
905 right to change premium rates and the factors that may affect
906 changes in premium rates;
907 b. The provisions of such coverage that relate to
908 renewability of coverage;
909 c. The provisions of such coverage that relate to any
910 preexisting condition exclusions; and
911 d. The benefits and premiums available under all health
912 insurance coverage for which the employer is qualified.
913 2. Information required under this subsection shall be
914 provided to small employers in a manner determined to be
915 understandable by the average small employer, and shall be
916 sufficient to reasonably inform small employers of their rights
917 and obligations under the health insurance coverage.
918 3. An insurer is not required under this subsection to
919 disclose any information that is proprietary or a trade secret
920 under state law.
921 (14) ~~(15)~~ SMALL EMPLOYERS ACCESS PROGRAM.—
922 (k) *Benefits.*~~—The benefits provided by the plan shall be~~
923 ~~the same as the coverage required for small employers under~~
924 ~~subsection (12).~~ Upon the approval of the office, the insurer
925 may ~~also~~ establish an optional mutually supported benefit plan
926 that ~~which~~ is an alternative plan developed within a defined
927 geographic region of this state or any other such alternative
928 plan that ~~which~~ will carry out the intent of this subsection.

929 Any small employer carrier issuing new health benefit plans may
930 offer a benefit plan with coverages similar to, but not less
931 than, any alternative coverage plan developed pursuant to this
932 subsection.
933 (15) ~~(16)~~ APPLICABILITY OF OTHER STATE LAWS.—
934 (a) Except as expressly provided in this section, a law
935 requiring coverage for a specific health care service or
936 benefit, or a law requiring reimbursement, utilization, or
937 consideration of a specific category of licensed health care
938 practitioner, does not apply to ~~a standard or basic health~~
939 ~~benefit plan policy or contract or~~ a limited benefit policy or
940 contract offered or delivered to a small employer unless that
941 law is made expressly applicable to such policies or contracts.
942 A law restricting or limiting deductibles, coinsurance,
943 copayments, or annual or lifetime maximum payments does not
944 apply to any health plan policy~~, including a standard or basic~~
945 ~~health benefit plan policy or contract,~~ offered or delivered to
946 a small employer unless such law is made expressly applicable to
947 such policy or contract. ~~However, every small employer carrier~~
948 ~~must offer to eligible small employers the standard benefit plan~~
949 ~~and the basic benefit plan, as required by subsection (5), as~~
950 ~~such plans have been approved by the office pursuant to~~
951 ~~subsection (12).~~
952 ~~(b) Except as provided in this section, a standard or basic~~
953 ~~health benefit plan policy or contract or limited benefit policy~~
954 ~~or contract offered to a small employer is not subject to any~~
955 ~~provision of this code which:~~
956 ~~1. Inhibits a small employer carrier from contracting with~~
957 ~~providers or groups of providers with respect to health care~~

958 ~~services or benefits;~~
959 ~~2. Imposes any restriction on a small employer carrier's~~
960 ~~ability to negotiate with providers regarding the level or~~
961 ~~method of reimbursing care or services provided under a health~~
962 ~~benefit plan; or~~
963 ~~3. Requires a small employer carrier to either include a~~
964 ~~specific provider or class of providers when contracting for~~
965 ~~health care services or benefits or to exclude any class of~~
966 ~~providers that is generally authorized by statute to provide~~
967 ~~such care.~~
968 (b) ~~(c)~~ Any second tier assessment paid by a carrier
969 pursuant to paragraph (11)(j) may be credited against
970 assessments levied against the carrier pursuant to s. 627.6494.
971 (c) ~~(d)~~ Notwithstanding chapter 641, a health maintenance
972 organization may ~~is authorized to~~ issue contracts providing
973 benefits equal to the ~~standard health benefit plan, the basic~~
974 ~~health benefit plan, and the~~ limited benefit policy authorized
975 by this section.
976 (16) ~~(17)~~ RESTRICTIONS ON COVERAGE.—
977 (a) A plan under which coverage is purchased in whole or in
978 part with any state or federal funds through an exchange created
979 pursuant to the federal Patient Protection and Affordable Care
980 Act, Pub. L. No. 111-148, may not provide coverage for an
981 abortion, as defined in s. 390.011(1), except if the pregnancy
982 is the result of an act of rape or incest, or in the case where
983 a woman suffers from a physical disorder, physical injury, or
984 physical illness, including a life-endangering physical
985 condition caused by or arising from the pregnancy itself, which
986 would, as certified by a physician, place the woman in danger of

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987 death unless an abortion is performed. Coverage is deemed to be
988 purchased with state or federal funds if any tax credit or cost-
989 sharing credit is applied toward the plan.
990 (b) This subsection does not prohibit a plan from providing
991 any person or entity with separate coverage for an abortion if
992 such coverage is not purchased in whole or in part with state or
993 federal funds.
994 (c) As used in this section, the term "state" means this
995 state or any political subdivision of the state.
996 (17) ~~(18)~~ RULEMAKING AUTHORITY.—The commission may adopt
997 rules to administer this section, including rules governing
998 compliance by small employer carriers and small employers.
999 Section 2. Section 627.66997, Florida Statutes, is created
1000 to read:
1001 627.66997 Stop-loss insurance.—
1002 (1) A plan established or maintained by an individual small
1003 employer in accordance with the Employee Retirement Income
1004 Security Act of 1974 (ERISA), Pub. L. No. 93-406, may provide a
1005 policy of stop-loss coverage, as defined in s. 627.6482, in lieu
1006 of the requirements of s. 627.6699 if the policy has an
1007 aggregate attachment point that is lower than the greatest of:
1008 (a) Two thousand dollars times the number of employees;
1009 (b) One hundred twenty percent of expected claims; or
1010 (c) Ten thousand dollars.
1011 (2) Health insurance providers shall use a consistent
1012 method of determining the number of covered employees of an
1013 employer. Such method may include, but is not limited to, the
1014 average number of employees employed on an annual basis or the
1015 number of employees employed on a uniform annual date.

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1016 Section 3. Subsection (3) of section 627.642, Florida
1017 Statutes, is amended to read:
1018 627.642 Outline of coverage.—
1019 (3) In addition to the outline of coverage, a policy as
1020 specified in s. 627.6699(3)(k) ~~627.6699(3)(l)~~ must be
1021 accompanied by an identification card that contains, at a
1022 minimum:
1023 (a) The name of the organization issuing the policy or the
1024 name of the organization administering the policy, whichever
1025 applies.
1026 (b) The name of the contract holder.
1027 (c) The type of plan only if the plan is filed in the
1028 state, an indication that the plan is self-funded, or the name
1029 of the network.
1030 (d) The member identification number, contract number, and
1031 policy or group number, if applicable.
1032 (e) A contact phone number or electronic address for
1033 authorizations and admission certifications.
1034 (f) A phone number or electronic address whereby the
1035 covered person or hospital, physician, or other person rendering
1036 services covered by the policy may obtain benefits verification
1037 and information in order to estimate patient financial
1038 responsibility, in compliance with privacy rules under the
1039 Health Insurance Portability and Accountability Act.
1040 (g) The national plan identifier, in accordance with the
1041 compliance date set forth by the federal Department of Health
1042 and Human Services.
1043
1044 The identification card must present the information in a

1045 readily identifiable manner or, alternatively, the information
1046 may be embedded on the card and available through magnetic
1047 stripe or smart card. The information may also be provided
1048 through other electronic technology.

1049 Section 4. Paragraph (g) of subsection (7) and paragraph
1050 (a) of subsection (8) of section 627.6475, Florida Statutes, are
1051 amended to read:

1052 627.6475 Individual reinsurance pool.—

1053 (7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.—

1054 (g) Except as otherwise provided in this section, the board
1055 and the office shall have all powers, duties, and
1056 responsibilities with respect to carriers that issue and
1057 reinsure individual health insurance, as specified for the board
1058 and the office in s. 627.6699(11) with respect to small employer
1059 carriers, including, but not limited to, the provisions of s.
1060 627.6699(11) relating to:

1061 1. Use of assessments that exceed the amount of actual
1062 losses and expenses.

1063 2. The annual determination of each carrier's proportion of
1064 the assessment.

1065 3. Interest for late payment of assessments.

1066 4. Authority for the office to approve deferment of an
1067 assessment against a carrier.

1068 5. Limited immunity from legal actions or carriers.

1069 6. Development of standards for compensation to be paid to
1070 agents. Such standards shall be limited to those specifically
1071 enumerated in s. 627.6699(12)(d) ~~627.6699(13)(d)~~.

1072 7. Monitoring compliance by carriers with this section.

1073 (8) STANDARDS TO ASSURE FAIR MARKETING.—

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1074 (a) Each health insurance issuer that offers individual
1075 health insurance shall actively market coverage to eligible
1076 individuals in the state. The provisions of s. 627.6699(12)
1077 ~~627.6699(13)~~ that apply to small employer carriers that market
1078 policies to small employers shall also apply to health insurance
1079 issuers that offer individual health insurance with respect to
1080 marketing policies to individuals.

1081 Section 5. Subsection (2) of section 627.657, Florida
1082 Statutes, is amended to read:

1083 627.657 Provisions of group health insurance policies.—

1084 (2) The medical policy as specified in s. 627.6699(3)(k)
1085 ~~627.6699(3)(l)~~ must be accompanied by an identification card
1086 that contains, at a minimum:

1087 (a) The name of the organization issuing the policy or name
1088 of the organization administering the policy, whichever applies.

1089 (b) The name of the certificateholder.

1090 (c) The type of plan only if the plan is filed in the
1091 state, an indication that the plan is self-funded, or the name
1092 of the network.

1093 (d) The member identification number, contract number, and
1094 policy or group number, if applicable.

1095 (e) A contact phone number or electronic address for
1096 authorizations and admission certifications.

1097 (f) A phone number or electronic address whereby the
1098 covered person or hospital, physician, or other person rendering
1099 services covered by the policy may obtain benefits verification
1100 and information in order to estimate patient financial
1101 responsibility, in compliance with privacy rules under the
1102 Health Insurance Portability and Accountability Act.

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1103 (g) The national plan identifier, in accordance with the
1104 compliance date set forth by the federal Department of Health
1105 and Human Services.
1106
1107 The identification card must present the information in a
1108 readily identifiable manner or, alternatively, the information
1109 may be embedded on the card and available through magnetic
1110 stripe or smart card. The information may also be provided
1111 through other electronic technology.
1112 Section 6. Paragraph (e) of subsection (2) of section
1113 627.6571, Florida Statutes, is amended to read:
1114 627.6571 Guaranteed renewability of coverage.—
1115 (2) An insurer may nonrenew or discontinue a group health
1116 insurance policy based only on one or more of the following
1117 conditions:
1118 (e) In the case of an insurer that offers health insurance
1119 coverage through a network plan, there is no longer any enrollee
1120 in connection with such plan who lives, resides, or works in the
1121 service area of the insurer or in the area in which the insurer
1122 is authorized to do business ~~and, in the case of the small-group~~
1123 ~~market, the insurer would deny enrollment with respect to such~~
1124 ~~plan under s. 627.6699(5)(i)~~.
1125 Section 7. Subsection (11) of section 627.6675, Florida
1126 Statutes, is amended to read:
1127 627.6675 Conversion on termination of eligibility.—Subject
1128 to all of the provisions of this section, a group policy
1129 delivered or issued for delivery in this state by an insurer or
1130 nonprofit health care services plan that provides, on an
1131 expense-incurred basis, hospital, surgical, or major medical

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1132 expense insurance, or any combination of these coverages, shall
1133 provide that an employee or member whose insurance under the
1134 group policy has been terminated for any reason, including
1135 discontinuance of the group policy in its entirety or with
1136 respect to an insured class, and who has been continuously
1137 insured under the group policy, and under any group policy
1138 providing similar benefits that the terminated group policy
1139 replaced, for at least 3 months immediately prior to
1140 termination, shall be entitled to have issued to him or her by
1141 the insurer a policy or certificate of health insurance,
1142 referred to in this section as a “converted policy.” A group
1143 insurer may meet the requirements of this section by contracting
1144 with another insurer, authorized in this state, to issue an
1145 individual converted policy, which policy has been approved by
1146 the office under s. 627.410. An employee or member shall not be
1147 entitled to a converted policy if termination of his or her
1148 insurance under the group policy occurred because he or she
1149 failed to pay any required contribution, or because any
1150 discontinued group coverage was replaced by similar group
1151 coverage within 31 days after discontinuance.
1152 (11) ALTERNATIVE PLANS.—~~The insurer shall, in addition to~~
1153 ~~the option required by subsection (10), offer the standard~~
1154 ~~health benefit plan, as established pursuant to s. 627.6699(12).~~
1155 The insurer may, at its option, ~~also~~ offer alternative plans for
1156 group health conversion in addition to the plans required by
1157 this section.
1158 Section 8. Paragraph (e) of subsection (2) of section
1159 641.31074, Florida Statutes, is amended to read:
1160 641.31074 Guaranteed renewability of coverage.—

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

28-01017-15 2015968__

1161 (2) A health maintenance organization may nonrenew or
1162 discontinue a contract based only on one or more of the
1163 following conditions:
1164 (e) There is no longer any enrollee in connection with such
1165 plan who lives, resides, or works in the service area of the
1166 health maintenance organization or in the area in which the
1167 health maintenance organization is authorized to do business
1168 ~~and, in the case of the small group market, the organization~~
1169 ~~would deny enrollment with respect to such plan under s.~~
1170 ~~627.6699(5)(i)~~.
1171 Section 9. Subsection (10) of section 641.3922, Florida
1172 Statutes, is amended to read:
1173 641.3922 Conversion contracts; conditions.—Issuance of a
1174 converted contract shall be subject to the following conditions:
1175 (10) ALTERNATE PLANS.—~~The health maintenance organization~~
1176 ~~shall offer a standard health benefit plan as established~~
1177 ~~pursuant to s. 627.6699(12).~~ The health maintenance organization
1178 may, at its option, ~~also~~ offer alternative plans for group
1179 health conversion in addition to those required by this section,
1180 provided any alternative plan is approved by the office or is a
1181 converted policy, approved under s. 627.6675 and issued by an
1182 insurance company authorized to transact insurance in this
1183 state. Approval by the office of an alternative plan shall be
1184 based on compliance by the alternative plan with the provisions
1185 of this part and the rules promulgated thereunder, applicable
1186 provisions of the Florida Insurance Code and rules promulgated
1187 thereunder, and any other applicable law.
1188 Section 10. This act shall take effect July 1, 2015.

968

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 5, 2015

I respectfully request that **Senate Bill #968**, relating to Employee Health Care Plans, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 23
Meeting Date

968
Bill Number (if applicable)

Topic: For both Bill and amdt → 195386
Amendment Barcode (if applicable)

Name: Tim Meenan

Job Title:

Address: 325 W College
Street

Tall FL
City State Zip

Phone:

Email:

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

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

Representing: National Association of Insurance & Financial Advisors

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

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

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

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

S-001 (10/14/14)

396478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**

2

3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 627.422, Florida Statutes, is amended to
6 read:
7 627.422 Assignment of policies; limitations on post-loss
8 assignment of benefits.—
9 (1) A policy may be assignable, or not assignable, as
10 provided by its terms. Subject to its terms relating to

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11 assignability, any life or health insurance policy under the
12 terms of which the beneficiary may be changed upon the sole
13 request of the policyowner may be assigned either by pledge or
14 transfer of title, by an assignment executed by the policyowner
15 alone and delivered to the insurer, regardless of whether ~~or not~~
16 the pledgee or assignee is the insurer. Any such assignment
17 entitles ~~shall entitle~~ the insurer to deal with the assignee as
18 the owner or pledgee of the policy in accordance with the terms
19 of the assignment, until the insurer has received at its home
20 office written notice of termination of the assignment or pledge
21 or written notice by or on behalf of some other person claiming
22 some interest in the policy in conflict with the assignment.
23 (2) A property insurance policy may limit the post-loss
24 assignment of benefits, rights, causes of action, or other
25 contractual rights under the policy which apply to a loss on a
26 structure, or the contents of personal property contained
27 therein, except that an insured may assign the benefit of
28 receiving payment under the policy directly to a person or
29 entity providing services or materials to mitigate or repair
30 damage arising directly from a covered loss. Such assignment is
31 limited solely to designating the person or entity as a copayee
32 for the benefit of payment for the services or materials
33 provided. The insured has the exclusive right to enforce payment
34 of the post-loss benefits under the policy and may not assign
35 that right to another person or entity. A post-loss assignment
36 in violation of this subsection is void.
37 Section 2. This act shall take effect July 1, 2015.
38
39 ================= T I T L E A M E N D M E N T ================

396478

40 And the title is amended as follows:
41 Delete everything before the enacting clause
42 and insert:
43 A bill to be entitled
44 An act relating to the assignment of post-loss
45 property insurance policy benefits; amending s.
46 627.422, F.S.; authorizing a property insurance policy
47 to limit the post-loss assignment of certain benefits
48 or rights that apply to specified losses; providing an
49 exception that authorizes the insured to assign the
50 benefit of receiving payment to a person or entity
51 providing specified services or materials; specifying
52 limitations on such assignment; providing that a post-
53 loss assignment in violation of the act is void;
54 providing an effective date.

656174

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (396478) (with title**
2 **amendment)**
3
4 Delete lines 23 - 36
5 and insert:
6 (2) A property insurance policy may prohibit the post-loss
7 assignment of benefits, rights, causes of action, or other
8 contractual rights under the policy, except that a policyholder
9 may assign the benefit of payment:
10 (a) Up to $3,000, to a person or entity that provides

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11 services or materials to mitigate or repair damage that directly
12 arises from a covered loss. Such assignment is limited solely to
13 designating the person or entity as a copayee for the benefit of
14 payment for the reasonable value of services or materials
15 provided. The policyholder has the exclusive right to enforce
16 payment of the post-loss benefits under the policy and may not
17 assign that right to another person or entity.
18 (b) To compensate a public adjuster for services authorized
19 by s. 626.854(11). The assignment may only be for compensation
20 due to the public adjuster by the policyholder and may not
21 include any assignment of other benefits under the policy. This
22 paragraph does not change the obligations, if any, of the
23 insurer to issue to the policyholder a check for payment in the
24 name of the policyholder or mortgageholder.
25 (c) To an attorney who represents the policyholder only if
26 the assignment provides that the benefits are to be paid to the
27 attorney for disbursement of the funds by the attorney to repair
28 the property at the direction of the policyholder.
29 (3) A post-loss assignment in violation of subsection (2)
30 is void.
31 Section 2. Subsection (16) of section 626.854, Florida
32 Statutes, is amended to read:
33 626.854 "Public adjuster" defined; prohibitions.—The
34 Legislature finds that it is necessary for the protection of the
35 public to regulate public insurance adjusters and to prevent the
36 unauthorized practice of law.
37 (16)(a) A licensed contractor under part I of chapter 489,
38 or a subcontractor, may not adjust a claim on behalf of an
39 insured unless licensed and compliant as a public adjuster under

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40 this chapter. However, the contractor may discuss or explain a
41 bid for construction or repair of covered property with the
42 residential property owner who has suffered loss or damage
43 covered by a property insurance policy, or the insurer of such
44 property, if the contractor is doing so for the usual and
45 customary fees applicable to the work to be performed as stated
46 in the contract between the contractor and the insured.
47 (b) An assignment or agreement that transfers the authority
48 to adjust, negotiate, or settle any portion of a claim to such
49 contractor or subcontractor or that is otherwise in violation of
50 this section is void.
51 Section 2. Subsection (11) of section 626.8651, Florida
52 Statutes, is amended to read:
53 626.8651 Public adjuster apprentice license;
54 qualifications.—
55 (11) A public adjuster apprentice has the same authority as
56 the licensed public adjuster or public adjusting firm that
57 employs the apprentice except that an apprentice may not execute
58 contracts for the services of a public adjuster or public
59 adjusting firm and is limited in his or her ability to ~~may not~~
60 solicit contracts for the services ~~except under the direct~~
61 ~~supervision and guidance~~ of the supervisory public adjuster. A
62 public adjuster apprentice may only solicit contracts for the
63 supervisory public adjuster under the general supervision of the
64 supervisory public adjuster; provided, however, that the public
65 adjuster apprentice may only solicit contracts if the public
66 adjuster apprentice has appeared at a residence without a prior
67 appointment if the apprentice is under the direct supervision of
68 the supervisory public adjuster. A public adjuster apprentice

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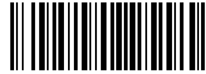
69 may not solicit contracts for natural disaster claims within 30
70 days after the declaration of the natural disaster except under
71 the direct supervision of a supervisory public adjuster. An
72 individual may not be, act as, or hold himself or herself out to
73 be a public adjuster apprentice unless the individual is
74 licensed and holds a current appointment by a licensed public
75 all-lines adjuster or a public adjusting firm that employs a
76 licensed all-lines public adjuster.
77 Section 3. Subsection (4) is added to section 627.405,
78 Florida Statutes, to read:
79 627.405 Insurable interest; property.—
80 (4) Insurable interest does not survive an assignment,
81 except to a subsequent purchaser of the property who acquires
82 insurable interest following a loss.
83
84 ================ T I T L E A M E N D M E N T ================
85 And the title is amended as follows:
86 Delete lines 44 - 53
87 and insert:
88 An act relating to insurance claims; amending s.
89 627.422, F.S.; authorizing a property insurance policy
90 to prohibit the post-loss assignment of certain
91 benefits or rights that apply to specified losses;
92 providing exceptions; providing that a post-loss
93 assignment in violation of the act is void; amending
94 s. 626.854, F.S.; providing that an assignment or
95 agreement that transfers authority to adjust,
96 negotiate, or settle a claim or that violates other
97 specified provisions is void; amending s. 626.8651,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98 F.S.; revising the authority of public adjuster
99 apprentices; amending s. 627.405, F.S.; prohibiting
100 assignment of an insurable interest except to
101 subsequent purchasers after a loss;

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 1064

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Assignment of Post-loss Insurance Policy Benefits

DATE: March 23, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1064 amends s. 627.422, F.S., to provide that a property insurance policy may prohibit the post-loss assignment of benefits except that a policyholder may assign the benefit of payment:

- Up to $3,000, to an entity that provides services or materials to mitigate or repair damage that directly arises from a covered loss. The assignment is limited solely to designating that entity as a copayee for the benefit of payment. The policyholder has the exclusive right to enforce payment of the post-loss benefits under the policy and may not assign that right to another person or entity.
- To compensate a public adjuster. The assignment may only be for compensation due to the public adjuster by the policyholder and may not include any assignment of other benefits under the policy.
- To an attorney who represents the policyholder only if the assignment provides that the benefits are to be paid to the attorney for disbursement of the funds by the attorney to repair the property at the direction of the policyholder.

The bill provides that a post-loss assignment in violation of provisions of the bill is void.

The bill provides that an insurable interest does not survive an assignment except to a subsequent purchaser who acquires an insurable interest following a loss.

The bill amends s. 626.8651, F.S., relating to the licensure of public adjuster apprentices. It expands the ability of a public adjuster apprentice to solicit contracts for the services of the supervisory public adjuster. The bill allows public adjuster apprentices to solicit contracts while under the "general supervision" of a supervisory public adjuster rather than the "direct supervision and guidance" of the supervisory public adjuster. The bill maintains the direct supervision requirement in two situations: (1) if the public adjuster apprentice has appeared at a residence without a prior appointment; and (2) within 30 days after the declaration of the natural disaster.

II. Present Situation:

Background on Assignment of Benefits

An assignment is the transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee can file a lawsuit against the insurer to recover the benefits. Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries,*[1] the court held that a provision in an insurance contract prohibiting assignment was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.[2] However, Florida courts have held that an assignment made after the loss is valid even if the contract states otherwise.[3] In *Continental Casualty Company v. Ryan Incorporated,*[4] the court noted that it is a "well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss. A court recently explained that the rationale for post-loss assignments is that "[a]n assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer's contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money" and "has no effect upon the insurer's duty under the policy." [5]

Assignments have been prohibited by statute in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.,*[6] the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses "prohibiting an insured's assignments to out-of-network medical

[1] 704 So.2d 1384 (Fla. 1998).
[2] *Id*. at 1386.
[3] *See West Florida Grocery Company v. Teutonia Fire Insurance Company*, 77 So. 209 (Fla. 1917); *Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh*, 651 So.2d 141 (Fla. 3d DCA 1995)(reversal a dismissal based on a no-assignment provision because "a provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim"); *Gisela Investments v. Liberty Mutual Ins. Co.*, 452 So.2d 1056 (Fla. 3d DCA 1984)(holding that a "provision in a policy of insurance which prohibits assignment thereof except with consent of the insurer does not apply to prevent assignment of the claim or interest in the insurance money then due, after loss").
[4] 974 So.2d 368, 377 n. 7 (Fla. 2008)
[5] *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012).
[6] 955 So.2d 1140 (Fla. 4th DCA 2007).

providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action."[7]

Assignment of Benefits in Property Insurance Cases

Assignment of benefits is becoming increasingly common in property insurance claims, especially in water damage claims where a homeowner assigns his or her right to receive benefits under their property insurance policy to a contractor or vendor who repairs the damaged property. In a recent presentation to the Florida House of Representatives Insurance and Banking Subcommittee, Citizens Property Insurance Company ("Citizens") provided its 2013 litigation study statistics. Water claims represented 50 percent of all new reported claims and 75percent of all litigation.[8] Citizens reported that during accident years 2007-2010, the percentage of water cases in which there was an assignment of benefits was less than 1 percent each year. In 2011, the percentage of water cases in which there was an assignment of benefits was 2.32 percent. In 2012, it was 8.26 percent and in 2013, it was 10.93 percent.[9] Citizens reported that its loss adjustment expense in a litigated claim involving assignment of benefits is 60 percent higher than a litigated claim without an assignment of benefits.[10]

Ongoing Litigation Involving Assignment of Benefits

At least four cases are pending in state appellate courts relating to assignment of benefits. In *Security First Insurance Company v. Florida Office of Insurance Regulation*,[11] an insurer is appealing the Office of Insurance Regulation's denial of policy language that would prohibit the assignment of "any benefit or post-loss right" without the consent of the insurer. On March 24, 2015, the Fourth District Court of Appeal is scheduled to hear oral arguments in three cases relating to assignment of benefits to water remediation companies. In those cases, the water remediation companies are arguing that post-loss benefits are freely assignable and the insurers are arguing that the assignments of benefits to water remediation companies are invalid.[12]

Insurable Interest

Section 627.405, F.S., provides that no contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss. "Insurable interest" means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.[13] There is ongoing litigation over whether an assignee water remediation company has an

[7] *Id*. at 1144-1145.
[8] *See* PowerPoint presentation by Citizens Property Insurance Company to the Florida House of Representatives Insurance and Banking Subcommittee, February 9, 2015 (on file with the Florida Senate Banking and Insurance Committee).
[9] *See Id.*
[10] *See Id.*
[11] Case No. 1D14-1865 (Fla. 1st DCA). Briefing is complete and oral argument is not scheduled. The court will likely decide the case on the briefs.
[12] *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-424 (Fla. 4th DCA), *Emergency Services 24, Inc. v. United Property Casualty Ins. Co.*, Case No. 4D14-576 (Fla. 4th DCA).
[13] *See* s. 627.405(2), F.S.

insurable interest in the property. For example, in *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), the insurer is arguing that the water remediation company cannot bring a lawsuit to enforce the assigned insurance post-loss benefits because the company had no insurable interest in the property at the time of loss.[14] The water remediation company argues that s. 627.405, F.S., does not prohibit the action because the company, as assignee, "stands in the shoes of the insured" and can bring the same actions the insured can bring.[15]

Public Adjusters

Public adjusters are required to be qualified and licensed by the Department of Financial Services (DFS). A public adjuster is a person "who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims."[16] There are currently other limitations and regulations regarding public adjusting. For example, a licensed contractor or subcontractor may not adjust a claim on behalf of an insured unless licensed and compliant as a public adjuster under ch. 626, F.S.[17] However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered a loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.[18] Current law also contains a public adjuster conflict of interest section that prohibits public adjusters from participating, directly or indirectly, in the reconstruction, repair, or remediation of the insured property that is the subject of the claim or engaging in any other activity that could reasonably be construed as a conflict of interest.

Public Adjuster Apprentices

Section 626.8541, F.S., defines a "public adjuster apprentice" as any person who is not a licensed public adjuster, who is employed by or has a contract with a licensed and appointed public adjuster in good standing with the DFS or a public adjusting firm that employs at least one licensed and appointed public adjuster in good standing with the DFS to assist a public adjuster in conducting business under the license. A public adjuster apprentice must work with a licensed and appointed public adjuster for a period of 12 months prior to being eligible for appointment as a licensed public adjuster.[19]

[14] *See ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), Answer Brief of Appellee at p. 36.
[15] *See ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), Reply Brief of Appellent at p. 13.
[16] *See* s. 626.854(1), F.S.
[17] *See* s. 626.854(16), F.S.
[18] *Id.*
[19] *See* s. 626.8541(2), F.S.

Section 626.8651(11), F.S., prohibits a public adjuster apprentice from executing contracts for the services of a public adjuster. The statute also provides that a public adjuster apprentice may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster. "Direct supervision and guidance" and "solicit" are not defined in s. 626.8651(11), F.S. On at least two occasions, the DFS has attempted to define "direct supervision" and "solicitation" by rule and has been subject to a rule challenge proceeding.[20]

According to the DFS, there are 1,422 licensed public adjusters (1,133 appointed) and 93 licensed public adjuster apprentices (65 appointed).[21]

III. Effect of Proposed Changes:

Assignment of Benefits

The bill provides that a property insurance policy may prohibit the post-loss assignment of benefits, rights, causes of action, or other contractual rights under the policy, except that a policyholder may assign the benefit of payment:

- Up to $3,000, to a person or entity that provides services or materials to mitigate or repair damage that directly arises from a covered loss. Such assignment is limited solely to designating the person or entity as a copayee for the benefit of payment for the reasonable value of services or materials provided. The policyholder has the exclusive right to enforce payment of the post-loss benefits under the policy and may not assign that right to another person or entity.
- To compensate a public adjuster for services authorized by s. 626.854(11), F.S. The assignment may only be for compensation due to the public adjuster by the policyholder and may not include any assignment of other benefits under the policy. The bill does not change the obligations, if any, of the insurer to issue to the policyholder a check for payment in the name of the policyholder or mortgageholder.
- To an attorney who represents the policyholder only if the assignment provides that the benefits are to be paid to the attorney for disbursement of the funds by the attorney to repair the property at the direction of the policyholder.

The bill provides that a post-loss assignment in violation of provisions of the bill is void.

The bill provides that an insurable interest does not survive an assignment except to a subsequent purchaser who acquires an insurable interest following a loss. It is not clear whether the policyholder will retain an insurable interest in the policy if an assignment is made and later determined to be void.

---

[20] *See Florida Association of Public Insurance Adjusters, Inc. v. Department of Financial Services, Division of Agent and Agency Services*, Division of Administrative Hearings Case No. 13-1633RP (association argued that the DFS did not have the authority to define "direct supervision" as physical presence) and *Florida Association of Public Insurance Adjusters, Inc. v. Department of Financial Services, Division of Agent and Agency Services*, Division of Administrative Hearings Case No. 14-4196RP (association argued that the DFS did not have the authority to limit solicitation by public adjuster apprentices to those "under the direct supervision of the supervising public adjuster").

[21] Email from the DFS staff dated March 24, 2015 (on file with the Banking and Insurance Committee).

Public Adjusters

This bill provides that any assignment or agreement purporting to transfer the authority to adjust, negotiate, or settle any portion of a claim to a contractor or subcontractor, or that is otherwise in derogation of the public adjuster contractor prohibition section is void. The bill appears to have the effect of prohibiting a vendor from disputing the amount of payment with the insurer under an assignment of benefits. Thus, if a property insurance policy permitted a post-loss assignment, the assignment would be limited to payment of a fixed amount to the vendor.

Public Adjuster Apprentices

This bill amends s. 626.8651, F.S., relating to the licensure of public adjuster apprentices. The bill expands the ability of a public adjuster apprentice to solicit contracts for the services of the supervisory public adjuster. The bill allows public adjuster apprentices to solicit contracts while under the "general supervision" of a supervisory public adjuster rather than the "direct supervision and guidance" of the supervisory public adjuster. The bill maintains the direct supervision requirement in two situations: (1) if the public adjuster apprentice has appeared at a residence without a prior appointment; and (2) within 30 days after the declaration of the natural disaster.

The bill does not define "general supervision" or "direct supervision." Current law does not define "natural disaster claims" or "declaration of the natural disaster." The Insurance Adjusters Law does impose specified requirements on public adjusters based on "events that are the subject of a declaration of a state of emergency by the Governor."

This bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 2, Fla. Const., provides that all persons have the right to acquire, possess and protect property. Opponents of the bill may argue that an insurance claim is chose in action and therefore is a property interest.[22] Accordingly, it could be argued that the

[22] *See Castellanos v. Citizens Property Insurance Corp.,* 98 So.3d 1180, 1183 (Fla. 3d DCA 2012)(explaining that an "insurance claim is a chose in action and because personal property is an asset)(citations omitted); *Sunspan Engineering &*

assignment of a post-loss insurance claim cannot be prohibited. The Florida Supreme Court has held that property rights are not absolute:

> Of course, even constitutionally protected property rights are not absolute, and are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, and general welfare.[23]

The court weighs whether the statute is reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution. If this bill is challenged, the court would have to determine whether its provisions are reasonably necessary to justify the limitation on the property rights.[24]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes some restrictions on the activities of public adjuster apprentices. Removal of these restrictions may allow apprentices to solicit more business for the supervisory public adjuster.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 627.405, F.S., to state that "an insurable interest does not survive an assignment, except to a subsequent purchaser of the property who acquires insurable interest following a loss." The intent of the language is to specify that the recipient of an assignment will not have an insurable interest. The bill, however, simply states that insurable interest does not survive an assignment. It is not clear whether the policyholder will retain an insurable interest in the policy if an assignment is made and later determined to be void..

VII. Related Issues:

None.

Const. Co. v. Spring-Lock Scaffolding Co., 310 So.2d 4, 8 (Fla. 1975)(noting that "it has been held that a vested cause of action, or 'chose in action' is personal property entitled to protection from arbitrary laws).

[23] *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64 (Fla. 1990).

[24] *Id*.

VIII. Statutes Affected:

This bill substantially amends section 627.422 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 23, 2015:
The CS is a delete-all amendment that substantially changes the bill. Changes include:

- Adding a provision to void an assignment if it transfers the authority to adjust a claim to a contractor or subcontractor.
- Changing the supervision requirements for public adjuster apprentices.
- Providing that an insurable interest does not survive an assignment.
- Allowing a property insurance contract to prohibit post-loss assignment of benefits with three exceptions and provide an invalid assignment is void.

B. Amendments:

None.

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

By Senator Hukill

8-00788-15 20151064__

A bill to be entitled

An act relating to the assignment of post-loss insurance policy benefits; amending s. 627.422, F.S.; providing that the post-loss benefits under a policy may be assignable or not assignable as provided by the terms of the policy; providing an effective date.

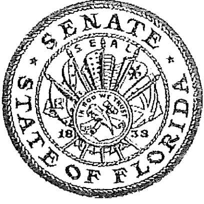
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.422, Florida Statutes, is amended to read:

627.422 Assignment of policies.—A policy or the post-loss benefits provided under the policy may be assignable, or not assignable, as provided by the ~~its~~ terms of the policy. Subject to the policy’s ~~its~~ terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment entitles ~~shall entitle~~ the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

Section 2. This act shall take effect July 1, 2015.

1064



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Finance and Tax, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 2, 2015

The Honorable Lizbeth Benacquisto
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1064 – Assignment of Post-loss Insurance Policy Benefits

Dear Chairwoman Benacquisto:

Senate Bill 1064, relating Assignment of Post-loss Insurance Policy Benefits has been referred to the Banking and Insurance Committee. I am requesting your consideration on placing SB 1064 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: James Knudson, Staff Director of the Banking and Insurance Committee
Sheri Green, Administrative Assistant of the Banking and Insurance Committee

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: *www.flsenate.gov*

ANDY GARDINER
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)

3/23/15
Meeting Date

Topic ~~Lee Jacobson~~ Assignment of Benefit   Bill Number SB 1064 (if applicable)

Name Lee Jacobson   Amendment Barcode 656174 (if applicable)

Job Title Attorney

Address 545 Delaney Ave   Phone 407 497 0771
Street

Orlando FL 32801   E-mail
City State Zip

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

Representing Homeowners

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic: Assigment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Robert "Dawn" Sweet

Amendment Barcode: ________ *(if applicable)*

Job Title: C.O.O

Address: 111 W Gen[illegible] St
Street

Tampa, FL 33603
City, State, Zip

Phone: 813-962-6[illegible]

E-mail: Dawn.Sweet@NextGenRestoration.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: NextGen Restoration, Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/23/2015
Meeting Date

Topic: Assignment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Steve Fortier

Amendment Barcode: ______ *(if applicable)*

Job Title: Manager

Address: 192 W Highway 50
Street

Clermont, FL 34711
City, State, Zip

Phone: 352-242-4322

E-mail: steve@nolandsroofing.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Nolands Roofing - Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB-1064
Bill Number (if applicable)

____
Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: Scott Johnson

Job Title: Pres. Johnson Strategies, LLC

Address: 8976 Eagles Ridge Dr.
Street

Tallahassee, Fl, 32312
City, State, Zip

Phone: _______________

Email: _______________

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

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

Representing: Myself

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

SB 1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: SB-1064 - Assignment of Benefits - support bill

Name: Andrew Gorman

Job Title: Attorney

Address: 250 S. Orange Ave, Suite 600
Street

Orlando   FL   32801
City   State   Zip

Phone: 407-872-2498

Email:

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

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

Representing: Self

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-521-1235

Email cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

W

SR 1064
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic: AOR

Name: CHRISTIAN CAMARA

Job Title: STATE DIRECTOR, FL

Address: PO BOX 10577
Street

TALL. FL 32302
City State Zip

Phone: 305 608 4300

Email: CCAMARA@RSTREET.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: R STREET INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic: Assignment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Terry Perkins

Amendment Barcode: ______ *(if applicable)*

Job Title: retired

Address: 7730 Cornucopia Lane
Street

TLH, FL 32309
City *State* *Zip*

Phone: 893-1615

E-mail: ______

Speaking: ☐ For ☐ Against ☐ Information

Representing: ______

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic: Assigment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Greg Noland

Amendment Barcode: *(if applicable)*

Job Title: President Noland's Roofing INC

Address: 192 W Hwy 50
Street

Clermont, FL 34711
City *State* *Zip*

Phone: 352-573-7676

E-mail: greg@nolandsroofing.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: My Small Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/23/15
Meeting Date

Topic: Assignment of Benefits

Bill Number: SB 1064 (if applicable)

Name: CAROL DORNAN

Amendment Barcode: ____ (if applicable)

Job Title: HOMEOWNER

Address: 2297 EDMONTON CT
Street

CLERMONT FL 34711
City State Zip

Phone: 313 887 5293

E-mail: CDORNAN380@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing: Myself as a homeowner

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/23/2015
Meeting Date

Topic: Assigment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Sephk' Arce

Amendment Barcode: ________ *(if applicable)*

Job Title: Senior Project Manager /

Address: 4612 Cheyenne Point Trl
Street

Kissimmee, FL 34746
City *State* *Zip*

Phone: (407) 791-4757

E-mail: ________

Speaking: ☐ For ☑ Against ☐ Information

Representing: Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ____________

Bill Number (if applicable): ~~SB~~ 1064

Amendment Barcode (if applicable): 656174

Topic: AOB

Name: Jon Lavender

Job Title: Owner of FLARS

Address: 2151 Andrea Lane
Street

Fort Myers, FL 33912
City, State, Zip

Phone: 239.274.8043

Email: jlavender@flwaterstorms.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing: ~~[illegible]~~ myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic Assignment of Benefits

Bill Number SB 1064 *(if applicable)*

Name Bobby Swindle

Amendment Barcode ______ *(if applicable)*

Job Title OWNER

Address 308 Weir DR.
Street

Phone 407-656-8920

Winter Garden, Fl. 34787
City *State* *Zip*

E-mail WestOrangeRoofing@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing West Orange Roofing Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ______

Bill Number (if applicable): 1064

Amendment Barcode (if applicable): ______

Topic: AOB

Name: Crystal Rinkston

Job Title: Vice President

Address: PO Box 945 (Street)

Williston (City) FL (State) 32696 (Zip)

Phone: 352-221-0019

Email: ______

Speaking: ☐ For ☑ Against ☐ Information

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

Representing: Accident Cleaners

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ____________

Bill Number (if applicable): 1064

Topic: SB 1064, Assignment of Benefits

Amendment Barcode (if applicable): ____________

Name: Richie Kidwell

Job Title: Owner, Air Quality Assessors

Address: 941 Morse Blvd
Street

Winter Park FL
City State Zip

Phone: 407-334-4621

Email: ____________

Speaking: ☐ For ☑ Against ☐ Information

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

Representing: Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-2-3-15
Meeting Date

1064
Bill Number (if applicable)

On the bill as amended
Amendment Barcode (if applicable)

Topic: AOB

Name: William Ryan

Job Title: President, Rytech

Address: 1690 Roberts Blvd
Street

Kennesaw, GA 30144
City, State, Zip

Phone: 770-977-8787

Email: WRyan@RytechINC.Com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing: Rytech

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3 23 15
Meeting Date

1064
Bill Number (if applicable)

on the bill as amended
Amendment Barcode (if applicable)

Topic AOB

Name TED NELSON

Job Title Founder - NATIONAL WATER

Address 9570 Regency Sq Blvd
Street

Jacksonville FL 32259
City State Zip

Phone 904 509 6989

Email tnelson@skytec.com

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

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

Representing National Water

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic: Assigment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Jon Lavender

Amendment Barcode: ______ *(if applicable)*

Job Title: Owner

Address: 2151 Andrea Lane
Street

Fort Myers, FL 33912
City *State* *Zip*

Phone: 239.274.0043

E-mail: jlavender@ifwrestorations.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: FLARS & Insurance Fire & Water Restorations

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/23/15
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: MICHAEL CARLSON

Job Title: EXECUTIVE DIRECTOR

Address: 215 S. Monroe Ste. 835
Street

Tall FL 32301
City State Zip

Phone: 850 597 7425

Email: Michael.Carlson@piff.net

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

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

Representing: PERSONAL INSURANCE FEDERATION of FLA.

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.23.15
Meeting Date

1064
Bill Number (if applicable)

on the bill as amended
Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: Lisa Miller

Job Title: CEO, Lisa Miller & Associates

Address: 331 N. Monroe St
Street

Tallahassee
City State Zip

Phone: 8505289229

Email: lisamiller@lisamillerassociates.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing: Demotech, national insurance company rating agency

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23
Meeting Date

SB 1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignment of Benefits - Negron Amendment

Name: Mark Delegal

Job Title:

Address: 315 S. Calhoun St. #600
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850 224-7000

Email:

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

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

Representing: State Farm Florida Insurance Company

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ASSIGNMENT OF BENEFITS

Name GARY FARMER

Job Title

Address 425 N. ANDREWS AVE #2
Street

FT. LAUDERDALE FL 33301
City *State* *Zip*

Phone 954-524-2820

Email GARY@PATHTOJUSTICE.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CONSUMERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

8/23
Meeting Date

SB 1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic AOB

Name Paul Handerhan

Job Title Consultant

Address 120 South Monroe Street
Street

Tallahassee FL 32301
City State Zip

Phone 561 704 0428

Email Paul e Ramba Consulting

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

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

Representing Florida Association for Insurance Reform

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

W

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

3/23/15
Meeting Date

SB 1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignement of Benefits

Name: William Large

Job Title: President, Florida Justice Reform Institute

Address: 210 S. Monroe St.
Street

Tallahassee, FL. 32308
City, State, Zip

Phone: 850-222-0170

Email: william@fljustice.org

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

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

Representing: Florida Justice Reform Institute

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

W

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

03/23/2014
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic ADB

Name DON BROWN

Job Title

Address POB 866
Street

DEFUNIAK SPRINGS, FL 32435
City State Zip

Phone 850 865 9280

Email DON@DONBROWNFLORIDA.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SECURITY FIRST

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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W

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: Harry Pelzer

Job Title: Contractor

Address: 3401 S. Saint Lucie Dr
Street

Casselberry, FL 32707
City, State, Zip

Phone: 407 696 2026

Email:

Speaking: [ ] For [ ] Against [ ] Information

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

Representing:

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

W

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

3/23/2015
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: Gene Williams

Job Title: Operations Manager

Address: 8249 Kristel Cir.
Street

New Port Richey, FL 34668
City, State, Zip

Phone: 727-278-0857

Email:

Speaking: [ ] For [✓] Against [ ] Information

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

Representing: United Water Restoration

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

W

3/23/15
Meeting Date

1064
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: Ricardo Gonzalez

Job Title: Field Supervisor

Address: 1730 Winter Green Blvd
Street

Phone: 386 589 7617

Winter Park, FL 32792
City, State, Zip

Email: Ricky@ [illegible]

Speaking: ☐ For ☑ Against ☐ Information

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

Representing: ____________________

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

Meeting Date: ______

Bill Number (if applicable): SB 1064

Amendment Barcode (if applicable): ______

Topic: AOB

Name: Jeff Grant

Job Title: Owner

Address: 1285 Smoke Rise Lane (Street)

Tallahassee (City) Fl (State) 32317 (Zip)

Phone: 850-878-6469

Email: ______

Speaking: ☐ For ☑ Against ☐ Information

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

Representing: Bone Dry Restoration

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/2015
Meeting Date

Topic: Assigment of Benefits

Bill Number: SB 1064 *(if applicable)*

Name: Lee Jacobson

Amendment Barcode: 396478 *(if applicable)*

Job Title: Attorney

Address: 545 Delaney Ave
Street

Orlando, FL 32801
City *State* *Zip*

Phone: 4074970771

E-mail: lj1045@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Hale, Hale + Jacobson

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/23/15
Meeting Date

1064
Bill Number (if applicable)

656174 Negron
Amendment Barcode (if applicable)

Topic: Assignment of Benefits

Name: MICHAEL CARLSON

Job Title: Executive Director

Address: 215 S. Monroe Ste. 835
Street

City State Zip

Phone: 547 7425

Email: Michael.Carlson@piff.net

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

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

Representing: PERSONAL INSURANCE FEDERATION of FLA

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

1064
Bill Number (if applicable)

396478
Amendment Barcode (if applicable)

Topic PROPERTY INSURANCE

Name CAM FENTRISS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQUARE #3-243
Street

Phone 850-222-2772

TALL FL 32312
City State Zip

Email AFENTRISS@AOL.COM

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

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

Representing FLA ROOFING + SHEET METAL CONTRACTORS ASSN

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 8/23

Bill Number (if applicable): SB 1064

Amendment Barcode (if applicable): Negron Amendment

Topic: Assignment of Benefits

Name: Paul Handerhan

Job Title: Consultant Ramba Group

Address: 120 South Monroe Street (Street)

Tallahassee (City) FL (State) 32301 (Zip)

Phone: 561 704 0428

Email: paul@rambaconsulting.gov

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

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

Representing: Florida Association for Insurance Reform

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/15 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

1064

Bill Number (if applicable)

Topic: Assignment of Benefits

Negron Amendment

Amendment Barcode (if applicable)

Name: Steve Geller

and the Bill

Job Title: Attorney

Address: 100 E. Broward Blvd

Street

Phone: 954-491-1120

Ft. Laud

City State Zip

Email

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

Amendment

Waive Speaking: [ ] In Support [ ] Against

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

Representing: Florida Association of Public Adjusters

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

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

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

3/23/15
Date

1064
Bill Number

Name Mark Burger

Phone 386.795.9121

Address Sales & Marketing
Street 6802 Arri CT

E-mail

Job Title

City Port Orange State Zip

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject

Representing United Water Restoration Group

Lobbyist registered with Legislature: ☐ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____________ ___.m. to ____________ ___.m.

S-001 (08/2005)

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 1298

INTRODUCER: Senator Simmons

SUBJECT: Insurance for Short-term Rental and Transportation Network Companies

DATE: March 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.			JU	
3.			AP	

I. Summary:

SB 1298 creates insurance requirements for short-term rentals and transportation network companies. A short-term rental network company is an entity for which participating lessors provide prearranged, short-term rentals, such as homes or rooms within homes, for compensation using a software application to connect a participating renter with a participating lessor. The bill requires a short-term rental network company to maintain insurance that:

- Is primary;
- Insures the participating lessor against direct physical loss to the short-term rental property and its contents; and
- Provides liability coverage for personal injury and property damage with limits of at least $1 million.

The bill does not limit the liability of a short term rental network company arising out of the use or occupancy of a short-term rental property by a participating renter for an amount that exceeds the coverage limits.

A transportation network company (TNC) is an entity for which drivers operating a vehicle in this state provide transportation services for compensation using an application to connect a passenger with a participating driver. The bill creates requirements for TNC insurance. The bill creates two time periods during which the TNC insurance must provide different coverages: a "ride-acceptance period" and an "on-call" period. The ride acceptance period is the period beginning at the time a driver accepts a ride request and ending at the time the ride is completed.

The bill provides that during the ride-acceptance period, the TNC insurance must provide:

- Liability coverage of at least $1 million for death, bodily injury, and property damage.
- Uninsured and underinsured motorist coverage of at least $1 million.
- Personal injury protection.

- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

The "on-call" period is the period of time when a driver is using the application to find passengers but has not accepted a ride request. During the on-call period, the TNC company insurance must provide:

- Liability coverage for death and bodily injury of at least $125,000 per person and $250,000 per incident.
- Liability coverage for property damage of at least $50,000.
- Uninsured and underinsured motorist coverage of at least $250,000.
- Personal injury protection.
- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

The bill provides that its coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both.

The bill also requires written notifications to drivers and lessors relating to insurance for TNC activities and short-term rentals, requires that the insurer indemnify and defend its insured, and provides specific situations where a driver or lessor's personal policy is not required to provide coverage.

II. Present Situation:

Technological advances are resulting in new methods for consumers to arrange and pay for transportation and short-term rentals, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Some states and local governments have taken steps to recognize and regulate companies using these new technologies. Ridesharing companies describe themselves as "transportation network companies" (TNCs) and not vehicles for hire. Short-term rental companies, such as Airbnb, use the Internet or smartphone applications to connect potential hosts who wish to rent their homes or rooms in their homes with persons who desire short-term rentals.

Many homeowner policies exclude coverage when the home is used for business purposes. This exclusion could lead to situations in which homeowners who use their homes for short-term rentals are subject to liability claims without liability insurance. Companies are dealing with the issue in different ways. One company advertises an insurance product which replaces homeowner coverage and provides short-term rental coverage as well.[1] Another provides coverage as part of its agreement with clients as secondary coverage.[2] Some homeowner policies cover short-term rentals in some situations.[3]

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[1] *See* http://help.homeaway.com/articles/en_US/Article/Do-I-need-a-special-vacation-rental-insurance-policy-for-my-property? (last accessed March 19, 2015).
[2] *See* https://www.airbnb.com/host-protection-insurance (last accessed March 19, 2015).
[3] *See* http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html (last accessed March 19, 2015).

Ridesharing companies or transportation network companies use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs into a phone application that indicates the driver is ready to accept passengers. Potential passengers can log into the application, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

Drivers generally use their personal vehicles and most personal automobile policies contain a "livery" exclusion that provides there is no coverage if the vehicle is carrying passengers for hire.[4] Consequently, most personal automobile insurance policies do not cover any damages or losses when a car is being used for commercial ridesharing. Some ridesharing companies provide some insurance for portions of the time when the driver is operating the vehicle. For example, UberX advertises that its policy provides, "from the moment a driver accepts a trip to its conclusion," $1 million of liability per incident, that it provides $1 million of uninsured/underinsured motorist coverage per incident, and that it provides comprehensive and collision insurance if the ridesharing driver holds personal comprehensive and collision coverage on the vehicle.[5] Coverage provided by ridesharing companies is often secondary to a driver's personal insurance policy. This means that the ridesharing company policy provides coverage when the personal policy does not.

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[6]

III. Effect of Proposed Changes:

The bill creates insurance requirements for short-term rentals and transportation network companies.

Short-Term Rental Network Company Insurance

The bill defines the following terms:
- "Application" means an Internet-enabled application or platform owned or used by a short-term rental network company or any similar method of providing rental services to a participating renter.
- "Participating lessor" means a person who makes a short-term rental property available through an application to participating renters.
- "Participating renter" means a person who enters into a short-term rental arrangement through an application.
- "Short-term rental network company" means an entity for which participating lessors provide prearranged, short-term rentals for compensation using an application to connect a participating renter with a participating lessor.

[4] The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance" contained in s. 627.041, F.S.
[5] *See* http://blog.uber.com/ridesharinginsurance and http://blog.uber.com/uberXridesharinginsurance (last accessed March 16, 2015).
[6] *See* s. 324.032(1), F.S.

- "Short-term rental period" means the period beginning at the time the participating renter first uses or occupies the short-term rental property and ending at the time the participating renter vacates the short-term rental property.
- "Short-term rental property" means the entirety or any portion of a residential property, condominium, tenancy in common, apartment, or other rental unit located in this state which is owned or rented by a participating lessor.

The bill provides that, during the short-term rental period, a short-term rental network company must maintain short-term rental network company insurance that:
- Is primary.
- Insures the participating lessor against direct physical loss to the short-term rental property and its contents, exclusive of the property of the participating renter, with limits equal to any multi- or named-peril property insurance maintained by the participating lessor.
- Provides liability coverage for personal injury and property damage with limits of at least $1 million which covers the acts and omissions of the short-term rental network company, a participating lessor, and all persons using or occupying the short-term rental property.
- May not require as a prerequisite of coverage that another insurance policy first deny a claim.

The bill does not limit the liability of a short term rental network company arising out of the use or occupancy of a short-term rental property by a participating renter for an amount that exceeds the coverage limits.

The bill requires a short-term rental network company to provide written notice to a participating lessor relating to insurance coverage. The notice must:
- Inform the participating lessor of the insurance coverages and limits of liability that the short-term rental network company provides during the short-term rental period.
- Advise the participating lessor in writing that the participating lessor's personal insurance policy may not provide the insurance coverage required by the bill.

The bill requires an insurer that provides short-term rental network company insurance to defend and indemnify the insured.

The bill requires that, during the short-term rental period, the participating lessor's personal insurance policy for the short term rental property may not:
- Be required to provide primary or excess coverage.
- Provide any coverage to the participating lessor, the participating renter, or a third party unless the policy expressly provides for such coverage.
- Have any duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy expressly provides for such duties.

The bill provides that, before or after the short-term rental period, the participating lessor's personal policy for the short-term rental property may not provide coverage for claims arising from any rental arrangement entered into by a participating renter with the short-term rental company or the participating lessor for the short-term rental property or for acts and omissions related to the rental arrangement unless the policy provides for such coverage.

The bill requires a short-term rental network company or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the number and duration of all short-term rental periods made with respect to the short-term rental property for the 12 months preceding the date of loss.

Transportation Network Company Insurance

This bill defines a transportation network company as an entity for which drivers operating a vehicle in this state provide transportation services for compensation using an application to connect a passenger with a participating driver.

The bill creates requirements for TNC insurance.[7] The bill creates two time periods during which the TNC insurance must provide different coverages: a "ride-acceptance period" and an "on-call" period.

The bill defines "ride-acceptance period" as the period beginning at the time a driver accepts a ride request made through an application and ending at the time the driver completes the ride request on the application or the ride is completed, whichever is later. If the ride is not completed, the ride-acceptance period ends at the time the ride request is terminated by the driver or requester.

The bill provides that during the ride-acceptance period, the TNC insurance must provide:
- Liability coverage of at least $1 million for death, bodily injury, and property damage.
- Uninsured and underinsured motorist coverage of at least $1 million.
- Personal injury protection as required under s. 627.736, F.S.
- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

The bill defines the "on-call" period as the period:
- Beginning at the time the driver logs onto an application and ending at the time the driver accepts a ride request through the application; or
- Beginning at the time the driver completes a ride request on an application, or the ride is complete, whichever is later, or, if not completed, beginning at the time the ride request is terminated by the driver or requester, and ending at the time the driver accepts another ride request on the application or logs off the application.

During the on-call period, the TNC company insurance must provide:
- Liability coverage for death and bodily injury of at least $125,000 per person and $250,000 per incident.
- Liability coverage for property damage of at least $50,000.
- Uninsured and underinsured motorist coverage of at least $250,000.
- Personal injury protection as required under s. 627.736, F.S
- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

[7] The bill defines TNC insurance as "an insurance policy that expressly provides coverage for a participating driver's use of a motor vehicle in connection with an application."

The bill provides that its coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both. If the requirement is satisfied by a policy maintained by the driver, the TNC must verify that the insurance policy is specifically written to cover the driver's use of a motor vehicle in connection with an application. If a driver fails to continuously maintain the required insurance, the TNC must provide it. The TNC insurance policy may not require as a condition of coverage that coverage first be denied under another motor vehicle insurance policy.

The bill requires a participating driver to carry proof of TNC insurance coverage at all times during the use of a motor vehicle in connection with an application. If the participating driver is involved in an accident, the driver shall provide insurance coverage information to any party involved in the accident and to a police officer.

The bill requires a TNC to disclose in writing to a participating driver the insurance coverage and limits of liability the company provides when the driver uses a motor vehicle in connection with an application. The company shall advise the driver that the personal motor vehicle insurance policy of the driver may not provide the required insurance coverage.

The bill requires an insurer that provides TNC insurance to defend and indemnify the insured.

The bill provides that it cannot be construed to require a participating driver's personal motor vehicle insurance policy to provide primary or excess coverage during the on-call period or the ride-acceptance period. The personal motor vehicle insurance policy of the driver or motor vehicle owner may not, during the on-call period or ride-acceptance period, provide any coverage to the driver, motor vehicle owner, or a third party or have a duty to defend or indemnify the driver's activities in connection with the company unless the policy expressly provides otherwise.

The bill requires the TNC or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the date and time at which the accident occurred which involved a participating driver and the precise times that the driver logged on and off the application.

The bill provides that its provisions determine the minimum obligations of an insurance policy issued to a transportation network company and a participating driver using a motor vehicle in connection with an application notwithstanding any law regarding primary or excess policy coverage.

This bill takes effect July 1, 2015.

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 imposes insurance requirements on short-term rental companies and TNCs that do not currently exist in law. The cost of complying with such requirements is not known.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill takes effect July 1, 2015. It is not known if insurers will be able to offer the required policies by that date.

The bill could have the effect of requiring licensees pursuant to ch. 509, F.S., to obtain insurance.

The bill does not contain enforcement provisions if TNC companies do not comply with the insurance requirements.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 627.716 and 627.748.

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.

By Senator Simmons

10-00842A-15 20151298__

1 A bill to be entitled
2 An act relating to insurance for short-term rental and
3 transportation network companies; creating s. 627.716,
4 F.S.; defining terms; establishing insurance
5 requirements for short-term rental network companies
6 during certain timeframes; requiring a short-term
7 rental network company to make certain written
8 disclosures to participating lessors; requiring an
9 insurer to defend and indemnify an insured in this
10 state; prohibiting the personal insurance policy of a
11 participating lessor of a short-term rental property
12 from providing specified coverage during certain
13 timeframes except under specified circumstances;
14 requiring a short-term rental network company and its
15 insurer to cooperate with certain claims
16 investigations; providing that the section does not
17 limit the liability of a short-term rental network
18 company under specified circumstances; creating s.
19 627.748, F.S.; defining terms; establishing insurance
20 requirements for transportation network companies and
21 participating drivers during certain timeframes;
22 requiring a transportation network company to make
23 certain written disclosures to participating drivers;
24 requiring an insurer to defend and indemnify an
25 insured in this state; prohibiting the personal motor
26 vehicle insurance policy of a participating driver
27 from providing specified coverage during certain
28 timeframes except under specified circumstances;
29 requiring a transportation network company and its

10-00842A-15 20151298__

30 insurer to cooperate with certain claims
31 investigations; requiring participating drivers to
32 carry proof of insurance coverage; providing for
33 application of certain coverage requirements;
34 providing an effective date.
35
36 Be It Enacted by the Legislature of the State of Florida:
37
38 Section 1. Section 627.716, Florida Statutes, is created to
39 read:
40 627.716 Short-term rental network company insurance.—
41 (1) For purposes of this section, the term:
42 (a) “Application” means an Internet-enabled application or
43 platform owned or used by a short-term rental network company or
44 any similar method of providing rental services to a
45 participating renter.
46 (b) “Participating lessor” means a person who makes a
47 short-term rental property available through an application to
48 participating renters.
49 (c) “Participating renter” means a person who enters into a
50 short-term rental arrangement through an application.
51 (d) “Short-term rental network company” or “company” means
52 an organization, including, but not limited to, a corporation,
53 limited liability company, partnership, sole proprietorship, or
54 other entity for which participating lessors provide
55 prearranged, short-term rentals for compensation using an
56 application to connect a participating renter with a
57 participating lessor.
58 (e) “Short-term rental network company insurance” means an

insurance policy that expressly provides coverage as required by this section at all times during the short-term rental period.

(f) “Short-term rental period” means the period beginning at the time the participating renter first uses or occupies the short-term rental property and ending at the time the participating renter vacates the short-term rental property.

(g) “Short-term rental property” means the entirety or any portion of a residential property, condominium, tenancy in common, apartment, or other rental unit located in this state which is owned or rented by a participating lessor.

(2)(a) During the short-term rental period, a short-term rental network company shall maintain short-term rental network company insurance that is primary and that:

1. Insures the participating lessor against direct physical loss to the short-term rental property and its contents, exclusive of the property of the participating renter, with limits equal to any multi- or named-peril property insurance maintained by the participating lessor.

2. Provides liability coverage for personal injury and property damage with limits of at least $1 million which covers the acts and omissions of the short-term rental network company, a participating lessor, and all persons using or occupying the short-term rental property.

(b) Short-term rental network company insurance may not require as a prerequisite of coverage that another insurance policy first deny a claim.

(3) A short-term rental network company shall disclose in writing to a participating lessor the insurance coverages and limits of liability that the short-term rental network company

provides during the short-term rental period. The company shall advise the participating lessor in writing that the participating lessor’s personal insurance policy may not provide the insurance coverage required by subsection (2).

(4) An insurer that provides short-term rental network company insurance shall defend and indemnify in this state the insured in accordance with the policy’s provisions.

(5)(a) During the short-term rental period, the participating lessor’s personal insurance policy for the short-term rental property may not:

1. Be required to provide primary or excess coverage.

2. Provide any coverage to the participating lessor, the participating renter, or a third party unless the policy, with or without a separate charge, expressly provides for such coverage or contains an amendment or endorsement to provide such coverage.

3. Have any duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy, with or without a separate charge, expressly provides for such duties or contains an amendment or endorsement to provide for such duties.

(b) Before or after the short-term rental period, the participating lessor’s personal policy for the short-term rental property may not provide coverage for claims arising from any rental arrangement entered into by a participating renter with the short-term rental company or the participating lessor for the short-term rental property or for acts and omissions related to the rental arrangement unless the policy, with or without a separate charge, provides for such coverage or contains an

117 amendment or endorsement to provide such coverage.
118 (6) In a claims investigation, a short-term rental network
119 company or its insurer shall cooperate with other insurers to
120 facilitate the exchange of information, which must include the
121 number and duration of all short-term rental periods made with
122 respect to the short-term rental property for the 12 months
123 preceding the date of loss.
124 (7) This section does not limit the liability of a short-
125 term rental network company arising out of the use or occupancy
126 of short-term rental property by a participating renter for an
127 amount that exceeds the limits specified in subsection (2).
128 Section 2. Section 627.748, Florida Statutes, is created to
129 read:
130 627.748 Transportation network company insurance.—
131 (1) For purposes of this section, the term:
132 (a) “Application” means an Internet-enabled application or
133 platform owned or used by a transportation network company or
134 any similar method for providing transportation services to a
135 passenger.
136 (b) “On-call period” means the period beginning at the time
137 the driver:
138 1. Logs onto an application and ending at the time the
139 driver accepts a ride request through the application; or
140 2. Completes a ride request on an application, or the ride
141 is complete, whichever is later, or, if not completed, beginning
142 at the time the ride request is terminated by the driver or
143 requester, and ending at the time the driver accepts another
144 ride request on the application or logs off the application.
145 (c) “Participating driver” or “driver” means a person who

146 uses a motor vehicle in connection with an application to
147 connect with a passenger.
148 (d) ”Ride-acceptance period” means the period beginning at
149 the time a driver accepts a ride request made through an
150 application and ending at the time the driver completes the ride
151 request on the application or the ride is completed, whichever
152 is later, or, if not completed, ending at the time the ride
153 request is terminated by the driver or requester.
154 (e) “Transportation network company” or “company” means an
155 organization, including, but not limited to, a corporation,
156 limited liability company, partnership, sole proprietorship, or
157 other entity for which drivers operating a vehicle in this state
158 provide transportation services for compensation using an
159 application to connect a passenger with a participating driver.
160 (f) “Transportation network company insurance” means an
161 insurance policy that expressly provides coverage for a
162 participating driver’s use of a motor vehicle in connection with
163 an application.
164 (2)(a) During the ride-acceptance period, transportation
165 network company insurance must provide:
166 1. Liability coverage of at least $1 million for death,
167 bodily injury, and property damage.
168 2. Uninsured and underinsured motorist coverage of at least
169 $1 million.
170 3. Personal injury protection as required under s. 627.736.
171 4. Physical damage coverage, including collision or
172 comprehensive physical damage coverage, if the driver carries
173 such coverage on his or her personal motor vehicle insurance
174 policy.

175 (b) During the on-call period, transportation network
176 company insurance must provide:
177 1. Liability coverage for death and bodily injury of at
178 least $125,000 per person and $250,000 per incident.
179 2. Liability coverage for property damage of at least
180 $50,000.
181 3. Uninsured and underinsured motorist coverage of at least
182 $250,000.
183 4. Personal injury protection as required under s. 627.736.
184 5. Physical damage coverage, including collision or
185 comprehensive physical damage coverage, if the driver carries
186 such coverage on his or her personal motor vehicle insurance
187 policy.
188 (c) The coverage requirements of this subsection may be
189 satisfied by transportation network company insurance maintained
190 by a driver, by a company, or, in combination, by both. If the
191 requirement is satisfied by a policy maintained by the driver,
192 the company shall verify that the insurance policy is
193 specifically written to cover the driver's use of a motor
194 vehicle in connection with an application. If a driver fails to
195 continuously maintain the transportation network company
196 insurance required by this subsection, the transportation
197 network company shall provide such insurance.
198 (d) A transportation network company insurance policy may
199 not require as a prerequisite of coverage that another motor
200 vehicle insurance policy first deny a claim.
201 (3) A transportation network company shall disclose in
202 writing to a participating driver the insurance coverage and
203 limits of liability the company provides when the driver uses a

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

204 motor vehicle in connection with an application. The company
205 shall advise the driver that the personal motor vehicle
206 insurance policy of the driver may not provide the insurance
207 coverage required under subsection (2), except as provided in
208 subsection (5).
209 (4) An insurer that provides transportation network company
210 insurance shall defend and indemnify in this state the insured
211 in accordance with the policy's provisions.
212 (5)(a) This section may not be construed to require that a
213 participating driver's personal motor vehicle insurance policy
214 provide primary or excess coverage during the on-call period or
215 the ride-acceptance period.
216 (b) Unless the policy expressly provides otherwise, with or
217 without a separate charge, or the policy contains an amendment
218 or endorsement to provide such coverage, for which a separately
219 stated premium is charged, the personal motor vehicle insurance
220 policy of the driver or motor vehicle owner may not, during the
221 on-call period or ride-acceptance period, provide any coverage
222 to the driver, motor vehicle owner, or a third party or have a
223 duty to defend or indemnify the driver's activities in
224 connection with the company.
225 (6) In a claims investigation, a transportation network
226 company or its insurer shall cooperate with other insurers to
227 facilitate the exchange of information, which must include the
228 date and time at which the accident occurred which involved a
229 participating driver and the precise times that the driver
230 logged on and off the application.
231 (7) A participating driver shall carry proof of
232 transportation network company insurance coverage at all times

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

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233 during his or her use of a motor vehicle in connection with an
234 application. In the event of an accident, a driver shall, upon
235 request, provide insurance coverage information to any party
236 involved in the accident and to a police officer.
237 (8) Notwithstanding any law regarding primary or excess
238 policy coverage, this section determines the minimum obligations
239 of an insurance policy issued to a transportation network
240 company and a participating driver using a motor vehicle in
241 connection with an application.
242 Section 3. This act shall take effect July 1, 2015.
243

1298

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 3, 2015

I respectfully request that **Senate Bill 1298**, relating to Insurance for Short-term Rental and Transportation Network Companies, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

W

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Ride share insurance

Name: Paul Lowell

Job Title: Public Affairs Director, Foley & Lardner

Address: 106 E. College Ave, Suite 900
Street

Tallahassee | FL | 32301
City | State | Zip

Phone: 850-222-6100

Email: plowell@foley.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing: Lyft

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Gerald Wester

Job Title

Address 101 E College
Street

Tallahassee — Fl — 32301
City — State — Zip

Phone 850 222 9075

Email GWester@capcitycons[ult].com

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

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

Representing American Insurance Association

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Insurance for Short term Rental

Name Richard Turner

Job Title General Counsel

Address 230 S. Adams
Street

Tallahassee FL 32309
City State Zip

Phone 850.879.2646

Email RTurner@FRLA.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Restaurant & Lodging Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: TNC SB 1298

Name: Logan McFaddin

Job Title: PCI Regional Manager

Address: 215 S. Monroe
Street

Phone:

City *State* *Zip*

Email:

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

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

Representing: Property Casualty Assoc. of America

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Transportation Network Companies

Name: Roger Chapin

Job Title: VP

Address: 324 W. Gore St.
Street

Orlando, FL 32804
City State Zip

Phone

Email

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

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

Representing: Mears Transportation Group

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: TNC Insurance

Name: Cesar Fernandez

Job Title: Public Policy Associate

Address: 701 Mirror Lake Dr N #316
Street

St. Petersburg, FL 33701
City, State, Zip

Phone: 786-262-6092

Email: Fernandez@uber.com

Speaking: [ ] For [✓] Against [ ] Information

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

Representing: Uber Technologies

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-23-2015
Meeting Date

SB 1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Insurance for Transp. Network Companies

Name: Floyd Webb

Job Title: General Manager - Yellow Cab Tallahassee 350-2001

Address: 3941 W. Pensacola St.
Street

Tallahassee, Fl 32304
City State Zip

Phone: 850-999-9999

Email: FWebb@TallahasseeYellowCab.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing: vehicle for hire industry - self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: SB 1298 - Transportation Networks

Name: Douglas McAlarney

Job Title: Attorney

Address: 215 S. Monroe St Ste. 835
Street

Tallahassee FL 32301
City State Zip

Phone: (850) 597-7425

Email: doug.mcalarney@piff.net

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

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

Representing: Personal Insurance Federation of Florida

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: ______

Bill Number (if applicable): #1298

Amendment Barcode (if applicable): ______

Topic: TNC

Name: Brock Rosayn

Job Title: General Man.

Address: 1587 S.W. 4th Ave
Street

Delray Bch — FL — 33444
City — State — Zip

Phone: 561-702-9055

Email: ______

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

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

Representing: Metro Taxi of Palm Beach County

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

1298
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: TNC - Insurance/Insurance

Name: Louis Minardo

Job Title: President

Address: 4413 N. Hesperides St
Street

Tampa, Fl 33614
City, State, Zip

Phone: (813) 917-7946

Email: Louie@yellowcabofTampa.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing: Florida Taxicab Association

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

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

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

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

S-001 (10/14/14)

259754

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment**

2

3 Delete lines 10 - 27

4 and insert:

5 Section 1. Paragraph (e) is added to subsection (1) of

6 section 624.4625, Florida Statutes, present paragraph(e) of the

7 subsection is redesignated as paragraph (f), and paragraph (b)

8 and redesignated paragraph (f) of subsection (1) of section

9 624.4625, Florida Statutes, are amended to read:

10 624.4625 Corporation not for profit self-insurance funds.—

259754

11 (1) Notwithstanding any other provision of law, prior to
12 July 1, 2015, any two or more corporations not for profit
13 located in and organized under the laws of this state are
14 authorized to ~~may~~ form a self-insurance fund for the purpose of
15 pooling and spreading liabilities of its group members in any
16 one or combination of property or casualty risk, provided the
17 corporation not for profit self-insurance fund that is created:
18 (b) Requires for qualification that each participating
19 member receive at least 75 percent of its revenues from:
20 1. Local, state, or federal governmental sources or a
21 combination of such sources; or, in a separate account,~~.~~
22 2. The public as evidenced on the organization's most
23 recent Internal Revenue Service Form 990 or Form 990-EX and
24 Schedule A and is a publicly supported organization under s.
25 501(c)(3) of the Internal Revenue Code.
26 (e)1.a. A fund with participating members permitted under
27 subparagraph (b)2 shall only be authorized if the qualified
28 actuary specified in paragraph (d) has first certified that the
29 fund is able to establish and maintain total assets solely for
30 the account authorized in (b)2, in an amount at least equal to
31 or greater than the loss and loss adjustment expense reserves
32 for such assets at the 80 percent confidence level for the fund
33 authorized in (b)2. No fund shall be authorized to operate in
34 accordance with (b)2 until the actuarial certification required
35 under this paragraph is submitted to the Office.
36 b. A fund with participating members under subparagraph(b)1
37 which does not maintain loss or loss adjustment expense reserves
38 at the 80 percent confidence level as certified by a qualified
39 actuary, shall file with the office a remedial plan for

259754

40 increasing the reserves or otherwise addressing the financial
41 condition of the fund. Beginning on the date the remedial plan
42 is received by the Office, the fund shall, within five years
43 submit a filing with the Office, certified by a qualified
44 actuary permitted by (d) indicating that the fund has loss or
45 loss adjustment expense reserves at the 80 percent confidence
46 level. The remedial filing required by (b) shall be subject to a
47 determination by the office that the fund is operating on an
48 actuarially sound basis and does not pose a significant risk of
49 insolvency. The office may issue a cease and desist order to a
50 fund that maintains total assets in an amount less than the loss
51 and loss adjustment expense reserves at the 70 percent
52 confidence level as of the end of the fiscal year as determined
53 by the qualified actuary specified in paragraph (d).
54 2. A fund shall prohibit the inclusion of participating
55 members under subparagraph (b)2. until it is in compliance with
56 this subparagraph.
57 3. Notwithstanding subparagraph (e)1., the Office may at
58 any time order remedial action and issue a cease and desist
59 order to a fund if the Office finds that the fund is not
60 operating on an actuarially sound basis and poses a significant
61 risk of insolvency.
62 (f) ~~(e)~~ Maintains a continuing program of excess insurance
63 coverage and reserve evaluation to protect the financial
64 stability of the fund in an amount and manner determined by a
65 qualified actuary. At a minimum, this program must:
66 1. Purchase excess insurance from authorized insurance
67 carriers or eligible surplus lines insurers or reinsurers with a
68 rating of A- or better by a rating agency that is approved by

259754

69 the office.

70 2. Retain a per-loss occurrence that does not exceed

71 $350,000.

72

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 830

INTRODUCER: Banking and Insurance Committee and Senator Simmons

SUBJECT: Regulation of Corporation Not for Profit Self-insurance Funds

DATE: March 23, 2015 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.			CM	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 830 expands the types of entities that are eligible to be members of a corporation not for profit self-insurance fund (fund) authorized under s. 624.4625, F.S. In 2007, the Legislature authorized two or more not-for-profit corporations to create a self-insurance fund for purposes of pooling property or casualty insurance, if each member of the fund receives at least 75 percent of its revenue from governmental sources, and other conditions are met.[1] CS/SB 830 maintains this requirement but also allows publicly supported organizations, under section 501(c)(3) of the Internal Revenue Code, receiving at least 75 percent of their support from the public to be members of the fund if the fund meets certain solvency requirements. The bill also establishes solvency requirements for the fund relating to the existing account of nonprofit members. The fund is required to obtain actuarial certification regarding the financial solvency of the existing nonprofit members account and the new publicly supported members account and submit remedial plans, if applicable, to the Office of Insurance Regulation (OIR). The OIR is authorized to order remedial action if the fund is not operating on an actuarially sound basis.

II. Present Situation:

Regulation of Self-Insurance Funds

The Office of Insurance Regulation (OIR) regulates the activities of insurers and other risk-

[1] Section 14, chapter 2007-1, Laws of Florida.

bearing entities.[2] As an alternative to obtaining insurance from a licensed insurance company, the current law allows certain persons to form and obtain insurance coverage from a self-insurance fund. Generally, the members of a self-insurance fund assume the risk of loss among themselves, rather than transferring the risk to an insurance company.[3]
Section 624.4625, F.S., provides that two or more not-for-profit corporations[4] located and organized under Florida law may form a self-insurance fund. The purpose of the self-insurance fund must be to pool and spread the property and casualty liabilities of group members. The fund must meet a number of requirements including that it:

- Has annual normal premiums in excess of $5 million;
- Has only members who receive at least 75 percent of its revenues from local, state, or federal governmental sources;
- Uses a qualified actuary to determine actuarially sound rates and adequate reserves and submits annual certifications to the OIR;
- Maintains excess insurance coverage; and
- Submits an annual audited financial report to the OIR.

A corporation not for profit self-insurance fund that meets the requirements of this section is not an insurer for purposes of participation in or coverage by any guaranty association established under ch. 631, F.S. Further, such a self-insurance fund is not subject to s. 624.4621, F.S., and is not required to file any report with the Department of Financial Services under s. 440.38(2)(b), F.S., that is uniquely required of group self-insurer funds qualified under s. 624.4621, F.S.

Florida Insurance Trust

The Florida Insurance Trust (FIT) is a corporation not for profit self-insurance fund created in 2007. Currently, the FIT has approximately 175 participating non-profit social service entities.[5] According to representatives of the FIT, the existing statutes provide for a potential field of membership of 9,000, of which only 175 are currently members. The FIT provides property, general liability, professional liability, employment practice liability, workers compensation, health insurance, and commercial automobile coverage to its members.

The FIT is required to ensure that all members are eligible pursuant to s. 624.4625, F.S. Any potential member is required to submit a notarized certification, signed by an officer of the member that at least 75 percent of funding comes from governmental sources as required under

---

[2] Section 20.121(3)(a)1., F.S.
[3] The Commercial Self-Insurance Fund Act (ss. 624.460-624.488, F.S.), authorizes certain groups and associations to form a commercial self-insurance fund, subject to the approval of OIR. Under s. 624.4621, F.S., two or more employers may pool their workers' compensation liabilities and form a self-insurance fund for workers' compensation purposes, referred to as a group self-insurance fund. Such funds must comply with administrative rules adopted by the Financial Services Commission. Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent non-profit colleges or universities may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under the workers' compensation law.
[4] Section 617.1803, F.S., defines the term, "corporation not for profit" to mean a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.
[5] Florida Insurance Trust, *Florida Insurance Trust Current Membership Overview* (February 27, 2015) (on file with the Senate Committee on Banking and Insurance).

s. 624.4625, F.S. Each member must submit Form 990 for review and, if necessary, audited financial statements to confirm compliance with eligibility requirements. [6] Recently, during an OIR inquiry into the eligibility determination process of the FIT, the FIT noted that four entities did not meet statutory eligibility requirements.[7] According to the OIR, the FIT represented that these accounts have been nonrenewed. Based on the results of its inquiry, the OIR does not have any objections to the manner in which the FIT reviews eligibility. The OIR determined that none of the entities brought to its attention, except for the four entities referenced above, were ineligible for membership.

In the event premiums are inadequate, the trustees of the FIT, or an agency or court of competent jurisdiction may assess members of the FIT for payment of the obligations of the FIT as necessary based proportionately on premiums earned from each member. If one or more members fail to pay the assessment, the other members are liable on a proportionate basis for an additional assessment.

Section 501(c)(3) Tax Exempt Organizations

Organizations described in section 501(c)(3) of the Internal Revenue Code are commonly referred to as charitable organizations. To qualify as exempt from federal income tax, an organization must meet requirements set forth in the Internal Revenue Code and apply for recognition of an exemption. For section 501(c)(3) organizations, the law provides only limited exceptions to this requirement. Applying for recognition of an exemption results in formal IRS recognition of an organization's status, and may be preferable for that reason. To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes[8] set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual.[9]

Generally, exempt organizations, other than private foundations, that are described in section 501(c)(3) must file their annual information returns on Form 990 or 990-EZ, unless excepted from filing and must also complete Schedule A. Schedule A is used to report and substantiate information about an organization's public charity status and public support.

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[6] Office of Insurance Regulation letter to the Florida Insurance Trust (July 25, 2014) (on file with the Senate Banking and Insurance Committee).

[7] *Id*.

[8] The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. *See* http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Purposes-Internal-Revenue-Code-Section-501(c)(3) (last visited February 28, 2015).

[9] *See* Internal Revenue Service, *Frequently Asked Questions about Applying for Tax Exemption* accessible at: http://www.irs.gov/Charities-&-Non-Profits/Frequently-Asked-Questions-About-Applying-for-Tax-Exemption (last visited February 28, 2015).

III. Effect of Proposed Changes:

Section 1. CS/SB 830 expands the types of entities that are eligible to be members of a corporation not-for-profit self-insurance fund authorized under s. 624.4625, F.S. Currently, two or more not-for-profit corporations may create a self-insurance fund for purposes of pooling property or casualty insurance, if each member of the fund receives at least 75 percent of its revenue from governmental sources, and other conditions are met.[10]

CS/SB 830 maintains this requirement and allows a publicly supported organization under section 501(c)(3) of the Internal Revenue that receive at least 75 percent of its support from a governmental unit or the public to be a member in a separate account if the fund meets certain solvency requirements. The bill limits the provisions of this section to funds authorized prior to July 1, 2015. The eligibility of the publicly supported organizations would be evidenced on the most recent Internal Revenue Service Form 990 or Form 990EZ and Schedule A.

A fund with participating members comprised of publicly supported organizations, as provided under the bill, would only be authorized if a qualified actuary had certified that the fund is able to establish and maintain total assets solely for the publicly supported organizations in an amount at least equal to or greater than the loss and loss adjustment expense reserves for such assets at the 80 percent confidence level for the fund. A fund with such participating members is not authorized to operate until the actuarial certification is submitted to the OIR. The bill prohibits a fund from including participating members comprised of publicly supported organizations into the new account until the fund is compliant with the solvency requirements.

A fund with participating members comprised of the existing nonprofit members that does not maintain a loss or loss adjustment expense reserves at least equal to or greater than 80 percent confidence level, as certified by a qualified actuary, is required to file a remedial plan with the OIR. Once the remedial plan is filed, the fund would have 5 years to submit a remedial filing with the OIR, certified by a qualified actuary indicating that the fund has a loss or loss adjustment expense reserves at the 80 percent confidence level. This remedial filing would be subject to a determination by the OIR that the fund is operating at an actuarially sound basis and does not pose a significant risk of insolvency. The OIR is authorized to issue a cease and desist order to a fund that maintains total assets in an amount less than the loss and loss adjustment expense reserves at the 70 percent confidence level as of the end of the fiscal year.

Further, the OIR is authorized to order remedial action and to issue a cease and desist order to a fund if the OIR finds that the fund is not operating on an actuarially sound basis and poses a significant risk of insolvency.

The bill would take effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[10] Section 14, chapter 2007-1, Laws of Florida.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate. Premiums, contributions, and assessments received by a corporation not for profit self-insurance fund are subject to the premium tax, like insurers, except that the tax rate is 1.6 percent (instead of 1.75 percent) of the gross amount of such premiums, contribution, and assessments.

B. Private Sector Impact:

The bill would allow public support organizations that are 501(c)(3) entities and receive 75 percent of their support from public sources to become members of a corporation not for profit self-insurance fund organized under s. 624.4625, F.S. By allowing such entities to self-insure as a group, in lieu of obtaining insurance from the private market, such corporations may realize a savings on insurance premiums, assuming the fund has lower expenses than private insurers or more favorable loss experience than insured plans.

According to representatives of the Florida Insurance Trust (FIT), SB 830 would allow additional classes of business including Goodwill Industries, Boys & Girls Clubs, food banks, rescue missions (homeless shelters), Salvation Army, Big Brothers Big Sisters, and YMCAs to become members. FIT estimates that the bill would increase the number of additional eligible entities by 125 to 150 entities. The FIT asserts that there are a finite number of entities for each of these classes in Florida (9 Goodwill Industries, 41 Boys & Girls Clubs, and 24 YMCAs) that would become members.

The bill provides additional solvency requirements for the fund and separate accounts for existing members and new members authorized under the bill, thereby providing protections for existing and future members of the fund. Currently, the fund must submit annual actuarial certifications on the rates and reserves and audited financial statements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.4625 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance Committee on March 23, 2015:
The CS requires a corporation not for profit self-insurance fund to meet solvency criteria before adding publicly supported organizations under 501(c)(3) of the Internal Revenue Code as members. The bill also requires such funds to meet additional solvency requirements for their existing nonprofit members within 5 years.

B. Amendments:

None.

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

By Senator Simmons

10-00263B-15 2015830__

1 A bill to be entitled
2 An act relating to the regulation of corporation not
3 for profit self-insurance funds; amending s. 624.4625,
4 F.S.; revising the requirements for a participating
5 member of a corporation not for profit self-insurance
6 fund; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (b) of subsection (1) of section
11 624.4625, Florida Statutes, is amended to read:
12 624.4625 Corporation not for profit self-insurance funds.—
13 (1) Notwithstanding any other provision of law, any two or
14 more corporations not for profit located in and organized under
15 the laws of this state may form a self-insurance fund for the
16 purpose of pooling and spreading liabilities of its group
17 members in any one or combination of property or casualty risk,
18 provided the corporation not for profit self-insurance fund that
19 is created:
20 (b) Requires for qualification that each participating
21 member receive at least 75 percent of its revenues from local,
22 state, or federal governmental sources or a combination of such
23 sources or be a publicly supported organization under s.
24 501(c)(3), which receives at least 75 percent of its support
25 from a governmental unit or the public as evidenced on the
26 organization’s most recent Internal Revenue Service Form 990 or
27 Form 990-EZ and Schedule A.
28 Section 2. This act shall take effect July 1, 2015.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

830
Bill Number (if applicable)

259754
Amendment Barcode (if applicable)

Topic ______

Name Paul Sanford

Job Title ______

Address 106 S. Monroe St
Street

Tallahassee FL 32301
City State Zip

Phone ______

Email [illegible]@aol.com

Speaking: ☐ For ☐ Against ☑ Information

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

Representing Florida [illegible] Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/15
Meeting Date

830
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Non-Profit Insurance Regulation

Name: Chris Carmody

Job Title: Attorney

Address: 301 E. Pine St., Suite 1400
Street

Orlando, FL 32801
City, State, Zip

Phone: 352-514-2196

Email: chris.carmody@gray-robinson.com

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

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

Can answer questions if needed.

Representing:

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.

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 23, 2015

The Honorable Lizbeth Benacquisto, Chair
The Committee on Banking and Insurance
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bencquisto,

I respectfully ask to be excused from the Banking and Insurance Committee meeting scheduled for March 23rd, 2015 at 1:30 p.m.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant

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*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Banking and Insurance Committee **Judge:**

Started: 3/23/2015 1:33:30 PM
Ends: 3/23/2015 3:22:19 PM Length: 01:48:50

1:33:39 PM Meeting called to order by Chair
1:33:51 PM Roll call -- quorum present
1:34:27 PM TAB 7 SB 1064 by Hukill
1:35:10 PM Amd. 396478 by Hukill -- explanation of amendment
1:38:04 PM John Lavender
1:39:34 PM Lee Jacobson
1:43:10 PM Michael Carlson, Executive Director, Personal Insurance Federation of FL
1:47:01 PM Senator Steve Geller
1:48:02 PM Senator Hukill recognized to explain amended bill
1:56:00 PM Mark Berger
1:57:38 PM Scott Johnson
2:01:19 PM Andrew Gorman, Attorney
2:03:56 PM Terry Perkins, Retired
2:06:39 PM Greg Noland
2:08:37 PM Carol Dornan, Homeowner
2:09:37 PM Steve Fortier, Nolands Roofing
2:12:42 PM Bobby Swindle, West Orange Roofing, Inc.
2:16:14 PM Jephde Arce, Sr. Project Manager
2:19:42 PM Crystal Pintrston, Accident Cleaners
2:22:28 PM David Sweet- Tampa
2:23:38 PM Richie Kidwell, Air Quality Assessors
2:26:03 PM William Ryan - Rytech
2:28:54 PM Ted Nelson, Natonal Water
2:31:02 PM Jon Lavender
2:33:18 PM Mark Delegal, State Farm FL Insurance Company
2:33:44 PM Gary Farmer, Consumer
2:34:50 PM Paul Handerhan, FL Association for Insurance Reform
2:36:06 PM Jeff Grant, Bone Dry Restoration and Cleaning, Inc.
2:37:17 PM Senator Detert recognized for comments to bill
2:38:05 PM Senator Hukill recognized to close on bill
2:38:58 PM Roll call on CS/SB 1064 -- Favorable
2:39:33 PM TAB 1 - Sen Dean - Volunteer Firefighting
2:39:56 PM Delete all amendment (679442) Explanation of amendment by Sen. Dean -- fwo/adopted
2:40:43 PM Edward Fessenden, Jr.
2:41:59 PM Roll call on CS/SB 244 -- Favorable
2:42:32 PM TAB 4 - SB 1314 -- Electronic Noticing of Trust Accounts
2:43:08 PM Senator Bradley recognized to explain the bill
2:43:33 PM Amd. 203012 -- fwo/adopted
2:44:10 PM Roll call on CS/SB 1314 -- Favorable
2:45:15 PM TAB 3 - SB 1006 - Depop of Citizens
2:45:36 PM Senator Flores recognized to explain the bill
2:48:49 PM Explanation of Substitute Amendment by Senator Flores
2:50:03 PM Corey Mathews, Professional Insurance Agents of FL
2:51:01 PM Substitute Amd. (259236) fwo
2:51:34 PM Christine Ashburn, Citizens Property Ins. Corp.
2:51:58 PM Christian Cauara, R. Street Institute
2:53:11 PM Carolyn Johnson, FL Chamber of Commerce
3:00:31 PM Senator Flores recognized to close on bill
3:01:31 PM Roll call on CS/SB 1006 - Favorable
3:02:12 PM TAB 6 SB 968 - Employee Health Care Plans
3:02:29 PM Explanatoin of bill by Senator Detert
3:03:09 PM Amd. 195386 by Sen. Detert -fwo/adopted

3:03:57 PM Roll call on CS/SB 968 - Favorable
3:04:39 PM TAB 2 - SB 860 - Pharmacy
3:04:56 PM Explanation of bill by Senator Garcia
3:05:08 PM Delete all amd. (299520) - fwo
3:06:55 PM Rollcall on CS/SB 860 - favorable
3:08:15 PM TAB 8 - SB 1298 - Insurance for Short Term Rentals
3:08:42 PM Explanation of bill by Sen. Simmons
3:10:22 PM Roger Chapin, Mears Transportation
3:11:22 PM Cesar Fernandez, Uber Technologies
3:12:46 PM Floyd Webb--Yellow Cab Tallahassee
3:14:03 PM Brock Rosayn, Metro Taxi of Palm Beach County
3:15:09 PM Louis Minarde, FL Taxicab Association
3:16:13 PM Roll call on SB 1298 - Favorable
3:16:44 PM TAB 9 - SB 830 - Reg. of Corporation Not for Profit Self-Insurance Funds
3:17:09 PM Explanation of bill by Senator Simmons
3:19:40 PM Amd. 259754 by Sen. Simmons - fwo
3:20:47 PM Roll call on CS/SB 830 - Favorable
3:21:24 PM TAB 5 - SB 1088 -- Motion to tp
3:22:07 PM Meeting adjourned