Tab 1	**SB 390** by **Wright**; (Compare to H 01155) Prescription Drug Coverage

536256	A	S	BI, Rouson	Delete L.294 - 301:	03/15 08:21 AM
580820	A	S	BI, Rouson	Delete L.393 - 397:	03/15 08:22 AM

Tab 2	**SB 566** by **Perry**; (Similar to H 00365) Motor Vehicle Rentals

751844	D	S	BI, Gibson	Delete everything after	03/15 09:34 AM

Tab 3	**CS/SB 1288** by **JU, Boyd**; (Identical to CS/H 06077) Assets of an Estate in Administration

Tab 4	**SB 1470** by **Boyd**; (Similar to H 00797) Florida Life and Health Insurance Guaranty Association

Tab 5	**SB 1478** by **Gibson**; (Compare to CS/H 00895) Consumer Finance Loans

657704	A	S L	BI, Brandes	Delete L.972 - 980:	03/15 10:06 AM
306134	A	S L	BI, Brandes	Delete L.1117 - 1118:	03/15 10:06 AM

Tab 6	**SB 1574** by **Brandes**; Citizens Property Insurance Corporation

621180	A	S L	BI, Brandes	btw L.395 - 396:	03/15 09:48 AM

Tab 7	**SB 1598** by **Gruters**; (Similar to CS/H 00717) Consumer Protection

Tab 8	**SB 1758** by **Brandes**; (Identical to H 01351) Money Services Businesses

Tab 9	**SB 1786** by **Burgess**; (Similar to H 01165) Payments for Birth-related Neurological Injuries

Tab 10	**SB 1950** by **Gruters**; (Similar to H 01641) Financial Institutions

590092	A	S	BI, Gruters	Delete L.190 - 559:	03/15 09:01 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, March 16, 2021
TIME: 9:30 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Boyd, Chair; Senator Broxson, Vice Chair; Senators Brandes, Burgess, Gruters, Passidomo, Rodrigues, Rouson, Stargel, Stewart, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**SB 390** Wright (Compare H 1155)	Prescription Drug Coverage; Authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; revising the definition of the term “maximum allowable cost”; authorizing the office to require health insurers to submit to the office certain contracts or contract amendments entered into with pharmacy benefit managers; requiring certain health benefit plans covering small employers to comply with certain provisions, etc. BI 03/16/2021 AEG AP	
2	**SB 566** Perry (Similar H 365, Compare H 785, S 708)	Motor Vehicle Rentals; Specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying the applicable rental car surcharge on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing an exemption from vicarious liability for peer-to-peer car-sharing programs and shared vehicle owners, etc. BI 03/16/2021 TR AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 1288** Judiciary / Boyd (Identical CS/H 6077)	Assets of an Estate in Administration; Deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state, etc. JU 03/09/2021 Fav/CS BI 03/16/2021 RC	
4	**SB 1470** Boyd (Similar H 797)	Florida Life and Health Insurance Guaranty Association; Defining the term “Moody’s Corporate Bond Yield Average”; authorizing the association to assume or reissue covered policies of impaired insurers; granting the association the right to appear or intervene before a court or an agency in certain proceedings; revising the calculation of Class A assessments; specifying requirements for repayment of deferred assessments upon removal or rectification of the conditions causing a deferral, etc. BI 03/16/2021 AEG AP	
5	**SB 1478** Gibson (Identical CS/H 895)	Consumer Finance Loans; Prohibiting a person licensed to make and collect loans under the Florida Consumer Finance Act from charging prepayment penalties for loans; providing requirements for loan terms, etc. BI 03/16/2021 CM RC	
6	**SB 1574** Brandes	Citizens Property Insurance Corporation; Revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; specifying a limit for agent commission rates; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; authorizing information from underwriting files and confidential claims files to be released by the corporation to specified entities considering writing or underwriting risks insured by the corporation under certain circumstances, etc. BI 03/16/2021 AEG AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1598** Gruters (Similar CS/H 717, Compare H 471, CS/CS/S 76, S 344)	Consumer Protection; Prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; authorizing the department to disapprove the use of insurance agency names containing the words “Medicare” or “Medicaid”; revising the timeframes in which an insured or a claimant may cancel a public adjuster’s contract to adjust a claim without penalty or obligation; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; providing that a communication made to or by an insurer’s representative, rather than to or by an insurer’s agent, constitutes communication to or by the insurer; revising information contained in the Homeowner Claims Bill of Rights, etc. BI 03/16/2021 AEG AP	
8	**SB 1758** Brandes (Identical H 1351)	Money Services Businesses; Revising exceptions for a licensee during the Financial Technology Sandbox period; revising and providing definitions; prohibiting certain activities by a person without obtaining a license; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments, etc. BI 03/16/2021 CM RC	
9	**SB 1786** Burgess (Similar H 1165)	Payments for Birth-related Neurological Injuries; Increasing the amount that may be awarded to the parents or legal guardians of an infant found to have sustained a birth-related neurological injury; requiring that such amount be revised annually; providing for retroactive application, etc. BI 03/16/2021 HP AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 1950** Gruters (Similar H 1641)	Financial Institutions; Providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; revising the interval for the Office of Financial Regulation to conduct certain examinations; authorizing the Commissioner of the Office of Financial Regulation to delay examinations of financial institutions under certain circumstances; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; revising the type of institution with which certain family trust companies are required to maintain a deposit account, etc. BI 03/16/2021 JU RC	

Other Related Meeting Documents

2020 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 390
INTRODUCER:	Senator Wright
SUBJECT:	Prescription Drug Coverage
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 390 revises provisions of the Florida Insurance Code (code) relating to the oversight of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR). Specifically, the bill:

- Authorizes OIR to conduct market conduction examinations of PBMs to determine compliance with applicable provisions of the code;
- Revises the definition of the term, "maximum allowable cost," which is the per-unit amount that a PBM reimburses a pharmacist for a prescription drug, to specify applicability to generic drugs, brand-name drugs, biological drugs, and specialty drugs and reimbursement pricing references;
- Requires a health insurer or Health Maintenance Organizations (HMO), and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions;
- Provides that a health insurer or HMO may only contract with a PBM that complies with specified statutory requirements;
- Authorizes an audited pharmacy to appeal certain pharmacy audit findings made by health insurers or HMO;
- Clarifies that an insurer or HMO remains responsible for any violations of the pharmacy audit requirements and the prompt pay law by a PBM acting on its behalf; and
- Authorizes the OIR to review an insurer or HMO's contract with a PBM, and to order the cancellation of the contract under certain conditions. Currently, the OIR has the authority to cancel certain contracts of HMOs under the conditions specified in the bill.

The Office of Insurance Regulation estimates that it will incur a negative fiscal impact, ranging from $100,000 to $200,000, to contract with a pharmacist to provide oversight of PBM market conduct examinations and respond to complaints involving pharmacy audits.

The Division of State Group Insurance program may incur an indeterminate negative fiscal impact associated with the administrative costs associated with any market conduct examination of its PBM by the OIR, to the extent such examination occurs and such costs are passed down to participants of the program.

The bill takes effect July 1, 2021.

II. Present Situation:

In 2019, total US health care spending increased 4.6 percent from the prior year to reach $2.8 trillion or $11,482 per person.[1] Over the past 20 years, US drug spending has increased by 330 percent compared with a 208 percent increase in total US health expenditures.[2]

The Prescription Drug Supply Chain

In recent years, the affordability of prescription drugs has gained attention, resulting in PBMs and drug manufacturers coming under scrutiny as policymakers have attempted to understand their role in the drug supply chain. Many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved with, and pay different prices for, prescription drugs as they move from the drug manufacturer to the insured.

Due to a lack of transparency in the marketplace, it can be difficult to determine the final price of a prescription drug. The final price of a drug may include rebates and discounts to insurers, HMOs, or pharmacy benefit managers that are not disclosed. [3] Market participants, such as drug wholesalers, may add their own markups and fees, and drug manufacturers may offer direct consumer discounts, such as prescription drug coupons that can be redeemed when filling a particular prescription at a pharmacy.[4]

Some independent pharmacies may contract with pharmacy services administrative organizations (PSAO) to interact on their behalf with other stakeholders, such as drug wholesalers and third-party payers, such as large private and public health plans and their PBMs.[5] The PSAOs develop networks of pharmacies by signing contractual agreements with each pharmacy that authorizes them to negotiate with third-party payers on the pharmacy's behalf. Drug wholesalers and independent pharmacy cooperatives owned the majority of PSAOs in operation in 2011 or 2012.[6] Health insurers, HMOs, or self-insured employers may contract with PBMs to manage their

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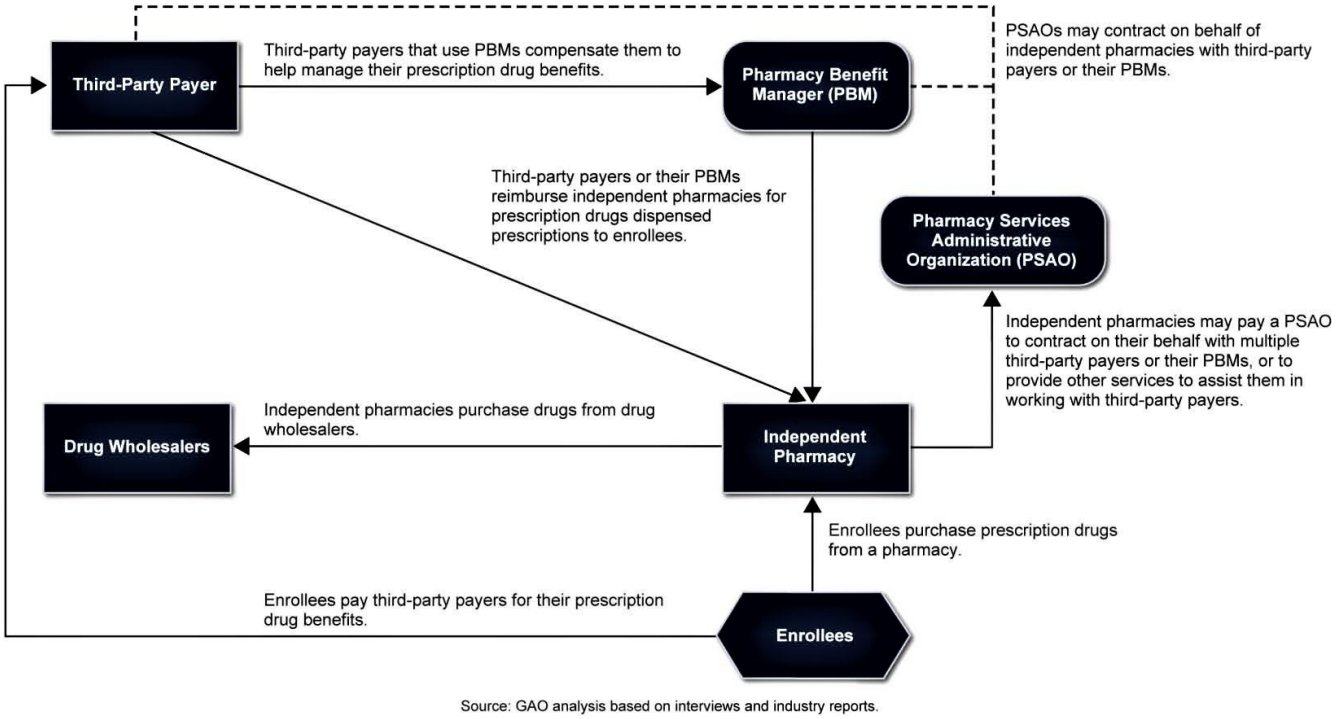
[1] Centers for Medicare and Medicaid Services, *National Health Expenditure 2019 Highlights,* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical (last visited Feb. 23, 2021).
[2] Kirzinger, A., et. al., for the Kaiser Family Foundation. *US Public's Perspective on Prescription Drug Costs*. *JAMA.* 2019;322(15):1440. doi:10.1001/jama.2019.15547, https://jamanetwork.com/journals/jama/fullarticle/2752910 (last visited Feb. 21, 2021).
[3] *Annu. Rev. Public Health. 1999. 20:361–401.*
[4] Reynolds, Ian, *et. al., The Prescription Drug Landscape, Explored (Mar. 2019).* The Pew Charitable Trusts.
[5] General Accounting Office, *The Number, Role, and Ownership of Pharmacy Services Administrative Organizations* (GAO-13-176) (Feb 28, 2013), https://www.gao.gov/products/GAO-13-176 (last visited Jan. 21, 2021).
[6] *Id.*

prescription drug benefits. The interaction among key entities involved in the distribution and payment of prescription drugs is depicted below:[7]



Source: GAO analysis based on interviews and industry reports.

A Study of 15 Large Employer Plans[8]

In response to concerns about rising drug costs, a recent study evaluated drug utilization from plan sponsors to estimate savings from reducing the use of high cost, low-value drugs and described some of the cost concerns and challenges relating to the drug supply chain, as follows:

> PBMs negotiate with pharmaceutical manufacturers for price discounts, which are typically paid as rebates based on sales volumes driven by formulary placement. Rebates can reduce the final net price to the plan sponsor and may be passed on to patients. However, in exchange for low administration fees, plan sponsors allow PBMs to keep a portion of the negotiated rebates and other fees. Contracts between PBMs and plan sponsors contain rebate guarantees, perpetuating the demand for high-rebate drugs by encouraging PBMs to maximize rebate revenue, giving preference to some drugs over others on formularies based on rebate revenue rather than their value and final cost to the patient or plan sponsor. Additionally, PBMs earn revenue from "spread" pricing, which is the difference between what PBMs pay pharmacies on behalf of plan sponsors and what PBMs are reimbursed by the plan sponsor. This also encourages PBMs to prioritize higher-cost drugs to allow for a larger spread.

[7] *Id.*
[8] Vela, Lauren, *Reducing Wasteful Spending in Employers' Pharmacy Benefit Plans* (Aug. 2019) the Commonwealth Fund, https://www.commonwealthfund.org/publications/issue-briefs/2019/aug/reducing-wasteful-spending-employers-pharmacy-benefit-plans (last viewed Jan. 23, 2021).

The report further describes additional factors that may increase costs for employers and insureds:

> [P]lan sponsors often allow broad formularies that include wasteful drugs because they are concerned that employees will be disappointed if their prescribed drugs are not covered. Doctors prescribe these drugs because they are often unaware of drug costs. Pharmaceutical manufacturers contribute to these patterns by promoting their products through "detailers" — pharmaceutical salespeople calling on doctors — when less costly alternatives may be clinically appropriate for patients. Plan sponsors have addressed the resulting high spending by increasing patient cost-sharing on lower-value drugs. Manufacturers counteract cost-sharing and formulary management tools by flooding the market with copayment coupons that undermine the benefit structure put in place by plan sponsors.[9]

Pharmacy Benefit Managers

Many public and private employers and health plans contract with PBMs to help manage drug costs.[10] Some of the services provided by the PBMs include processing pharmacy claims; providing mail-order pharmacy services to their customers; negotiating rebates (discounts paid by a drug manufacturer to a PBM), developing pharmacy networks, creating drug formularies; reviewing drug utilization; and providing disease management.[11] Generally, a contract between a PBM and a health plan or an employer specifies the amount a plan or an employer will pay a PBM for brand name and generic drugs and specify certain savings guarantees.[12] A recent report found that PBMs passed through 78 percent of manufacturer rebates to health plans in 2012 and 91 percent in 2016.[13] For the same period, the report noted that manufacturer rebates grew from $39.7 billion to $89.5 billion, and played a growing role in partially offsetting increases in list prices, which the study noted have risen more quickly than overall retail prescription drug spending.[14]

In recent years, significant consolidations in the PBM industry have occurred. Further, many health insurers are acquiring PBMs. Many entities have cited reducing drug cost as a factor for many of the acquisitions.[15] In 2018, three PBMs processed about 75 percent of all equivalent prescription claims: CVS Health (including Caremark and Aetna), Express Scripts, and the

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[9] *Id.*
[10] Pharmacy Benefit Managers and Their Role in Drug Spending (Apr. 22. 2019), https://www.commonwealthfund.org/publications/explainer/2019/apr/pharmacy-benefit-managers-and-their-role-drug-spending (last viewed Feb. 1, 2021).
[11] *Supra* note 3.
[12] *Policy Options To Help Self-Insured Employers Improve PBM Contracting Efficiency*, Health Affairs Blog, (May 29, 2019). DOI: 10.1377/hblog20190529.43197.
[13] *Supra* note 4.
[14] *Id.*
[15] Barlas, Stephen, Vertical Integration Heats Up in Drug Industry: Will Medication Price Hikes Cool Down as a Result? *P & T: a peer-reviewed journal for formulary management* vol. 43,1 (2018): 31-39.

OptumRx business of UnitedHealth. [16] The following six PBMs handled more than 95 percent of the total U.S. equivalent prescription claims managed:

- CVS Caremark/Aetna, 30 percent;
- Express Scripts, 23 percent;
- OptumRx (UnitedHealth), 23 percent;
- Humana Pharmacy Solutions, 7 percent;
- Medimpact Healthcare Systems, 6 percent; and
- Prime Therapeutics, 6 percent.[17]

Reimbursement of Pharmacies by PBMs

Generally, the maximum allowable cost (MAC) price 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).[18] A PBM can maintain multiple MAC lists, each tied to the requirements of a particular employee benefit plan or other payer.[19] 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 profit margins, and other factors.[20] One of the goals 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.[21] 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.[22]

Retail Pharmacies

Independent pharmacies are a type of retail pharmacy with a physical store location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs.[23] Nationwide, the number of independent pharmacies in the United States continues to decline. In 2010, there were 23,106 independent pharmacies; by 2017, that number had dropped to 21,909.[24] Independent community pharmacies represented an estimated 35 percent of all community pharmacies nationwide in 2019, and comprised a $73.7 billion marketplace.[25]

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[16] Drug Channels, CVS, Express Scripts, and the Evolution of the PBM Business Model (May 29, 2019) at https://www.drugchannels.net/2019/05/cvs-express-scripts-and-evolution-of.html (last visited Jan. 10, 2021).
[17] *Id.*
[18] Academy of Managed Care Pharmacy, Maximum Allowable Cost (MAC) Pricing (May 22, 2019), https://www.amcp.org/policy-advocacy/policy-advocacy-focus-areas/where-we-stand-position-statements/maximum-allowable-cost-mac-pricing (last visited Feb. 5, 2021).
[19] Hyman, David, *The Unintended Consequences of Restrictions on the Use of Maximum Allowable Cost Programs ("MACs") for Pharmacy Reimbursement* (Apr. 2015), at https://www.pcmanet.org/wp-content/uploads/2016/08/hyman-mac-white-paper-april-2015.pdf (last visited Jan. 29, 2021)
[20] *Id.*
[21] *Supra* note 18.
[22] *Id.*
[23] *Supra* note 3. In the report, an independent pharmacy means a pharmacy having one to three pharmacies under common ownership.
[24] Arnold, Karen, *Independent Pharmacies: Not Dead Yet,* (Jan. 12, 2019, vol. 163, issue 1) Drug Topics, Voice of the Pharmacist, https://www.drugtopics.com/view/independent-pharmacies-not-dead-yet (last visited Feb. 28, 2021).
[25] APhA, *National Community Pharmacists Association Releases 2020 Digest Report* (Oct. 22, 2020), https://www.pharmacist.com/article/ncpa-releases-2020-digest-report (last visited Feb. 18, 2021).

The decision of employers, HMOs, or insurers to contract with PBMs may shift business away from smaller, local retail pharmacies that are also known as independent pharmacies. Historically, independent pharmacies were important health care providers in their communities and their pharmacists had long-term relationships with their patients.[26] However, many independent pharmacies have closed in recent years because of the competition resulting from the proliferation of large, chain retail pharmacies[27] that can negotiate with PBMs at deeply discounted reimbursement levels based on large volume sales.

Further, innovations and greater competition in the pharmacy marketplace are occurring. In 2018, Amazon acquiring PillPack, a mail-order pharmacy, which has pharmacy licenses in all 50 states.[28] Further, many digital pharmacies are entering the marketplace and focus on certain strategies, such as:

- Home delivery of individual prescriptions;
- Operating at least one brick-and mortar retail location (so that the pharmacy can remain in a PBM's network);
- Dispensing 30-day prescriptions, not 90-day maintenance prescriptions;
- Offering a mobile application so consumers can manage their account, order prescription refills, and schedule delivery; and
- Providing telehealth consultations with prescribers.[29]

Federal Oversight of Health Insurance

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law.[30] Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting medical conditions and without basing premiums on any health-related factors. [31] The PPACA imposes many other requirements on qualified health plans offered by individual and group plans, including required benefits, reporting of medical loss ratios, and internal and external appeals of adverse benefit determinations.[32]

Medical Loss Ratios, Rebates, and Spread Pricing

If an insurer or HMO spends less than 80 percent in the individual or small group market (85 percent in the large group market) of premium on medical care and efforts to improve the quality

[26] Independent pharmacies are a type of retail pharmacy with a store-based location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. See http://www.gao.gov/assets/660/651631.pdf (last visited Jan. 9, 2021).
[27] Such as Walmart, CVS, Walgreens, Publix or Kroger.
[28] Garcia, Ahiz, *Amazon rolls out "Amazon Pharmacy" branding to PillPack*, CNN Business (Nov. 15, 2019) at *https://www.cnn.com/2019/11/15/tech/amazon-pharmacy-pillpack/index.html* (last viewed Jan. 22, 2021).
[29] Drug Channels, *The Promise and Limits of Digital Pharmacies* (Feb. 16, 2021) at https://www.drugchannels.net/2021/02/the-promise-and-limits-of-digital.html (last viewed Feb. 5, 18, 2021).
[30] Pub. L. 111–148 was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The two laws are collectively referred to as the ''Patient Protection and Affordable Care Act.''
[31] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).
[32] *Id*.

of care, they must refund the portion of premium that exceeds this limit.[33] The 80 percent (or 85 percent) is the medical loss ratio (MLR). The PBMs must report rebate information to the health insurers and HMOs, and the insurer or HMO includes this information as a deduction from the amount of incurred claims in the MLR reporting to the Department of Health and Human Services (HHS).[34]

Insurer Reporting of Health Plan Spending on Drugs

Beginning in 2021, federal law requires a group health plan or health insurance issuer offering group or individual health insurance coverage must report to the Secretary of the Department of Labor and the Secretary of the Department of Treasury the following information with respect to the health plan or coverage in the previous plan year:

- The 50 brand prescription drugs most frequently dispensed and the total number of paid claims for each drug;
- The 50 most costly prescription drugs by total annual spending;
- The 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year;
- Total spending on health care services by such plan or coverage, categorized by type of costs, including hospital, health care provider, clinical services, prescription drugs, and other medical costs;
- Spending on prescription drugs by the plan or coverage, and the enrollees; and
- Average monthly premium paid by the employer and by participants and beneficiaries; and
- Impact of rebates, fees and other remuneration paid by drug manufacturers on premiums and out-of-pocket costs.[35]

Oversight of Health Insurers, HMOs, and PBMs in Florida

Insurers and HMOs

The OIR licenses and regulates insurers, HMOs, and other risk-bearing entities.[36] To operate in Florida, an insurer or HMO must obtain a certificate of authority from the OIR.[37] Section 641.234, F.S., authorizes the OIR to require an HMO to submit any contract for administrative services, contract with a provider other than an individual physician, contract for management services, and contract with an affiliated entity to the OIR. After review of a contract, the OIR may order the HMO to cancel the contract in accordance with the terms of the contract and applicable law if it determines:

[33] 45 CFR 158.210 and 158.211.
[34] 42 U.S.C. s. 2718.
[35] Title II, Consolidated Appropriations Act, 2021 (H.R. 133), Public L. No: 116-260 (Dec. 27, 2020).
[36] Section 20.121(3)(a)1., F.S.
[37] Sections 624.401 and 641.21(1), F.S.

- That the fees to be paid by the health maintenance organization under the contract are so unreasonably high as compared with similar contracts entered into by the HMO or as compared with similar contracts entered into by other HMOs in similar circumstances that the contract is detrimental to the subscribers, stockholders, investors, or creditors of the HMO; or
- That the contract is with an entity that is not licensed under state statutes, if such license is required, or is not in good standing with the applicable regulatory agency.

Oversight of PBMs

A PBM is a person or entity doing business in Florida, which contracts to administer prescription drug benefits on behalf of a health insurer or an HMO to residents of Florida.[38] The PBMs are required to register with the OIR.[39] The registration process requires an applicant to remit a nonrefundable fee not to exceed $500, a copy of certain corporate documents, and a completed registration form. Registration and registration renewal certificates are valid for 2 years and are nontransferable.[40]

The Insurance Code[41] mandates that contracts between health insurers or HMOs and PBMs contain certain provisions. However, there is no statutory penalty if the PBM does not comply with these contractual provisions. These mandatory contractual provisions require the PBM to:

- Update the maximum allowable cost (MAC) pricing information at least once every 7 calendar days;
- Maintain a process that will eliminate drugs from the MAC lists or modify drug prices in a timely manner to remain consistent with changes in pricing data;
- Not limit a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244, F.S.; and
- Not require an insured to pay for a prescription drug at the point of sale in an amount that exceeds the lesser of:
  - The applicable cost sharing amount; or
  - The retail price of the drug in the absence of prescription drug coverage.

Maximum Allowable Cost. Current law defines the term, "maximum allowable cost" (MAC) as the per-unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.[42]

Payment of claims. Current law requires a PBM, acting on behalf of an insurer or HMO, to pay a provider's claim within a prescribed time.[43] Further, the Department of Financial Services

[38] Section 624.490, F.S.
[39] Ch. 2018-91, s. 3, Laws of Fla.
[40] *Id.*
[41] Sections 627.64741, 627.6572, and 641.314, F.S.
[42] *Id.*
[43] Sections 627.6131 and 641.3155, F.S.

reviews alleged violations, relating to claims of providers not paid or denied by the insurer or HMO.[44]

Florida Pharmacy Audits

Pursuant to ch. 465, F.S., the Florida Pharmacy Act, a "pharmacy" includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy. The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.[45] The term, "independent pharmacy," is not defined.

Pharmacies are subject to routine audits by an insurer, HMO, or a PBM acting on behalf of an insurer or HMO. Audits of pharmacies are conducted to determine compliance with respect to billing, reimbursement, and other contractual requirements.[46] Section 465.1885, F.S., prescribes the following rights of a pharmacy in connection with an audit conducted directly or indirectly by an insurance company, a managed care company, or a PBM:

- To be notified at least 7 calendar days before the initial onsite audit;
- To have the onsite audit scheduled after the first 3 calendar days of a month unless the pharmacist consents otherwise;
- To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law;
- To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity;
- To receive the preliminary audit report within 120 days after the conclusion of the audit;
- To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy;
- To receive the final audit report within 6 months after receiving the preliminary audit report; and
- To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.[47]

However, neither the Department of Health nor the Board of Pharmacy has authority under ch. 465, F.S., the Florida Pharmacy Act, to enforce these provisions against any entity not complying with these requirements.

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[44] Department of Financial Services, *Medical Providers, find out who to contact about your claim payment concerns* at https://apps.fldfs.com/eservice/MedicalProvider.aspx (last viewed Jan. 22, 2021).
[45] Section 465.003(11), F.S.
[46] JD Supra, *Pharmacy Compliance: Will Your Pharmacy's Policies and Protocols Withstand a DEA or PBM Audit?* (Aug. 3, 2020), at https://www.jdsupra.com/legalnews/pharmacy-compliance-will-your-pharmacy-78764/ (last viewed Feb. 5, 2021).
[47] Section 465.188, F.S., prescribes the rights of a pharmacy in connection with a Medicaid audit.

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Agency for Health Care Administration (Agency), administers the Statewide Provider and Health Plan Claim Dispute Resolution Program, which assists contracted and noncontracted providers and health plans to resolve claim disputes that are not resolved by the provider and the health plan.[48] The Agency contracts with an independent dispute resolution organization to assist health care providers and health plans in order to resolve claim disputes. These services are available to Medicaid managed care providers and health plans. Claims submitted to managed care plans that have been denied in full or in part, or allegedly underpaid or overpaid, may be eligible for dispute under the arbitration process.[49]

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance (DSGI), administers the state group insurance program under a cafeteria plan consistent with s. 125, Internal Revenue Code to provide medical and prescription drug benefits for state employees and state university employees. To administer the program, the department contracts with third-party administrators for self-insured health plans, fully insured HMOs, and a pharmacy benefits manager (PBM) for the self-insured State Employees' Prescription Drug Program (program) pursuant to s.110.12315, F.S. The current PBM for the state employees' prescription drug plan is CaremarkPCS Health, LLC (CVS Caremark).

Recent U.S. Supreme Court Decision

In 2015, Arkansas enacted a law[50] that effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy's acquisition cost. To accomplish this result, the law requires PBMs to update their MAC lists in a timely manner when drug prices increase, and to provide pharmacies with an administrative appeal process to challenge MAC reimbursement rates that are below the pharmacies' acquisition costs.[51] If a pharmacy could not have acquired the drug at a lower price from its typical wholesaler, a PBM must increase its reimbursement rate to cover the pharmacy's acquisition cost.[52] A PBM must also allow pharmacies to "reverse and rebill" each reimbursement claim affected by the pharmacy's inability to procure the drug from its typical wholesaler at a price equal to or less than the MAC reimbursement price.[53] Lastly, the Act allows a pharmacy to decline to sell a drug to a consumer if the relevant PBM will reimburse the pharmacy at less than its acquisition cost.[54]

In late 2020, the U.S. Supreme Court decided that Arkansas' law regulating PBMs was not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA)[55] because

[48] Section 408.7057, F.S.
[49] *Id.*
[50] AR SB 688, 2015 90th General Assembly (Apr. 2, 2015). Act 900, 2015 Session.
[51] Arkansas Code 17-92-507 (2019 Supp.)
[52] Section 17–92– 507(c)(4)(C)(i)(b) (Supp. 2019)
[53] Section 17–92–507(c)(4)(C)(iii) (Supp. 2019)
[54] Section17–92–507(e) (Supp. 2019)
[55] 88 Stat. 829, as amended, 29 U. S. C. s. 1001 *et seq.*

the Arkansas law has neither an impermissible connection with nor reference to ERISA[56] and is therefore not preempted.[57]

III. Effect of Proposed Changes:

Section 1 amends s. 624.3161, F.S., to authorize the OIR to conduct market conduct examinations of PBMs. This section currently authorizes the OIR to examine insurers and HMOs.

Section 2 transfers s. 465.1885, F.S., renumbers the section as s. 624.491, F.S., and amends the section to clarify that the existing rights of a pharmacy, relating to a pharmacy audit, are statutory requirements for an insurer or HMO or any entity acting on behalf of the insurer or HMO, including but not limited to a PBM, conducting a pharmacy audit. The section specifies:

- Limits on when audits can be conducted;
- Audit period;
- Use of a consulting pharmacist;
- Use of written and verifiable records of health care providers to validate pharmacy records;
- Retroactive reimbursement for claims denied for certain errors;
- The timeframe for the provision of preliminary audits;
- Allowance for production of preliminary documentation to rebut an audit finding;
- Time period for production of the final audit; and
- Methodology for calculating final recoupment and penalties.

The section allows a pharmacy to appeal claim payments that are due because of an audit with the Statewide Provider and Health Plan Claim Dispute Resolution Program at the Agency for Health Care Administration pursuant to s. 408.7057, F.S.

Sections 4, 5, and 6 amend s. 627.64741, 627.6572, and 641.314, F.S., respectively, relating to individual health insurance policies, group health insurance policies, and HMO contracts.

The definition of the term, "maximum allowable cost" (MAC) is revised to mean the per unit amount that a PBM reimburses a pharmacist for prescription drugs:

- As specified at the time of claim processing and reported on the initial remittance advice of an adjudicated claim for a generic drug, brand-name, biological product, or specialty drug; and
- Which amount must be based on pricing published in the Medi-Span Master Drug Database or on pricing published in FDB MedKnowledge if the PBM uses only FDB MedKnowledge.

The definition of MAC would continue to exclude dispensing fees, prior to the application of cost sharing obligations, if any.

[56] 29 U. S. C. s. 1144(a).
[57] RUTLEDGE v. PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION (Dec. 10, 2020) No. 18-540

In addition, the sections prohibit an insurer or HMO from contracting with a PBM unless the PBM:

- Updates its MAC information at least every 7 days;
- Maintains a process that, in a timely manner, will eliminate drugs from MAC lists or modify drug prices to remain consistent with changes in pricing data used in formulating MAC prices and product availability;
- Does not limit a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug and the availability of a more affordable alternative drug; and
- Does not require an insured to make a payment for a prescription drug in an amount that exceeds the lesser of the applicable cost-sharing amount or the retail price of the drug.

Under current law, an insurer or HMO must include these provisions in any contract with a PBM. However, there is no statutory penalties for a PBM's noncompliance with these provisions.

The sections also provide that the OIR may require any health insurer or HMO to submit any PBM contract or amendment for the administration of pharmacy benefits to the office for review. After review of the contract, the OIR may order the health insurer or HMO to cancel the contract in accordance with the contract terms and applicable law if any of the following conditions exist:

- The PBM fees paid by the health insurer or HMO are so unreasonably high, compared to similar contracts entered by health insurers or HMOs, or as compared to similar contracts in similar circumstances, that the contract is detrimental to the policyholders or subscribers of the insurer or HMO.
- The contract does not comply with the Florida Insurance Code.
- The PBM is not registered with the OIR pursuant to s. 624.490, F.S.

Under current law, the OIR has authority to require HMOs to submit any contract for administrative services, contract with a provider other than an individual physician, contract for management services, and contract with an affiliated entity to the OIR. The OIR may cancel such contracts for the conditions previously described.

Section 7 provides that this bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill clarifies statutory provisions relating to pharmacy audits to impose audit requirements rather than rights, which will provide greater transparency regarding the audit process. The bill provides pharmacies with a process to appeal PBM audit filings related to claim payments with the Statewide Provider and Health Plan Claim Dispute Resolution Program.

Since the bill authorizes OIR to conduct market conduct examinations of PBMs, the bill will increase the administrative costs of health insurers, HMOs, and PBMs to the extent PBMs are examined. Entities examined by OIR are responsible for the payment of the examination expenses.[58]

C. Government Sector Impact:

Office of Insurance Regulation[59]

According to OIR, the bill will have negative fiscal impact of $100,000 to $200,000 on a recurring basis. The OIR would incur costs associated with obtaining pharmacy-related training or contracting with a pharmacist in order to provide effective oversight of PBM market conduct examinations and respond to any complaints involving pharmacy audits. The minimum estimated cost to contract with a pharmacist would be $100,000 -$200,000 (Contracted Services).

Department of Management Services/Division of State Group Insurance[60]

The costs of a PBM market conduct examination conducted by the OIR could result in an indeterminate increase in administrative costs of the program's PBM. These costs could be recouped from individuals enrolled in the Division of State Group Insurance program.

[58] 624.6131(4), F.S.
[59] Office of Insurance Regulation, *2021 Legislative Session, Analysis SB 390* (Jan. 4, 2021).
[60] Department of Management Services, *2021 Agency Legislative Bill Analysis of SB 390* (Feb. 19, 2021).

According to CVS Caremark, changes in the bill relating to the definition of the term "maximum allowable cost," would not apply to the existing contract with DSGI executed before the July 1, 2021, the effective date of the bill. However, if the existing contract were to be amended or renewed after July 1, 2021, then the provisions would become applicable and compliance would be required.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161, 627.64741, 627.6572, and 641.314.

This bill creates section 624.492 of the Florida Statutes.

This bill repeals section 465.1885 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.

By Senator Wright

14-00250A-21 2021390__

A bill to be entitled

An act relating to prescription drug coverage; amending s. 624.3161, F.S.; authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; specifying that certain examination costs are payable by persons examined; transferring, renumbering, and amending s. 465.1885, F.S.; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; authorizing audited pharmacies to appeal certain findings; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for certain violations; amending ss. 627.64741 and 627.6572, F.S.; revising the definition of the term "maximum allowable cost"; authorizing the office to require health insurers to submit to the office certain contracts or contract amendments entered into with pharmacy benefit managers; authorizing the office to order health insurers to cancel such contracts under certain circumstances; authorizing the commission to adopt rules; revising applicability; amending s. 627.6699, F.S.; requiring certain health benefit plans covering small employers to comply with certain provisions; amending s. 641.314, F.S.; revising the definition of the term "maximum allowable cost"; authorizing the office to require health maintenance organizations to submit to the office certain contracts or contract amendments

14-00250A-21 2021390__

entered into with pharmacy benefit managers; authorizing the office to order health maintenance organizations to cancel such contracts under certain circumstances; authorizing the commission to adopt rules; revising applicability; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 624.3161, Florida Statutes, are amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each pharmacy benefit manager as defined in s. 624.490; each licensed rating organization;~~,~~ each advisory organization;~~,~~ each group, association, carrier~~,~~ as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance;~~,~~ and each authorized insurer transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

(3) The examination may be conducted by an independent professional examiner under contract to the office, in which case payment shall be made directly to the contracted examiner by the insurer or person examined in accordance with the rates and terms agreed to by the office and the examiner.

Section 2. Section 465.1885, Florida Statutes, is

transferred, renumbered as section 624.491, Florida Statutes, and amended to read:

624.491 ~~465.1885~~ Pharmacy audits~~; rights~~.—

(1) A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health insurance policy or a health maintenance organization contract, respectively, shall comply with the requirements of this section when the insurer or health maintenance organization or any person or entity acting on behalf of the insurer or health maintenance organization, including, but not limited to, a pharmacy benefit manager as defined in s. 624.490, audits the records of a pharmacy licensed under chapter 465. The person or entity conducting such audit must ~~If an audit of the records of a pharmacy licensed under this chapter is conducted directly or indirectly by a managed care company, an insurance company, a third-party payor, a pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to as an "entity" in this section, the pharmacy has the following rights~~:

(a) Except as provided in subsection (3), notify the pharmacy ~~To be notified~~ at least 7 calendar days before the initial onsite audit for each audit cycle.

(b) Not schedule an ~~To have the~~ onsite audit during ~~scheduled after~~ the first 3 calendar days of a month unless the pharmacist consents otherwise.

(c) Limit the duration of ~~To have~~ the audit period ~~limited~~ to 24 months after the date a claim is submitted to or adjudicated by the entity.

(d) In the case of ~~To have~~ an audit that requires clinical or professional judgment, conduct the audit in consultation with, or allow the audit to be conducted by, ~~or in consultation with~~ a pharmacist.

(e) Allow the pharmacy to use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law.

(f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim that was retroactively denied for a clerical error, typographical error, scrivener's error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity.

(g) Provide the pharmacy with a copy of ~~To receive~~ the preliminary audit report within 120 days after the conclusion of the audit.

(h) Allow the pharmacy to produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy.

(i) Provide the pharmacy with a copy of ~~To receive~~ the final audit report within 6 months after receipt of ~~receiving~~ the preliminary audit report.

(j) Calculate any ~~To have~~ recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.

(2) ~~The rights contained in~~ This section does ~~do~~ not apply to:

(a) Audits in which suspected fraudulent activity or other intentional or willful misrepresentation is evidenced by a physical review, review of claims data or statements, or other investigative methods;

(b) Audits of claims paid for by federally funded programs; or

(c) Concurrent reviews or desk audits that occur within 3 business days after ~~of~~ transmission of a claim and where no chargeback or recoupment is demanded.

(3) An entity that audits a pharmacy located within a Health Care Fraud Prevention and Enforcement Action Team (HEAT) Task Force area designated by the United States Department of Health and Human Services and the United States Department of Justice may dispense with the notice requirements of paragraph (1)(a) if such pharmacy has been a member of a credentialed provider network for less than 12 months.

(4) Pursuant to s. 408.7057, and after receipt of the final audit report issued by the health insurer or health maintenance organization, a pharmacy may appeal the findings of the final audit as to whether a claim payment is due and as to the amount of a claim payment.

(5) A health insurer or health maintenance organization that, under terms of a contract, transfers to a pharmacy benefit manager the obligation to pay any pharmacy licensed under chapter 465 for any pharmacy benefit claims arising from services provided to or for the benefit of any insured or subscriber remains responsible for any violations of this section, s. 627.6131, or s. 641.3155, as applicable.

Section 3. Section 627.64741, Florida Statutes, is amended

to read:

627.64741 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug:

1. As specified at the time of claim processing and directly or indirectly reported on the initial remittance advice of an adjudicated claim for a generic drug, brand name drug, biological product, or specialty drug;

2. Which amount must be based on pricing published in the Medi-Span Master Drug Database or, if the pharmacy benefit manager uses only FDB MedKnowledge, on pricing published in FDB MedKnowledge; and

3. ~~,~~Excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(2) A health insurer may contract only with a pharmacy benefit manager that satisfies all of the following conditions ~~A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager~~:

(a) Updates ~~Update~~ maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely manner, will eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in

pricing data used in formulating maximum allowable cost prices and product availability.

(c) ~~(3)~~ Does not limit ~~A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting~~ a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(d) ~~(4)~~ Does not require ~~A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring~~ an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

1. ~~(a)~~ The applicable cost-sharing amount; or

2. ~~(b)~~ The retail price of the drug in the absence of prescription drug coverage.

(3) The office may require a health insurer to submit to the office any contract or amendments to a contract for the administration or management of prescription drug benefits by a pharmacy benefit manager on behalf of the insurer.

(4) After review of a contract submitted under subsection (3), the office may order the insurer to cancel the contract in accordance with the terms of the contract and applicable law if the office determines that any of the following conditions exists:

(a) The fees to be paid by the insurer are so unreasonably high as compared with similar contracts entered into by insurers, or as compared with similar contracts entered into by other insurers in similar circumstances, that the contract is

detrimental to the policyholders of the insurer.

(b) The contract does not comply with this section or any other provision of the Florida Insurance Code.

(c) The pharmacy benefit manager is not registered with the office as required under s. 624.490.

(5) The commission may adopt rules to administer this section.

(6) ~~(5)~~ This section applies to contracts entered into, amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts entered into or renewed between July 1, 2018, and June 30, 2021, are governed by the law in effect at the time the contract was entered into or renewed.

Section 4. Section 627.6572, Florida Statutes, is amended to read:

627.6572 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug:

1. As specified at the time of claim processing and directly or indirectly reported on the initial remittance advice of an adjudicated claim for a generic drug, brand name drug, biological product, or specialty drug;

2. Which amount must be based on pricing published in the Medi-Span Master Drug Database or, if the pharmacy benefit manager uses only FDB MedKnowledge, on pricing published in FDB MedKnowledge; and

3. ~~,~~Excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health insurer to residents of this state.

(2) A health insurer may contract only with a pharmacy benefit manager that satisfies all of the following conditions ~~A contract between a health insurer and a pharmacy benefit manager must require that the pharmacy benefit manager~~:

(a) Updates ~~Update~~ maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely manner, will eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(c) ~~(3)~~ Does not limit ~~A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting~~ a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(d) ~~(4)~~ Does not require ~~A contract between a health insurer and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring~~ an insured to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

1. ~~(a)~~ The applicable cost-sharing amount; or

2. ~~(b)~~ The retail price of the drug in the absence of prescription drug coverage.

(3) The office may require a health insurer to submit to the office any contract or amendments to a contract for the administration or management of prescription drug benefits by a pharmacy benefit manager on behalf of the insurer.

(4) After review of a contract submitted under subsection (3), the office may order the insurer to cancel the contract in accordance with the terms of the contract and applicable law if the office determines that any of the following conditions exists:

(a) The fees to be paid by the insurer are so unreasonably high as compared with similar contracts entered into by insurers, or as compared with similar contracts entered into by other insurers in similar circumstances, that the contract is detrimental to the policyholders of the insurer.

(b) The contract does not comply with this section or any other provision of the Florida Insurance Code.

(c) The pharmacy benefit manager is not registered with the office as required under s. 624.490.

(5) The commission may adopt rules to administer this section.

(6) ~~(5)~~ This section applies to contracts entered into, amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts entered into or renewed between July 1, 2018, and June 30, 2021, are governed by the law in effect at the time the contract was entered into or renewed.

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

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(h) A health benefit plan covering small employers which is issued or renewed in this state on or after July 1, 2021, must comply with s. 627.6572.

Section 6. Section 641.314, Florida Statutes, is amended to read:

641.314 Pharmacy benefit manager contracts.—

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

(a) "Maximum allowable cost" means the per-unit amount that a pharmacy benefit manager reimburses a pharmacist for a prescription drug:

1. As specified at the time of claim processing and directly or indirectly reported on the initial remittance advice of an adjudicated claim for a generic drug, brand name drug, biological product, or specialty drug;

2. Which amount must be based on pricing published in the Medi-Span Master Drug Database or, if the pharmacy benefit manager uses only FDB MedKnowledge, on pricing published in FDB MedKnowledge; and

3. ~~,~~Excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.

(b) "Pharmacy benefit manager" means a person or entity doing business in this state which contracts to administer or manage prescription drug benefits on behalf of a health maintenance organization to residents of this state.

(2) A health maintenance organization may contract only with a pharmacy benefit manager that satisfies all of the following conditions ~~A contract between a health maintenance organization and a pharmacy benefit manager must require that the pharmacy benefit manager~~:

(a) Updates ~~Update~~ maximum allowable cost pricing information at least every 7 calendar days.

(b) Maintains ~~Maintain~~ a process that ~~will~~, in a timely manner, will eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(c)~~(3)~~ Does not limit ~~A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from limiting~~ a pharmacist's ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244.

(d)~~(4)~~ Does not require ~~A contract between a health maintenance organization and a pharmacy benefit manager must prohibit the pharmacy benefit manager from requiring~~ a subscriber to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

1.~~(a)~~ The applicable cost-sharing amount; or

2.~~(b)~~ The retail price of the drug in the absence of prescription drug coverage.

(3) The office may require a health maintenance organization to submit to the office any contract or amendments to a contract for the administration or management of prescription drug benefits by a pharmacy benefit manager on behalf of the health maintenance organization.

(4) After review of a contract submitted under subsection (3), the office may order the health maintenance organization to

cancel the contract in accordance with the terms of the contract and applicable law if the office determines that any of the following conditions exists:

(a) The fees to be paid by the health maintenance organization are so unreasonably high as compared with similar contracts entered into by health maintenance organizations, or as compared with similar contracts entered into by other health maintenance organizations in similar circumstances, that the contract is detrimental to the subscribers of the health maintenance organization.

(b) The contract does not comply with this section or any other provision of the Florida Insurance Code.

(c) The pharmacy benefit manager is not registered with the office as required under s. 624.490.

(5) The commission may adopt rules to administer this section.

(6)~~(5)~~ This section applies to pharmacy benefit manager contracts entered into, amended, or renewed on or after July 1, 2021 ~~2018~~. All contracts entered into or renewed between July 1, 2018, and June 30, 2021, are governed by the law in effect at the time the contract was entered into or renewed.

Section 7. This act shall take effect July 1, 2021.

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 566
INTRODUCER:	Senator Perry
SUBJECT:	Motor Vehicle Rentals
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Pre-meeting**
2.			TR	
3.			AP	

I. Summary:

SB 566 establishes insurance and operational requirements for peer-to-peer car-sharing programs (programs). Under the bill, peer-to-peer car-sharing is the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program that connects motor vehicle owners with drivers for financial consideration.

The bill applies to peer-to-peer car-sharing programs the 6 percent tax, and the $2 per day surcharge that currently apply to the lease or rental of motor vehicles.

The bill requires that the program ensure that during the car-sharing period, the shared vehicle owner (owner) and shared vehicle driver (driver) are insured to at least the minimum statutory requirements for property damage liability, bodily injury liability, personal injury protection, and uninsured motorists coverage. The program must assume liability for damages that may occur during the car-sharing period in amounts that may not be less than the minimum statutory coverage requirements for BI, PD, PIP, and UM, with exceptions. The bill provides that programs and owners are exempt from vicarious liability consistent with federal law.

The bill also requires a program to:

- Keep and retain specified records;
- Provide notice to owners and drivers of the rates and fees of the program contract, the programs' right to seek indemnification and make defenses, the fact that a shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle, conditions under which the shared vehicle driver must maintain insurance, and an emergency telephone number for roadside assistance and customer service inquiries;
- Require that drivers have a current, valid driver license or be otherwise authorized to drive;

- Have sole responsibility for equipment put in or on the shared vehicle to monitor or facilitate the peer-to-peer char-sharing transaction; and
- Verify shared vehicles have been repaired pursuant to any safety recalls, provide notice the owner of recalls, and remove vehicles from the program that have not been repaired.

The bill takes effect January 1, 2022.

II. Present Situation:

Motor Vehicle Rentals

Section 322.38, F.S., provides driver license-related requirements for renting a motor vehicle to another person. A person may not rent a motor vehicle to any other person unless the other person is duly licensed in Florida or, if a nonresident, is licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed. Prior to the rental, the rentee must inspect the driver license of the person to whom the vehicle is to be rented and verify that the driver license is unexpired.

Every person renting a motor vehicle to another is required to keep a record of the registration number of the motor vehicle, the name and address of the person to whom the vehicle is rented, the number of the license of the renter, and the place where the license was issued. The record must be open to inspection by any police officer, or officer or employee of the department.

If a rental car company rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the above obligations when the rental car company, at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company's services, or any time thereafter, requires the renter to verify that he or she is duly licensed and that the license is unexpired.

Peer-to-Peer Car Sharing

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing program's website.[1] Car-sharing programs require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Hosts typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.[2]

Guests also register with the car-sharing site. The car-sharing program will conduct a background check and review the guests' driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card

[1] Turo, Getaround, and Drift are examples of car-sharing programs.

[2] Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (February 2015), available at https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961 (last visited March 12, 2021).

information if it is not already on file. At the end of the sharing period, the guest replaces any consumed fuel before returning the car to its pickup location.[3]

One car-sharing website reports that its program has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to $1 million in liability insurance.[4] In Florida, the same car-sharing program has over 611,000 residents signed up as guests and 23,000 hosts (of which 95 percent share two or fewer cars).[5] The average trip duration is 4.4 days and the average host earns $300 per month.[6]

Car-Sharing Service

"Car-sharing service" is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

Minimum Insurance Requirements for Motor Vehicles

Florida's Financial Responsibility Law of 1955[7] provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.[8] In combination with the Florida Motor Vehicle No-Fault Law,[9] operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability[10] and personal injury protection.[11] Proof of such coverage is required only after an accident.[12]

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently

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[3] *Id.*
[4] Turo, *About Turo*, available at https://turo.com/about (last visited March 12, 2021).
[5] Florida House of Representatives Subcommittee on Transportation and Infrastructure, *HB 377 Staff Analysis* (February 5, 2020), https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0377a.TIS.DOCX&DocumentType=Analysis&BillNumber=0377&Session=2020 (last visited March 12, 2021).
[6] *Id.*
[7] Chapter 624, F.S.
[8] Section 324.011, F.S.
[9] Sections 627.730 – 627.7405, F.S.
[10] Section 324.022, F.S.
[11] Section 627.733, F.S.
[12] Section 324.011, F.S.

requires minimum PD coverage limits in the amount of $10,000, or $30,000 for a combined PD and bodily injury liability policy.[13]

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of $10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,[14] which is reduced to a $2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.[15] PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a $5,000 death benefit.[16]

Liability for Motor Vehicle Lessors

Florida's Financial Responsibility Law of 1955 also provides liability limits applicable to rented and leased vehicles. Under a motor vehicle rental or lease agreement with a term of less than one year, the lessor is deemed the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith up to $100,000 per person and $300,000 per incident for bodily injury.[17] The lessor is liable for property damage up to $50,000.[18]

However, if the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined PD and BI, the lessor is liable up to an additional $500,000 in economic damages arising from the operation of the motor vehicle.[19] This additional specified liability of the lessor for economic damages is reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.[20]

Additional Optional Insurance Coverages for Motor Vehicles

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of $10,000 because of bodily injury to,

[13] Section 324.022(1), F.S.
[14] Section 627.736(1), F.S.
[15] Section 627.736(1)(a)(4), F.S.
[16] Section 627.736(1)(c), F.S.
[17] Section 324.021(9)(b)1, F.S.
[18] Id.
[19] Id.
[20] Id.

or death of, one person in any one crash, and $20,000 for bodily injury to, or death of, two or more persons in any one crash.[21] Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage.[22]

Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.[23]

Florida Sales and Use Tax and Motor Vehicle Rental Surcharges

The lease or rental of tangible personal property, including vehicles, is taxable.[24] When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of 6 percent[25] of the gross proceeds derived from the lease or rental.[26] A "lease or rental" is defined as the leasing or renting or tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of title.[27] The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.[28]

Rule 12A-16.002(7), F.A.C., provides in pertinent part that "any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement…and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction." The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

Florida law imposes a surcharge[29] of $2.00 per day, or any part of a day, upon the lease or rental of a "motor vehicle licensed for hire"[30] and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.[31] The surcharge applies to the first 30 days of the term of any lease or rental.[32] Pursuant to Rule 12A-16.002(1)(b), F.A.C., "[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement." The term "person" includes "any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver,

[21] Chapter 324.022, F.S.
[22] Section 627.727(1), F.S.
[23] Section 627.727(2), F.S.
[24] Section 212.05(1), F.S.
[25] Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. *See* s. 212.054, F.S.
[26] Section 212.05(1)(c), F.S.
[27] Section 212.02(10)(g), F.S.
[28] Rule 12A-1.007(13)(a)1, F.A.C.
[29] The rental car surcharge is subject to sales and use tax. *See* s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.
[30] The term "for hire passenger motor vehicle" means any automobile designed to carry fewer than nine (9) passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term "for hire passenger motor vehicle" does not include any motorcycle, moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. See Rule 12A-16.002(2)(c), F.A.C.
[31] Section 212.0606(1), F.S.
[32] *Id*.

syndicate, or other group or combination acting as a unit…."[33] The term "business" is defined to mean "any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect."[34]

The $2.00 surcharge does not apply to rentals by a member of a car-sharing service when the motor vehicle is used for less than 24 hours.[35] Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a $1.00 surcharge, per usage.[36] The term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, 7 days per week;
- Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;
- On an hourly basis or for a shorter increment of time;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.[37]

III. Effect of Proposed Changes:

Section 1 amends s. 212.05, F.S., to subject the lease or rental of a motor vehicle by a peer-to-peer car-sharing program to the 6 percent sales tax on of the gross proceeds derived from the lease or rental of a motor vehicle.

Section 2 amends s. 212.0606, F.S., to apply the existing rental car surcharge of $2 per day to car-sharing programs.

The bill moves the existing definition for "car-sharing service" to the definitions subsection and provides the following definitions.

- "Motor vehicle rental company" means an entity that is in the business of providing motor vehicles to the public under a rental agreement for financial consideration.
- "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1), F.S.

These entities or business platforms are required to collect the rental car surcharge.

Section 3 creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car-sharing programs.

[33] Section 212.02(12), F.S.
[34] Section 212.02(2), F.S.
[35] Rule 12A-16.002(3), F.A.C.
[36] Section 212.0606(2), F.S.
[37] *Id*.

Definitions

The bill provides the following definitions:

- "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.
- "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.
- "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.
- "Car-sharing termination time" means the earliest of the following:
  - The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car sharing program agreement;
  - The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car sharing program; or
  - The time the shared vehicle owner takes possession and control of the shared vehicle.
- "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), F.S., a carpool as defined in s. 450.28(3), F.S., or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1), F.S.
- "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), F.S., a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15), F.S.
- "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15), F.S., or for a car-sharing service as defined in s. 212.0606(1), F.S.
- "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), F.S., or a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., for carpool as defined in s. 450.28(3), F.S., or for car-sharing service as defined in s. 212.0606(1), F.S. "Shared vehicle driver" means an individual who is authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

- "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15), F.S.

Insurance Requirements, Liability

Insurance Coverage Requirements

A peer-to-peer car-sharing program must have a motor vehicle insurance policy that provides the shared vehicle owner and the shared vehicle driver during each peer-to-peer car-sharing period all of the following:

- Property damage liability coverage in the amount of at least $10,000 as required under s. 324.022, F.S.;
- Bodily injury liability coverage in the amount of at least $10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least $20,000 for bodily injury to, or death of, two or more persons in any one crash as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits in the amount of at least $10,000[38] for medical and disability benefits and in the amount of at least $5,000 for death benefits required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits as required under s. 627.727, F.S.

The peer-to-peer car-sharing program must also ensure that the motor vehicle insurance policy:

- Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; and
- Does not exclude the use of a shared vehicle by a shared vehicle driver.

These insurance requirements may be satisfied by a motor vehicle insurance policy maintained by:

- A shared vehicle owner;
- A shared vehicle driver;
- A peer-to-peer car-sharing program; or
- A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

A motor vehicle insurance policy maintained by a shared vehicle owner, shared vehicle driver, peer-to-peer car-sharing program, or a combination of a shared vehicle owner, shared vehicle driver, and peer-to-peer car-sharing program, is primary during each peer-to-peer car-sharing period.

[38] Personal injury protection reimbursement medical benefits are limited to $2,500 if specified medical providers determine the injured person did not have an emergency medical condition.

If insurance maintained by a shared vehicle owner or shared vehicle driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car-sharing program must provide the required coverage beginning with the first dollar of a claim and must defend such claim, with the exceptions discussed below. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program may not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the peer-to-peer car-sharing period. This interest does not create liability for a network for maintaining the required coverage.

A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;
- Liability of the shared vehicle owner;
- Liability of the shared vehicle driver;
- Damage or loss to the shared motor vehicle; or
- Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

When the required insurance is maintained by a peer-to-peer car-sharing program, the motor vehicle insurance policy may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. A peer-to-peer car-sharing program is not transacting in insurance when it maintains this insurance.

Liability

A peer-to-peer car-sharing program assumes liability, with stated exclusions, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer car-sharing period in amounts stated in the peer-to-peer car-sharing program agreement. Such amounts may not be less than those set forth in:

- s. 324.021(7)(a)and (b), F.S.: Bodily injury liability coverage in the amount of at least $10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least $20,000 for bodily injury to, or death of, two or more persons in any one crash;
- s. 324.022, F.S.: Property damage liability coverage in the amount of at least $10,000;
- s.627.727, F.S.: Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits; and
- s. 627.736, F.S.: Personal injury protection benefits in the amount of at least $10,000 for medical and disability benefits and in the amount of at least $5,000 for death benefits.

This assumption of liability does not apply if a shared vehicle owner:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the peer-to-peer car-sharing period in which the loss occurs; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer to-peer car-sharing program agreement.

A peer-to-peer car-sharing program assumes primary liability for a claim when it is providing, in whole or in part, the minimal insurance discussed above and:

- A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and
- The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the required rental information.

The shared vehicle owner's insurer must indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

Vicarious Liability

A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

Exclusions

An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision physical damage coverage.

This provision does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use, which excludes coverage for motor vehicles made available for rent, sharing, hire, or for any business use.

Contribution Against Indemnification

A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program, if the claim is made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the peer to-peer car-sharing period and excluded under the terms of its policy.

Notification of Implications of a Lien

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Recordkeeping

A peer-to-peer car-sharing program must:

- Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.
- Retain these records for a period of not less than the applicable personal injury statute of limitations.
- Provide the information contained in the records upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

Consumer Protections

Disclosures

Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement;
- That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;
- That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;
- That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

Driver License Verification and Retention

A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver holds a valid driver license or is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

A peer-to-peer car-sharing program must keep a record of:
- The name and address of the shared vehicle driver;
- The driver license number of the shared vehicle driver and of any other person who will operate the shared vehicle; and
- The place of issuance of the driver license.

Responsibility for Equipment

The bill provides that a peer-to-peer car sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program must indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs outside of the peer-to-peer car-sharing period.

Motor Vehicle Safety Recalls

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:
- Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and
- Notify the shared vehicle owner that:
  - A shared vehicle may not be made available on the peer-to-peer car-sharing program if the vehicle is subject to a safety recall and the required repairs have not been made.
  - If the shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, the owner must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible so that the owner may address the safety recall repair.

Construction

The bill does not limit:
- The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

- The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4 provides an effective date of January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not appear to impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution, as leases or rented motor vehicles licensed for hire are currently subject to sales tax under s. 212.05, F.S., and a rental car surcharge under s. 212.0606, F.S. The Florida Constitution defines the term "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."[39] The Florida Constitution defines the term "raise" to mean "to increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis; to increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or to decrease or eliminate a state tax or fee exemption or credit."[40] The bill's inclusion of motor vehicle rental companies and peer-to-peer car-sharing programs as subcategories of motor vehicle lease or rental arrangements currently subject to state sales tax and rental car surcharges, neither imposes a fee on an industry not currently subject to state sales tax or rental car surcharges under the section nor raises a fee on an industry currently subject to state sales tax or rental car surcharges under the section. Accordingly, the bill does not appear to trigger the requirement for a separate bill for the consideration of the rental surcharge provision subject to a 2/3 vote by each chamber of the Legislature.[41]

E. Other Constitutional Issues:

None.

[39] Fla. Const. art. VII, s. 19(d)(1) (2019).
[40] Fla. Const. art. VII, s. 19(d)(2) (2019).
[41] See Fla. Const. art. VII, s. 19(a),(b) (2019).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill applies the existing 6 percent sales tax on motor vehicle rentals under s. 212.05, F.S., and the $2 per day rental car surcharge under s. 212.0606, F.S., to peer-to-peer car sharing.

B. Private Sector Impact:

Peer-to-peer car sharing programs will be responsible for collecting and remitting the 6 percent sales tax on motor vehicle rentals under s. 212.05, F.S., and collecting the $2 per day rental car surcharge under s. 212.0606, F.S.

C. Government Sector Impact:

The revenue impact of the bill has not yet been estimated by the Revenue Estimating Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.05 and 212.0606.

This bill creates section 627.7483 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.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 294 - 301
and insert:
a. Primary motor vehicle liability coverage of at least $1 million for death, bodily injury, and property damage.
b. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.
c. Uninsured and underinsured vehicle coverage as required under s. 627.727.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 393 - 397

and insert:

(b) *Vicarious liability.*—Section 324.021(9)(b)3. does not limit the liability of a shared vehicle owner for any loss or injury that occurs during the car-sharing period and arises out of the ownership, maintenance, or use of the shared vehicle.

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

580820

And the title is amended as follows:

Delete lines 29 - 30

and insert:

construction;

By Senator Perry

8-00637-21 2021566__

A bill to be entitled

An act relating to motor vehicle rentals; amending s. 212.05, F.S.; specifying the applicable sales tax rate on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; requiring peer-to-peer car-sharing programs to collect and remit the applicable sales tax; amending s. 212.0606, F.S.; defining terms; specifying the applicable rental car surcharge on motor vehicle leases and rentals by motor vehicle rental companies and peer-to-peer car-sharing programs; specifying applicability of the surcharge; requiring motor vehicle rental companies and peer-to-peer car-sharing programs to collect the surcharge; requiring car-sharing services to collect a certain surcharge; making technical changes; creating s. 627.7483, F.S.; defining terms; specifying insurance requirements for shared vehicle owners and shared vehicle drivers under peer-to-peer car-sharing programs; providing that a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during certain periods; providing construction; authorizing peer-to-peer car-sharing programs to own and maintain certain motor vehicle insurance policies; requiring peer-to-peer car-sharing programs to assume certain liability; providing exceptions; requiring a shared vehicle owner's insurer to indemnify the peer-to-peer car-sharing program under certain circumstances; providing an exemption from vicarious liability for peer-to-peer

8-00637-21 2021566__

car-sharing programs and shared vehicle owners; authorizing motor vehicle insurers to exclude coverages and a duty to defend or indemnify claims under a shared vehicle owner's policy; providing construction relating to exclusions; providing a right of contribution to a shared vehicle owner's insurer for certain claims; requiring peer-to-peer car-sharing programs to provide certain information to shared vehicle owners regarding liens; specifying recordkeeping, record retention, and record-sharing requirements for peer-to-peer car-sharing programs; specifying disclosure requirements for peer-to-peer car-sharing program agreements; specifying driver license verification and data retention requirements for peer-to-peer car-sharing programs; providing that peer-to-peer car-sharing programs have sole responsibility for certain equipment in or on a shared vehicle; providing for indemnification regarding such equipment; specifying requirements for peer-to-peer car-sharing programs relating to safety recalls on a shared vehicle; providing construction; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable

privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented by a motor vehicle rental company or a peer-to-peer car-sharing program, as those terms are defined in s. 212.0606(1), for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

c. If the motor vehicle is rented by a peer-to-peer car-sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax due in connection with the rental.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12

months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 2. Section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

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

(a) "Car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application fee or a membership fee and provides member access to motor vehicles:

1. Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;

2. Twenty-four hours per day, 7 days per week;

3. Only through automated means, including, but not limited to, a smartphone application or an electronic membership card;

4. On an hourly basis or for a shorter increment of time;

5. Without a separate fee for refueling the motor vehicle;

6. Without a separate fee for minimum financial responsibility liability insurance; and

7. Owned or controlled by the car-sharing service or its affiliates.

(b) "Motor vehicle rental company" means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.

(c) "Peer-to-peer car-sharing program" has the same meaning as in s. 627.7483(1).

(2) Except as provided in subsection (3) ~~(2)~~, a surcharge of $2 per day or any part of a day is imposed upon the lease or rental by a motor vehicle rental company or a peer-to-peer car-sharing program of a motor vehicle that is licensed for hire and designed to carry fewer than nine passengers, regardless of whether the motor vehicle is licensed in this state, for financial consideration and without transfer of the title of the motor vehicle. The surcharge is imposed regardless of whether the lease or rental occurs in person or through digital means. The surcharge applies to only the first 30 days of the term of a lease or rental and must be collected by the motor vehicle rental company or the peer-to-peer car-sharing program. The surcharge is subject to all applicable taxes imposed by this chapter.

(3) ~~(2)~~ A member of a car-sharing service who uses a motor vehicle as described in subsection (2) ~~(1)~~ for less than 24

hours pursuant to an agreement with the car-sharing service shall pay a surcharge of $1 per usage. A member of a car-sharing service who uses the same motor vehicle for 24 hours or more shall pay a surcharge of $2 per day or any part of a day as provided in subsection (2) ~~(1)~~. The car-sharing service shall collect the surcharge ~~For purposes of this subsection, the term "car-sharing service" means a membership-based organization or business, or division thereof, which requires the payment of an application or membership fee and provides member access to motor vehicles:~~

~~(a) Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;~~

~~(b) Twenty-four hours per day, 7 days per week;~~

~~(c) Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;~~

~~(d) On an hourly basis or for a shorter increment of time;~~

~~(e) Without a separate fee for refueling the motor vehicle;~~

~~(f) Without a separate fee for minimum financial responsibility liability insurance; and~~

~~(g) Owned or controlled by the car-sharing service or its affiliates~~.

The surcharge imposed under this subsection does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

(4)(a) ~~(3)(a)~~ Notwithstanding s. 212.20, and less the costs

of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122, and 4.25 percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" ~~of the surcharge~~ means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

(b) Notwithstanding any other ~~provision of~~ law, the proceeds deposited in the State Transportation Trust Fund shall be allocated on an annual basis in the Department of Transportation's work program to each department district, except the Turnpike District. The amount allocated to each district shall be based on the amount of proceeds attributed to the counties within each respective district.

(5)(a) ~~(4)~~ Except as provided in this section, the department shall administer, collect, and enforce the surcharge as provided in this chapter.

(b) ~~(a)~~ The department shall require a dealer ~~dealers~~ to report surcharge collections according to the county to which the surcharge was attributed. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into.

(c) ~~(b)~~ A dealer ~~Dealers~~ who collects ~~collect~~ the rental car

surcharge shall report to the department all surcharge revenues attributed to the county where the rental agreement was entered into on a timely filed return for each required reporting period. The provisions of this chapter which apply to interest and penalties on delinquent taxes apply to the surcharge. The surcharge shall not be included in the calculation of estimated taxes pursuant to s. 212.11. The dealer's credit provided in s. 212.12 does not apply to any amount collected under this section.

(6) ~~(5)~~ The surcharge imposed by this section does not apply to a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 3. Section 627.7483, Florida Statutes, is created to read:

627.7483 Peer-to-peer car sharing; insurance requirements.—

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

(a) "Car-sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.

(b) "Car-sharing period" means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.

(c) "Car-sharing start time" means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a

peer-to-peer car-sharing program.

(d) "Car-sharing termination time" means the earliest of the following events:

1. The expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the peer-to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car-sharing program agreement;

2. The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car-sharing program; or

3. The time the shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

(e) "Peer-to-peer car sharing" or "car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include the renting of a motor vehicle through a rental car company, the use of a for-hire vehicle as defined in s. 320.01(15), ridesharing as defined in s. 341.031(9), carpool as defined in s. 450.28(3), or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1).

(f) "Peer-to-peer car-sharing program" means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s.

212.0606(1), a taxicab association, or the owner of a for-hire vehicle as defined in s. 320.01(15).

(g) "Peer-to-peer car-sharing program agreement" means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15) or for a car-sharing service as defined in s. 212.0606(1).

(h) "Shared vehicle" means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), or a motor vehicle used for ridesharing as defined in s. 341.031(9), for carpool as defined in s. 450.28(3), or for car-sharing service as defined in s. 212.0606(1).

(i) "Shared vehicle driver" means an individual who has been authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.

(j) "Shared vehicle owner" means the registered owner, or a natural person or an entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15).

(2) INSURANCE COVERAGE REQUIREMENTS.—

(a)1. A peer-to-peer car-sharing program shall ensure that,

during each car-sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle insurance policy that provides all of the following:

a. Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022.

b. Bodily injury liability coverage limits as described in s. 324.021(7)(a) and (b).

c. Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736.

d. Uninsured and underinsured vehicle coverage as required under s. 627.727.

2. The peer-to-peer car-sharing program shall also ensure that the motor vehicle insurance policy under subparagraph 1.:

a. Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car-sharing program; or

b. Does not exclude the use of a shared vehicle by a shared vehicle driver.

(b)1. The insurance described under paragraph (a) may be satisfied by a motor vehicle insurance policy maintained by:

a. A shared vehicle owner;

b. A shared vehicle driver;

c. A peer-to-peer car-sharing program; or

d. A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

2. The insurance policy maintained in subparagraph 1. which satisfies the insurance requirements under paragraph (a) is primary during each car-sharing period.

3.a. If the insurance maintained by a shared vehicle owner

or shared vehicle driver in accordance with subparagraph 1. has lapsed or does not provide the coverage required under paragraph (a), the insurance maintained by the peer-to-peer car-sharing program must provide the coverage required under paragraph (a), beginning with the first dollar of a claim, and must defend such claim, except under circumstances as set forth in subparagraph (3)(a)2.

b. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program must not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

c. Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the car-sharing period. This sub-subparagraph does not create liability for a peer-to-peer car-sharing program for maintaining the coverage required under paragraph (a) and under this paragraph, if applicable.

d. A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

(I) Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;

(II) Liability of the shared vehicle owner;

(III) Liability of the shared vehicle driver;

(IV) Damage or loss to the shared motor vehicle; or

(V) Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and

underinsured motorist coverage requirements of this section.

e. Insurance required under paragraph (a), when maintained by a peer-to-peer car-sharing program, may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office. A peer-to-peer car-sharing program is not transacting in insurance when it maintains the insurance required under this section.

(3) LIABILITIES AND INSURANCE EXCLUSIONS.—

(a) *Liability.*—

1. A peer-to-peer car-sharing program shall assume liability, except as provided in subparagraph 2., of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car-sharing period in an amount stated in the peer-to-peer car-sharing program agreement, which amount may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, respectively.

2. The assumption of liability under subparagraph 1. does not apply if a shared vehicle owner:

a. Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the car-sharing period in which the loss occurs; or

b. Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer-

to-peer car-sharing program agreement.

3. A peer-to-peer car-sharing program shall assume primary liability for a claim when it is in whole or in part providing the insurance required under paragraph (2)(a) and:

a. A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and

b. The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the information required under subsection (5).

The shared vehicle owner's insurer shall indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

(b) *Vicarious liability.*—A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

(c) *Exclusions in motor vehicle insurance policies.*—An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

1. Liability coverage for bodily injury and property damage;

2. Personal injury protection coverage;

3. Uninsured and underinsured motorist coverage;

4. Medical payments coverage;

5. Comprehensive physical damage coverage; and

6. Collision physical damage coverage.

This paragraph does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, or hire or for any business use.

(d) *Contribution against indemnification.*—A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program if the claim is:

1. Made against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car-sharing period; and

2. Excluded under the terms of its policy.

(4) NOTIFICATION OF IMPLICATIONS OF LIEN.—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including the use without physical damage coverage, may violate the terms of the

contract with the lienholder.

(5) RECORDKEEPING.—A peer-to-peer car-sharing program shall:

(a) Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.

(b) Retain the records in paragraph (a) for a time period not less than the applicable personal injury statute of limitations.

(c) Provide the information contained in the records in paragraph (a) upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

(6) CONSUMER PROTECTIONS.—

(a) *Disclosures.*—Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

1. Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

2. That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program.

3. That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle

driver is in effect only during each car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

4. The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

5. That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle.

6. An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries.

7. Any conditions under which a shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

(b) *Driver license verification and data retention.*—

1. A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

a. Holds a driver license issued under chapter 322 which authorizes the driver to drive vehicles of the class of the shared vehicle;

b. Is a nonresident who:

(I) Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and

(II) Is at least the same age as that required of a resident to drive; or

c. Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

2. A peer-to-peer car-sharing program shall keep a record of:

a. The name and address of the shared vehicle driver;

b. The number of the driver license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and

c. The place of issuance of the driver license.

(c) *Responsibility for equipment.*—A peer-to-peer car-sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program shall indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs during the car-sharing period.

(d) *Motor vehicle safety recalls.*—At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

1. Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and

2. Notify the shared vehicle owner that if the shared vehicle owner:

a. Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made.

b. Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she shall remove the shared vehicle as available on the peer-to-peer car-sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

c. Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she shall notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that he or she may address the safety recall repair.

(7) CONSTRUCTION.—This section does not limit:

(a) The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or

(b) The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a

breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Section 4. This act shall take effect January 1, 2022.

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 1288
INTRODUCER:	Judiciary Committee and Senator Boyd
SUBJECT:	Assets of an Estate in Administration
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Schrader	Knudson	BI	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1288 amends s. 69.031, F.S., to repeal the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries. The Federal Savings and Loan Insurance Corporation was dissolved in 1989, making compliance with that requirement impossible.

The bill is effective July 1, 2021.

II. Present Situation:

Courts are commonly called on to assume control over a person's property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial judge does not have the time or expertise to inventory, manage, and distribute such property, and consequently a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond. A surety bond "is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety)

guarantees the performance or obligations of a second party (the principal) to a third party (the obligee)."[1]

Surety bonds can be expensive and reduce the amount that the heirs, beneficiaries and creditors may receive from an estate, trust or individual.[2] Further, there are circumstances where a bond can be difficult to obtain or may not be available at any cost.[3] Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries – the use of a depository account. A depository account may be used where "the size of the bond . . . is burdensome or for other cause." Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account.[4]

A depository account must be placed with a bank, trust company, or savings and loan association "(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)" designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer.[5]

The requirement that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation is problematic. The Federal Savings and Loan Insurance Corporation was dissolved in 1989.[6] The requirement that a savings and loan must be doing business in the state is unique to savings and loan institutions, there is no similar requirement applicable to a bank or trust company appointed by the court as a depository institution.

III. Effect of Proposed Changes:

The bill amends s. 69.031, F.S., to remove the requirements that a savings and loan be a member of the Federal Savings and Loan Insurance Corporation and be doing business in the state in order to qualify as a depository institution for court-appointed fiduciaries.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

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[1] *What are Surety Bonds*, National Association of Surety Bond Producers, https://www.nasbp.org/getabond/about-surety (last visited March 13, 2021).
[2] *Fiduciary Bonds—Who Needs Them*, XI National Law Review 72, *available at:* https://www.natlawreview.com/article/fiduciary-bonds-who-needs-them (August 3, 2015).
[3] *Id.*
[4] *See* Gale v. Harbor Fed. Sav. & Loan, 571 So. 2d 114 (Fla. 4th DCA 1990), where the court drew a distinction between a between a custodial account and an account placed pursuant to s. 69.031, F.S., in regards to restrictions on withdrawals.
[5] Section 69.031(1), F.S.
[6] Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 69.031 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 Judiciary on March 9, 2020:
The bill as filed only repealed the requirement that a savings and loan be a member of Federal Savings and Loan Insurance Corporation. The committee substitute also repeals

the requirement that a savings and loan institution be doing business in the state in order to qualify as a depository institution.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Boyd

590-02603-21 20211288c1

A bill to be entitled

An act relating to assets of an estate in administration; amending s. 69.031, F.S.; deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state; providing an effective date.

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

Section 1. Subsection (1) of section 69.031, Florida Statutes, is amended to read:

69.031 Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association ~~(which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state)~~ designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. When the assets are placed

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with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

Section 2. This act shall take effect July 1, 2021.

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 1470
INTRODUCER:	Senator Boyd
SUBJECT:	Florida Life and Health Insurance Guaranty Association
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1470 makes changes to conform to the Life and Health Insurance Guaranty Association Model Act. An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida.

The bill:

- Adds a definition for the term "Moody's Corporate Bond Yield Average."
- Amends the definition of "person" to include "limited liability company" and "governmental body or entity."
- Clarifies that, in dealing with an impaired domestic insurer, FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that, for purposes of FLAHIGA's standing to appear before any court in this state, FLAHIGA's powers and duties include reissuing or modifying covered policies.
- Provides that FLAHIGA may recover payment of improper claims.
- Authorizes FLAHIGA to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA's general administrative expenses, removes the cap of $250, permits the assessments to be made on a pro rata basis, and allows FLAHIGA's board to credit the assessments against future assessments related to insurer insolvencies.

- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Requires FLAHIGA to establish a procedure for removing a member insurer board member if that member insurer becomes impaired or insolvent and establish policies and procedure to address conflicts of interest.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.[1] The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Federal law provides that insurance companies may not file for bankruptcy.[2] Instead, the state through the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating an insurer.[3] If an insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Generally, once an insurance company is liquidated, an insurance guaranty association becomes liable for the policy or contract obligations of the liquidated insurance company. Insurance guaranty funds are designed to protect policyholders of liquidated insurers from financial losses and delays in claim payments, up to limits provided by law. The Florida Legislature has created five guaranty funds.[4]

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).[5] The association services covered policies and contracts,

[1] Section 20.121(3), F.S.
[2] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.
[3] Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.
[4] See parts II-V of ch. 631, F.S. and s. 440.385, F.S. (The Florida Insurance Guaranty Association, Florida Life and Health Insurance Guaranty Association, Florida Health Maintenance Organization Consumer Assistance Plan, Florida Workers' Compensation Insurance Guaranty Association, and the Florida Self-Insurers Guaranty Association, respectively.)
[5] In 1979, the Florida Legislature enacted provisions of the National Association of Insurance Commissioners' *Life and Health Insurance Guaranty Association Model Act*,[5] which created FLAHIGA. Ch. 79-189, L.O.F. The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.

collects premiums, and pays valid claims.[6] All insurers authorized to write life insurance policies, health insurance policies, supplemental contracts, and annuity contracts (with exceptions) in Florida are required, as a condition of doing business in this state, to be member insurers of the association.[7] Currently, the association does not provide coverage for or assess health maintenance organizations.[8]

A policy must meet coverage requirements, and association payments are limited for any one person as follows:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.[9]

Additionally, the association will only cover a policy or contract to the extent that:

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield (averaged for that same four-year period) minus two percentage points.
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.[10]

The Florida Life and Health Insurance Act does not currently define Moody's Corporate Bond and long-term care insurers are not subject to the interest rate cap.[11]

Section 631.713(3), F.S., excludes all of the following from coverage by the association:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;

[6] See association's website available at http://www.flahiga.org/aboutus.cfm (last viewed March. 8, 2021).
[7] Sections 631.713 and 631.715, F.S.
[8] Section 631.713(3)(e), F.S.
[9] Section 631.717(9), F.S., and FLAHIGA, *Frequently Asked Questions*, available at http://www.flahiga.org/faq.cfm (last viewed Mar. 1, 2017).
[10] Section 631.713(2)(n), F.S.
[11] *Id*.

- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies; and
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

Board of Directors

The board of directors of the association must be composed of not fewer than nine but not more than eleven member insurers.[12] At least one member of the board must be a domestic insurer.[13] The member insurers elect the members of the board, and the members of the board are subject to the approval of the DFS. In approving or appointing members to the board the DFS must consider whether all member insurers are represented fairly.[14] The members of board have the authority to fill a board vacancy; however, there is no process in law for removing a member of the board when the insurer becomes impaired or insolvent.

Assessments

The association has three operating accounts for purposes of administration and assessments: health insurance, life insurance, and annuity.

The association may impose two classes of assessments: Class A for administrative costs and general expenses and Class B to carry out the powers and duties of the association with regard to an impaired or insolvent domestic insurer.[15] Class A assessments are determined by the board, are made on a non-pro rata basis, and may not exceed $250 per year per member insurer.[16] Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the three most recent years.

Florida law limits assessments on a member insurer to a maximum of 1 percent of the insurer's premiums written in the state regarding business covered by the account received during the 3 calendar years preceding the year in which the assessment is made, divided by 3.[17] For long-term care insurer impairments and insolvencies, the total assessment is limited to 0.5 percent of the insurer's premiums written during any one calendar year, and also imposed upon members of the Florida Health Maintenance Organization Consumer Assistance Plan.[18]

[12] Section 631.716(1), F.S.
[13] *See* Section 624.06, F.S.
[14] Section 631.716(2). F.S.
[15] Section 631.718(2), F.S.
[16] Section 631.718(2)(a), F.S.
[17] Section 631.718(5)(a), F.S.
[18] *Id.*

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply; or
- 0.1 percent of written premium on such business in this state.[19]

Member insurers of the association may offset the amount of an assessment against the insurance premium tax or corporate income tax.[20] The credit may be taken in an amount of 5 percent of the assessments for each of the 20 years following the year in which the assessment was paid.[21]

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.[22]

Legal Standing and Right of Intervention

The FLAHIGA has standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.[23] Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

The National Organization of Life and Health Insurance Guaranty Associations

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association comprised of the life and health insurance guaranty associations of all 50 states and the District of Columbia. The NOLHGA assembles a task force of guaranty association officials to address situations where insurers licensed in multiple states are facing insolvency or are declared insolvent. This task force analyzes the companies' policies, ensures that covered claims are paid, and arranges for the transfer of covered policies to another insurer (when possible). This allows the receiver and potential assuming carriers to deal with a single point of contact and contracting instead of having to engage in multiple discussions,

[19] Section 631.718(9), F.S.
[20] Section 631.72, F.S.
[21] Section 631.72(1)(b), F.S.
[22] Section 631.718(4), F.S.
[23] Section 631.717(7), F.S.

negotiations, and contracts with a variety of different associations.[24] The NOLGHA allocates these expenses[25] to affected guaranty associations for payment.[26]

The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is an association of insurance regulators that coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. In 2017, the NAIC released and updated the Life and Health Insurance Guaranty Association Act.[27] The model act is designed to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees against losses (both in terms of payment of claims and continuation of coverage), which might otherwise occur due to an impairment or insolvency of an insurer.

III. Effect of Proposed Changes:

Section 1 amends s. 631.714, F.S., relating to definitions, by defining "Moody's Corporate Bond Yield Average" to mean the monthly average corporates as published by Moody's Investors Service, Inc., or similar successor organization. Currently the term is used in s. 631.713(3)(n), F.S., which specifies the types of insurance and portions of insurance contracts to which the chapter does not apply.

The bill expands the current definition of "person" to mean any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2 amends s. 631.717, F.S. relating to the powers and duties of the association, to provide FLAHIGA with the right to appear or intervene before a court or agency in another state which has jurisdiction over an impaired or insolvent insurer for which FLAHIGA is or may become obligated, or with any person or property against whom FLAHIGA may rights through subrogation or otherwise. This essentially authorizes FLAHIGA to attempt to intervene in and appear before courts and agencies in other states, but the Florida Statutes do not govern the courts of agencies of other states and thus this statutory change will not ensure that FLAHIGA is able to appear or intervene before such entities.

For purposes of the FLAHIGA's standing to appear before any court in Florida, the bill expands standing to FLAHIGA's powers and duties include reissuing or modifying covered policies.

The bill provides FLAHIGA with the authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.

The bill further provides FLAHIGA with authority to join an organization of state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.

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[24] https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last viewed March 8, 2021).
[25] Id.
[26] Section 631.721, F.S.
[27] NAIC, *Life and Health Insurance Guaranty Association Model Act 520-1* (1st Quarter 2018) available at: https://content.naic.org/sites/default/files/inline-files/MDL-520.pdf (last viewed March 8, 2021).

Section 3 amends s. 631.718, F.S., relating to assessments, to provide that Class A assessments may be made on a pro rata basis. Class A assessments made on a pro rata basis may be credited against future Class B assessments, as determined by the board of directors. The bill removes the $250 cap on Class A assessments.

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Currently, assessments may not exceed the greater of insurer's premium tax and corporate tax payments on insurance subject to ch. 631, F.S., or 0.1 percent of the insurer's written premium on such business in this state. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insure at risk of becoming impaired or insolvent.

The bill provides that a member insurer must pay all deferred assessments once the conditions that caused a deferral have been removed or rectified.

Section 4 amends s. 631.721, F.S., relating to FLAHIGA's plan of operation, to provide FLAHIGA with the authority to establish a procedure for removing a member of the board in the event the member insurer becomes impaired or insolvent.

The bill requires FLAHIGA's board of directors to establish policies and procedures for addressing conflicts of interest.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes the $250 per year limit on Class A assessments against a member insurer, which are used to meet FLAHIGA's administrative costs, general expenses, and expenses related to certain examinations of member insurer that are not impaired or insolvent.

The bill also removes the limit on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers.

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: 631.714, 631.717, 631.718, and 631.721.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Boyd

21-01280A-21 20211470__

A bill to be entitled

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.714, F.S.; defining the term "Moody's Corporate Bond Yield Average"; revising the definition of the term "person"; amending s. 631.717, F.S.; authorizing the association to assume or reissue covered policies of impaired insurers; granting the association the right to appear or intervene before a court or an agency in certain proceedings; authorizing the association to take legal action to recover payment of improper claims; authorizing the association to join an organization of other state guaranty associations for certain purposes; amending s. 631.718, F.S.; revising the calculation of Class A assessments; specifying requirements for repayment of deferred assessments upon removal or rectification of the conditions causing a deferral; deleting a prohibition on certain nonprofit insurance companies being assessed more than a certain amount in a calendar year; amending s. 631.721, F.S.; revising the requirements of the association's plan of operation; providing an effective date.

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

Section 1. Present subsections (8), (9), and (10) of section 631.714, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, a new subsection

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(8) is added to that section, and present subsection (9) of that section is amended, to read:

631.714 Definitions.—As used in this part, the term:

(8) "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or a similar successor organization.

(10)~~(9)~~ "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2. Subsections (1) and (7) and paragraph (f) of subsection (13) of section 631.717, Florida Statutes, are amended, and paragraph (h) is added to subsection (13) of that section, to read:

631.717 Powers and duties of the association.—

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the covered policies of the impaired insurer;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and

(c) Loan money to the impaired insurer.

(7) The association has ~~shall have~~ standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing extends ~~shall~~

~~extend~~ to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association has the right to appear or intervene before a court or an agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(13) The association may:

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims.

(h) Join an organization of other state guaranty associations to further the purposes and administer the powers and duties of the association.

Section 3. Paragraph (a) of subsection (3) and subsections (4) and (9) of section 631.718, Florida Statutes, are amended to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If the assessment is made on a pro rata basis, the board may provide that it be credited against future Class B assessments ~~The assessment may not be credited against future insolvency assessments and may not exceed $250 per member insurer in any one calendar year~~.

(4) The association may abate or defer, in whole or in

part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.~~

Section 4. Paragraphs (h) and (i) are added to subsection (3) of section 631.721, Florida Statutes, to read:

631.721 Plan of operation.—

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(h) Establish a procedure for removing a member insurer director when that member insurer becomes an impaired or insolvent insurer.

(i) Require the board of directors to establish policies and procedures for addressing conflicts of interest.

Section 5. This act shall take effect July 1, 2021.

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 1478
INTRODUCER:	Senator Gibson
SUBJECT:	Consumer Finance Loans
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1478 expressly prohibits prepayment penalties for consumer finance loans under ch. 516, F.S.

The bill also mandates minimum loan terms for consumer finance loans, as follows:

- At least 90 days for a loan with principle balance upon origination of no more than $4,000; and
- At least 12 months for a loan with principle balance upon origination that exceeds $4,000.

Currently, consumer finance loans are repayable in installments every two weeks, semimonthly, or monthly, but there is currently no minimum or maximum loan term.

The foregoing amends the Florida Consumer Finance Act in ch. 516, F.S., which allows licensed lenders to make secured or unsecured loans up to $25,000 with interest rates that exceed the definition of usury – 18 percent simple interest per annum – using a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

The bill takes effect on July 1, 2021.

II. Present Situation:

Consumer Finance Loans

The OFR's Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act.

Florida's prohibition on usury generally prohibits[6] interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.[7] Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the limits provided in ch. 516, F.S.[8] Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[9]

[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).
[2] Section 516.01(2), F.S.
[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[4] S. 516.36, F.S. This section does not apply to lines of credit.
[5] *Id.*
[6] Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. See s. 687.12(1), F.S.
[7] Section 687.02, F.S
[8] Section 687.12, F.S.
[9] Section 516.031(1), F.S.

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[10] and TILA's federal implementing regulations.[11] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[12] In the event that two or more interest rates are applied to the principal amount of a loan,[13] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[14] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.[15] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[16]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[17]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[18]

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[10] Codified at 15 U.S.C. § 1601 *et seq.*

[11] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[12] *Id.*

[13] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

[14] Section 516.031(1), F.S.

[15] Section 516.031(2), F.S.

[16] Section 516.031(4), F.S.

[17] Section 516.031(5), F.S.

[18] Section 516.031(3), F.S.

Because the above list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty.[19]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[20]

Licenses granted under the Act are for a single place of business[21] and must be renewed every two years.[22] As of February 16, 2021, there are 170 licensed consumer finance loan companies operating in Florida operating across a total of 382 locations.[23]

The yearly data for licensure under ch. 516, F.S., is contained in the charts below.[24]

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386
Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[25] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of

[19] *Id.*; Office of Financial Regulation, *Agency Analysis of 2021 House Bill 895, p. 2* (Feb. 17, 2021).
[20] Section 516.35(2), F.S.
[21] Sections 516.01(1) and 516.05(3), F.S.
[22] Sections 516.03(1) and 516.05(1) & (2), F.S.
[23] Office of Financial Regulation, *supra* note 16.
[24] Office of Financial Regulation, *Active Licenses*, https://www.flofr.com/sitePages/documents/finregstats.pdf (last visited Mar. 21, 2021).
[25] Sections 516.03(1), F.S.

$625.[26] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000.[27] Each location of a consumer finance lender must be separately licensed.[28]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[29]

Deferred Presentment Transactions (Payday Loans)

Deferred presentment transactions, commonly referred to as "payday loans", are another small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, F.S., part IV.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[30] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[31] and money services business licensed under ch. 560, F.S., part II[32] or part III.[33]

There are two types of payday loan products permitted in Florida:

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[34] Fees may not exceed 10 percent of payment provided to the drawer plus a verification fee of up to $5.[35] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[36]
- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an

[26] *Id.*; s. 516.05(1), F.S.
[27] Section 516.03(1), F.S.
[28] Section 516.05(3), F.S.
[29] Section 516.02(4), F.S.
[30] Section 560.402(2) & (3), F.S.
[31] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[32] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, F.S., part III.
[33] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.
[34] Section 560.404(5), F.S.
[35] Section 560.404(6), F.S.
[36] Section 560.404(8), F.S.

outstanding transaction balance (exclusive of fees) of up to $1,000.[37] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[38] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[39] Prepayment penalties are prohibited.[40]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[41] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[42] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[43]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[44] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[45]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[46] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[47] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense

[37] Section 560.404(5) & (8), F.S.
[38] Section 560.404(6), F.S.
[39] Section 560.404(26), F.S.
[40] Section 560.404(6)(c), F.S.
[41] Section 560.404(19), F.S.
[42] Section 560.404(19)(a) & (23), F.S.
[43] Section 560.404(18), F.S.
[44] Section 560.404(22), F.S.
[45] *Id.*
[46] Section 560.404, F.S.
[47] *Id.*

arising out of the agreement or any provision of ch. 560, F.S., part IV.[48] A deferred presentment provider must comply with state and federal disclosure requirements.[49]

III. Effect of Proposed Changes:

Section 1 amends s. 516.031, F.S., governing finance charges and maximum rates on consumer finance loans, to expressly prohibit prepayment penalties. Florida law allows consumer finance lenders to charge certain fees, including up to $25 for investigating the credit and character of the borrower. Because the list of permissible fees does not include a prepayment penalty, then impliedly a licensee is prohibited from charging a prepayment penalty. The bill makes explicit the implied prohibition on prepayment penalties.

The bill amends s. 516.36, F.S., governing installment payments on consumer finance loans, to provide minimum loan terms as follows:

- At least 90 days for a loan with principle balance upon origination of no more than $4,000; and
- At least 12 months for a loan with principle balance upon origination that exceeds $4,000.

Currently, consumer finance loans are repayable in installments every two weeks, semimonthly, or monthly, but there is no minimum or maximum loan term. The imposition of minimum loan terms makes consumer finance loans somewhat analogous to deferred presentment installment transactions ("payday loans"). Such payday loans under Part IV of ch. 560, F.S., may have a loan amount of up to $1,000, a term of 60 to 90 days, and may not impose prepayment penalties. The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[48] Section 560.404(10), F.S.
[49] Section 560.404(13) & (20), F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.031 and 516.36.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to


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provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements of s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

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Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000, issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond in the amount of at least $5,000 for each additional license, issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i).

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(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges, or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the office of the written notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give written notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more

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recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2-year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee's outstanding consumer finance loans in this state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

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Section 5. Section 516.36, Florida Statutes, is amended to read:

516.36 Installment requirement.—

(1) Every loan made pursuant to this chapter must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does not apply to lines of credit.

(2) Every loan, including a refinancing, made pursuant to this chapter on or after October 1, 2021, must have a minimum loan term of 6 months.

Section 6. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000 or documents satisfying the requirements of s. 516.05(10), and the office’s authority to investigate the applicant’s background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall

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investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

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13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 7. This act shall take effect October 1, 2021.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.03, F.S.; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide certain documents in lieu of evidence of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05, F.S.; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of evidence of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking

authority; amending s. 516.07, F.S.; amending grounds for denial of license or disciplinary action; amending s. 516.36, F.S.; providing requirements for loan terms; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

By Senator Gibson

6-01267A-21 20211478__

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect loans under the Florida Consumer Finance Act from charging prepayment penalties for loans; amending s. 516.36, F.S.; providing requirements for loan terms; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (3) of section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(3) OTHER CHARGES.—

(c) A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 2. Section 516.36, Florida Statutes, is amended to read:

516.36 Installment requirement.—

(1) Every loan made pursuant to this chapter must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does not apply to lines of credit.

(2) A loan with a principal balance upon origination of no more than $4,000 must provide a term of at least 90 days. A loan with a principal balance upon origination that exceeds $4,000

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must provide a term of at least 12 months.

Section 3. This act shall take effect July 1, 2021.

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 1574
INTRODUCER:	Senator Brandes
SUBJECT:	Citizens Property Insurance Corporation
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1574 revises Citizens Property Insurance Corporation (Citizens) eligibility criteria, rates, assessment surcharges on Citizens policyholders, depopulation programs, producing agent commissions, and confidentiality exceptions for underwriting and claim files.

The bill limits application of the Citizens "glide path," which prevents rate increases of greater than 10 percent, by applying the glide path to only Citizens personal lines residential policies issued on or before July 1, 2021, on homestead properties or single-unit condominiums which have a dwelling replacement cost of less than $700,000.

The bill provides that Citizens policyholders become ineligible for Citizens personal lines residential coverage upon receiving an offer from an authorized insurer for comparable coverage that is not 15 percent greater than the actuarially sound Citizens premium would be on the property. Under current law, Citizens policyholders remain eligible unless they receive an offer of comparable coverage less than the current Citizens premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

The bill increases the maximum surcharge that may be levied on Citizens policyholders if Citizens projects a deficit in one of its accounts to 20 percent of premium if Citizens has 1 million policyholders but less than 1.5 million policyholders, and 25 percent of premium if Citizens has 1.5 million policyholders or more. The surcharge may be levied for each of Citizens' three accounts. The bill also creates a legal expenses surcharge to be levied on Citizens policyholders for deficits in legal expenses.

The bill authorizes surplus lines insurers to participate in Citizens depopulation, take-out, and keep-out plans. The surplus lines insurer must meet financial requirements, provide notice to the policyholder outlining any coverage differences and explaining that surplus lines policies are not covered by the Florida Insurance Guaranty Association, and provide coverage similar to that

provided by Citizens. A risk with a dwelling replacement cost, or in the case of a condominium a combined dwelling and contents replacement cost, that is less than $700,000 remains eligible for Citizens regardless of receiving an offer of comparable coverage from a surplus lines insurer. If such risk has a replacement cost of $700,000 or more, however, the risk is ineligible for Citizens coverage upon receiving an offer of comparable coverage from a surplus lines insurer that is not greater than 15 percent more than the premium for Citizens coverage.

The bill also:

- Revises confidentiality exceptions for Citizens' underwriting and confidential claim files;
- Limits the commissions that Citizens may pay to producing agents; and
- Makes technical changes to s 627.3517, F.S., and reenacts and makes conforming changes to s. 627.3518, F.S.

The bill takes effect January 1, 2022.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[1] Citizens is not a private insurance company.[2] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[3] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.[4] Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens' Accounts

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 to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.[5]

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[1] Admitted market means insurance companies licensed to transact insurance in Florida.
[2] Section 627.351(6)(a)1., F.S.
[3] Section 627.351(6)(a)2.
[4] Section 627.351(6)(c)4.a., F.S.
[5] *See* 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016).

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.[6]

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.[7]

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[8] 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.[9]

Citizens Glide Path Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S. From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[10] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. If the board of directors determines that a Citizens account has a projected deficit, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[11] The assessments Citizens may impose and their sequence is as follows:

[6] *Id.*
[7] *Id.*
[8] Section 10, ch. 2013-60 L.O.F.
[9] Section 627.3518(2)-(3), F.S.
[10] Section 627.351(6)(n)6., F.S.
[11] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h.

Citizens Surcharge:

Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[12]

Regular Assessment:

If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater.[13] This assessment is not levied against Citizens' policyholders.

Emergency Assessment:

Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[14]

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, are approved by the OIR and set out in Citizens' underwriting manuals.[15]

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more. [16] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

[12] Sections 627.351.(6)(b)3.(i)(I) and 627.351.(6)(c)21.,F.S.
[13] Section.627.351.(6)(b)3.a., F.S.
[14] Section.627.351.(6)(b)3.(d)
[15] *See Revised Underwriting Manuals*, Citizens Property Insurance Corporation, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited March 12, 2021).
[16] Section 627.351(6)(c)5., F.S.

Under current law, a residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[17]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[18] Structures with a dwelling replacement cost of $700,000 or more a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[19] However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of $1 million or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[20]

Citizens 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.[21] In 2016, the legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.[22] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies that the insurer is requesting to take out;[23]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

[17] Section 627.351(6)(c)5., F.S.
[18] Section 627.351(6)(a)3., F.S.
[19] Section 627.351(6)(a)3.d., F.S.
[20] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available here:* https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf). *See also* Section 627.351(6)(a)3.d., F.S.
[21] Section 627.351(6)(q)3.a., F.S.
[22] Chapter 2016-229, L.O.F.
[23] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[24] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[25]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[26] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[27] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Confidentiality of Citizens' Underwriting and Claims Files

Section 626.916(1)(x) establishes that certain records of Citizens are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pursuant to sub-sub-paragraphs 1.a.-b. these exempt records include:

- Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.
- Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

Sub-sub-paragraphs 1.a.-b. also provide that such records may be released to other governmental agencies upon written request and demonstration of need. Records so released and held by the receiving agency would remain confidential and exempt.

Homestead Exemption

Every family unit[28] that has legal and equitable title to real estate and who maintains their permanent residence on the real estate (homestead property) is eligible for a $25,000 tax

[24] FLA. CONST. art. I, s. 24(a).
[25] *Id*.
[26] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[27] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[28] While FLA. CONST. art VII, s. 6(a), uses the term "person," the constitutional provision essentially equates a person with a family unit by adding, in s. 6(b), that "not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit." Florida courts have interpreted this language to mean that a "harmonious" family unit (i.e. not separated or estranged), even if living apart, cannot claim more than one homestead exemption. *See Brklacic v. Parrish*, 149 So. 3d 85 (Fla. 4th DCA 2014); Endsley v. Broward County, 189 So. 3d 938, 940 (Fla. 4th DCA 2016); *cf. Wells v. Haldeos*, 48 So.3d 85, 88 (Fla. 2d DCA 2010) (holding spouses that "have no financial connection with and do not provide benefits, income, or support to each other," yet are still technically married, can establish separate "family units" when their lives are

exemption applicable to all ad valorem tax levies, including levies by school districts.[29] An additional $25,000 exemption applies to homestead property value between $50,000 and $75,000.[30] This exemption does not apply to ad valorem taxes levied by school districts. Each family unit is entitled to only one property to claim for homestead exemption status.[31]

III. Effect of Proposed Changes:

Section 1 revises s. 627.021, F.S., to revise the scope of the Rating Law under ch. 627, F.S. to state that the chapter does apply to surplus lines coverage placed pursuant to the Surplus Lines Law under ss. 626.913-626.937 when "specifically stated to apply."

Section 2 makes a number of revisions to s. 627.351, F.S., regarding Citizens.

Surcharge levied on Citizens' Policyholders for Projected Account Deficits

The bill revises s. 627.351(6)(b)3.i.(I), F.S., to revise the 15 percent of premium surcharge cap for Citizens' policyholders when the Citizens' board of governors determines that a Citizens has a projected deficit. The 15 percent cap is instead replaced with an escalating cap for Citizens' policy holders, based upon the total number of Citizens' policyholders:

- If Citizens has less than 1 million policyholders, the premium surcharge cap is 15 percent per account.
- If Citizens has at least 1 million policyholders, but less than 1.5 million policyholders, the premium surcharge cap is 20 percent per account.
- If Citizens 1.5 million or more policyholders, the premium surcharge cap is 25 percent per account.

As under current law, a surcharge may be levied for each of Citizens' three accounts. For example, under the bill, if Citizens has 1.2 million policies, a Citizens policyholder could be assessed a maximum policyholder surcharge of 60 percent of premium, consisting of a 20 percent surcharge for each of Citizens' three accounts.

Legal Expenses Surcharge

Where, after accounting for the ten percent rate increase limitation under s. 627.351(6)(n)6., F.S., Citizens still has a deficit in legal expenses, the bill requires that such deficit be recovered via an additional annual premium surcharge on Citizens' policies. The provision does not have a percentage cap on this surcharge (as there is with s. 627.351 (6)(b)3.i.(I), F.S.), but does specify that the surcharge must be "a uniform percentage of the premium for the policy." This surcharge is payable upon issuance of a new policy and upon subsequent renewals. The surcharge is not premium (thus not subject to commissions, fees, or premium taxes), but a policyholder's failure to pay would be treated as such.

sufficiently attenuated, and both spouses can receive homestead exemptions for their separate primary residences, including one out-of-state residence).

[29] FLA. CONST. art VII, s. 6(a).

[30] *Id.*

[31] *Supra* note 28.

Revision to Eligibility for Coverage with Citizens Regarding Renewal Premiums

The bill revises s. 627.351(6)(c)5.a., F.S., to state that a residential policyholder is ineligible to renew a policy with Citizens if such policyholder can obtain comparable coverage from an authorized insurer for less than, or equal to, 15 percent more than the actuarially sound Citizens' renewal premium would be for the risk. Under existing law, a policyholder would be ineligible only if an authorized insurer could offer comparable coverage for less than or equal to Citizens' premium, which for many policyholders is subject to the glide path's 10 percent limit on annual rate increases.

Limitations on Commissions

In proposed new s. 627.351(6)(c)22., F.S., the bill limits the commissions that Citizens may pay to producing agents of record. The bill limits the commissions to no more than the average of commissions paid in the preceding year by the 20 insurers writing the greatest market share of property insurance in Florida.

Glide Path Eligibility

The bill revises s. 627.351(6)(n)6., F.S., to beginning January 1, 2022, create new requirements to remain eligible for the 10 percent rate increase cap under Citizens' glide path provision. To continue to qualify for the glide path, the coverage, must:

- Be a policy initially issued before July 1, 2021; and
- Cover homestead personal residential property that has a dwelling replacement cost below $700,000, or, if a single condominium unit, has a combined dwelling and contents replacement cost below $700,000.

In addition to the above, upon renewal, policyholders must provide proof of homestead exemption for the covered property to continue to be eligible for the glide path.

Surplus Lines Insurer Participation in Citizens' Depopulation, Take-out, and Keep-out Plans

In proposed new s. 627.351(6)(q)3.d., F.S., the bill establishes a new program for where eligible surplus lines insurers may participate in any Citizens depopulation, take-out, or keep-out plan in the same manner and terms as an authorized insurer. To be eligible for participation in a particular program, a surplus lines insurer must follow all Citizens requirements relating to the plan that would be applicable to admitted insurers, follow statutory requirements applicable to the removal of policies from Citizens, and obtain approval from OIR. In considering a surplus line insurer's request for approval, OIR must ensure that the insurer:

- Maintains surplus of $50 million on a company or pooled basis;
- Maintains a financial strength rating of A- or higher by A.M. Best Company;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover its 100-year probable maximum hurricane loss at least twice in a single hurricane season;[32]
- Provides prominent notice to the policyholder that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and outline any substantial policy differences between the existing Citizens policy and the policy the insurer is offering; and
- Provides policy coverage similar to that provided by Citizens.

[32] The insurer also must submit such reinsurance to OIR for review.

The surplus lines insurer also must file the following with OIR:

- Information requested by OIR to demonstrate compliance with s. 624.404(3), regarding basic qualifications to transact insurance in Florida;[33]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least 3 years;
- A duly authenticated copy of the insurer's current audited financial statement;[34]
- A certified copy of the insurer's most recent official financial statement required by the insurer's domiciliary state (this is only required if the authenticated copy provided above differs from what the insurer provided to their domiciliary state); and
- A copy of the United States trust account agreement, if applicable.

Participation in these plans would not make a surplus line insurer subject to additional requirements under ch. 626, except that which is already required under part VIII. Policies taken out are not subject to the exporting requirements provided in 626.916(1)(a)-(c), and (e).

After assuming policies under these plans, a surplus lines insurer would be required to remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services. The insurer would also need to submit to OIR an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Subsequently, each quarter, the surplus lines insurer must update OIR with the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies. The purpose of the special deposit is to allow DFS, in the event of liquidation of the surplus lines insurer, to pay unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of ch. 631, F.S., or in compliance with any order of a court having jurisdiction over the insurer's insolvency.

A surplus line broker representing a surplus lines insurer must obtain confirmation, in advance, from the producing agent that the agent is willing to participate in the take-out plan with the surplus lines insurer. Also, authorized insurers are to be given priority over surplus lines insurers if both select a particular policy for removal.

The surplus lines insurer participation provision also states that if a policyholder has a dwelling replacement cost of $700,000 or more; or, if a single condominium unit, a combined dwelling and contents replacement cost of $700,000 or more; the policyholder would no longer qualify for Citizens coverage if a premium offered by the surplus lines insurer is no greater than 15 percent higher than that offered by Citizens. For policyholders with a dwelling replacement cost below $700,000; or, if a single condominium unit, with a combined dwelling and contents replacement

[33] This may include biographical affidavits, fingerprints processed pursuant to s. 624.34, F.S., and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company.

[34] The statement must be in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as OIR may request;

cost below $700,000; this provision would not apply and the policyholder would continue to be eligible for coverage with Citizens.

Underwriting and Confidential Claim Files

The bill amends s. 626.916(1)(x)2., F.S., to revise an existing exception to a public records exemption that allows authorized insurers, considering underwriting a risk held by Citizens, to access underwriting files to be released underwriting files and confidential claims files that would otherwise be exempt from public records requirements. The bill expands this exception to also include reinsurance intermediaries, eligible surplus lines insurers, or entities that have been created to seek authority to write property insurance in this state. The bill also revises the activities that would allow such parties (including authorized insurers) to receive this information. In particular, the bill states that such parties considering writing or assisting in the underwriting of a risk may be released this information.

Section 3 of the bill makes technical changes to s. 627.3517, F.S.

Section 4 of the bill makes conforming changes to s. 627.3518(5) and reenacts s. 627.3518(6)-(7), F.S., to implement revisions made by **Section 2** of the bill above.

Section 5 specifies an effective date of January 1, 2022 for the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises limits as to what Citizens' policyholders may be charged via surcharge when Citizens projects a shortfall in one of its accounts. In addition, the bill authorizes a new surcharge on Citizens policyholders when a legal expense deficit exists. These additional authorized surcharges, may, depending on the necessity of assessing such surcharges, lead to additional insurance costs for Citizens' policyholders.

Provisions of the bill revising glide path eligibility may also lead to increased premiums, at least in the short term, for some Citizens policyholders whose policies no longer qualify for the 10 percent rate increase cap. However, private market insurers seeking to write coverage on such policies will benefit from not having to compete on price with Citizens coverage for which the glide patch suppresses an actuarially sound rate.

It is indeterminate how the bill's provisions reducing eligibility for coverage with Citizens will impact insurance premiums for current or potential Citizens policyholders. However, such provisions will likely lead to additional policies being taken-out of Citizens and entering the private market.

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans will likely have some impact on the number of policies held by Citizens and may result in additional policies moving from Citizens into the private market. Also, allowing surplus lines insurers to participate in these plans may have an indeterminate negative impact on the number of such policies taken by authorized insurers under these plans due to increased competition.

C. Government Sector Impact:

The provisions of the bill relating to allowing surplus lines insurers to participate in Citizens' depopulation, take-out, and keep-out plans requires such insurers, if they take out policies from Citizens, to make specified deposits with the Bureau of Collateral Management and to make regular filings with OIR. This will likely lead to an indeterminate amount of additional regulatory cost for those government entities.

The bill's revisions to Citizens eligibility criteria and ratemaking should result in further depopulation of policies, which will reduce the amount of risk insured by Citizens and the possibility of assessments. Citizens will collect an actuarially sound premium on all new business after July 1, 2021, which will benefit Citizens' financial status, and reduce the likelihood of deficits and associated surcharges and assessments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 627.021 and 627.351 of the Florida Statutes.

This bill makes technical changes to section 627.3517 of the Florida Statutes.

This bill reenacts and makes conforming changes to section 627.3518 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.

657704

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete lines 972 - 980
and insert:
corporation covering an owner-occupied personal residential property that has a dwelling replacement cost less than $700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost less than $700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation and the dwelling was

657704

determined by the corporation to be owner-occupied before July 1, 2021.

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

And the title is amended as follows:

Delete lines 14 - 16.

306134

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete lines 1117 - 1118

and insert:

(B) Has a superior, excellent, exceptional, or equally comparable financial strength rating by a rating agency acceptable to the office;

By Senator Brandes

24-00876F-21 20211574__

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; requiring the corporation to levy an annual legal expenses surcharge; revising conditions for eligibility for coverage with the corporation to require a certain minimum premium; specifying a limit for agent commission rates; revising the application of annual rate increase limits to certain policies issued by the corporation; requiring a property owner to provide proof of current homestead exemption to remain eligible for coverage subject to certain limitations on rate increases; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks offered coverage from qualified surplus lines insurers; authorizing information from underwriting files and confidential claims files to be released by

24-00876F-21 20211574__

the corporation to specified entities considering writing or underwriting risks insured by the corporation under certain circumstances; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; making technical changes; amending s. 627.3517, F.S.; making technical changes; amending s. 627.3518, F.S., and reenacting subsections (6) and (7), relating to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program, to incorporate the amendments made to s. 627.351, F.S., in references thereto; 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 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks

commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (b), (c), (n), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate

accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only

policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines

account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral~~,~~ which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and

(II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph

d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a

projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines

agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and

expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation

insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, which funds shall be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium shall be levied.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million policyholders, a surcharge of 20 percent of the premium shall be levied.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium shall be levied.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

4. After accounting for the rate limitations specified in subparagraph (n)6., any remaining deficit in legal expenses must be recovered through an annual Citizens policyholder legal expenses surcharge against all policyholders of the corporation. The surcharge must be levied as a uniform percentage of the

premium for the policy. The surcharge is payable upon issuance of a new policy by the corporation and upon each subsequent renewal of the policy. The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge must be treated as failure to pay premium.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas

eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The

responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide

for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but

not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all

actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing

officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three

representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation ~~at~~

~~renewal~~ from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for comparable coverage from the authorized insurer is more than 15 percent greater than the premium for nonhomestead personal residential properties under subparagraph (n)1. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's

usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or

a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under

sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or

its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and ~~the provisions of~~ chapter 120 does ~~do~~ not apply.

9. Must provide that the corporation make its best efforts

to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and,

if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing

or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified

hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant~~,~~ which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,

BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

22. The corporation shall pay a producing agent of record a reasonable commission not to exceed the average of commissions paid in the preceding year by the 20 admitted insurers writing the greatest market share of property insurance in this state.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The

corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. ~~After~~ The public hurricane loss-projection model under s. 627.06281, if ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, ~~the model~~ shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate

change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2022 ~~January 1, 2010~~, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy renewed ~~issued~~ by the corporation covering a homestead personal residential property that has a dwelling replacement cost below $700,000 or that is a single condominium unit that has a combined dwelling and contents replacement cost below $700,000, excluding coverage changes and surcharges, if the policy was initially issued by the corporation before July 1, 2021. Upon renewal, a property owner must provide proof of a current Florida homestead exemption to the corporation to remain eligible for coverage provided pursuant to this subparagraph.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of

actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any

residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~

not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b)3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate

in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of $50 million on a company or pooled basis;

(B) Maintains a financial strength rating of A- or higher by A.M. Best Company;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, expressing all monetary values in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from sub-sub-sub-subparagraph (D); and

(F) A copy of the United States trust account agreement, if applicable.

This sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Management within the Department of Financial Services. The surplus lines insurer shall submit to the office, along with the initial deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) Surplus lines brokers representing a surplus lines

insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent in advance stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation shall give the offer of coverage from the authorized insurer priority.

(VI)(A) When offered comparable coverage from a qualified surplus lines insurer no greater than 15 percent higher than the premium charged by the corporation, a risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation.

(B) When offered coverage from a qualified surplus lines insurer, a risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which 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.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written

request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to,

information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state, provided the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain

the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's

notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

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 keep-out ~~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 may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~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 keep-out ~~keepout~~ offer, the policyholder is ~~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 is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~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(4).

Section 4. Subsection (5) of section 627.3518, Florida Statutes, is amended, and paragraph (a) of subsection (6) and paragraph (a) of subsection (7) of that section are reenacted, to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, if the offer is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. ~~equal to or less than the corporation's renewal premium for comparable coverage~~, the risk is not

eligible for coverage with the corporation. In the event an offer of coverage for a new applicant or a personal lines risk at renewal is received from an authorized insurer through the program, and the premium offered exceeds the eligibility thresholds specified ~~threshold contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. ~~In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is more than the corporation's renewal premium for comparable coverage, the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation.~~ Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or

electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an

application, issue a policy, or for any other purpose necessary for placing such business through the program.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 5. This act shall take effect January 1, 2022.

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 1598
INTRODUCER:	Senator Gruters
SUBJECT:	Consumer Protection
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1598 modifies provisions in several areas related to insurance that are regulated by the Department of Financial Services (DFS). The bill:

- Prohibits a credit reporting agency from charging any fee to reissue a PIN or provide a new unique PIN to a consumer.
- Requires insurers to include information regarding DFS's free financial literacy programs in its notice that a consumer's credit report or score is being requested.
- Requires an entity that is licensed or issued a certificate of authority by the DFS to respond to document requests from the DFS Division of Consumer Services.
- Eliminates the $60 fee for a new or renewal adjusting firm license.
- Defines "claims adjusting" under the "Licensing Procedures Law."
- Specifies that entities must comply with s. 626.8696, F.S., with respect to possessing an adjusting firm license, but provides that an adjusting firm's branch place of business does not require licensure if it meets specified requirements.
- Revises the Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.
- Authorizes DFS to suspend, revoke, or refuse to issue the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent that makes a consumer's personal financial or medical information available to the public, or initiates in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.
- Prohibits the sale of industrial life insurance policies, effective July 1, 2021.
- Increases to 10 days, the cooling-off period during which a consumer may cancel his or her contract with a public adjuster.

- Requires that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs. The public adjuster must provide the estimate to the claimant or insured within 60 days after the execution of the public adjuster contract.
- Prohibits a licensed contractor or subcontractor from soliciting an insured to file a claim unless licensed and compliant as a public adjuster.
- Requires disclosure that surplus lines insurance is not covered by the Florida Insurance Guaranty Association prior to placing coverage with a surplus lines insurer.
- Expands the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:
  - Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured.
  - Submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property; does not apply to renewals or collateral protection insurance.
- Applies the property insurance claim investigation and communication requirements of s. 627.70131, F.S. to surplus lines insurers.
- Requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days.
- Requires insurers to provide to policyholders the adjuster's name and state adjuster license number when a claim investigation involves a physical inspection of the property and maintain a record of each adjuster who communicates with the policyholder.
- Requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate or making a claim payment that is not the full and final payment for the claim.
- Prohibits the inclusion of a foreign venue clause within any personal residential property insurance policy sold in Florida that insures only property located in this state. This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.
- Requires insurers to provide the Homeowner Claims Bill of Rights pursuant to any personal lines residential property insurance claim and adds notice regarding the right to receive interest and the utility of taking video of damages and repairs.
- Remove the insured's obligation to pay a $100 deductible to FIGA in order to receive payment on their claim through FIGA.
- Revises the definition of a "covered claim" for purposes of the Florida Workers' Compensation Insurance Guaranty Association, to exclude the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Except as otherwise provided, the bill is effective upon becoming law.

II. Present Situation:

Department of Financial Services

The Department of Financial Services (DFS or Department) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and

protection; and holding and attempting to return unclaimed property to its rightful owner.[1] The department has a number of regulatory responsibilities over the Florida insurance market. The DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters under Part VI, ch. 626, F.S. The DFS conducts insurance-related consumer outreach through its Division of Consumer Services. The Division of Workers' Compensation within the DFS administers ch. 440, F.S., through enforcement of coverage requirements,[2] administration of workers' compensation health care delivery system,[3] data collection,[4] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.[5] The DFS also administers insurer rehabilitation and liquidation in Florida under part I of ch. 631, F.S.

DFS Division of Consumer Services

The Division of Consumer Services (Division) provides education, information, and assistance to consumers for all products or services regulated by the DFS or the Financial Services Commission.[6] The Division of Consumer Services' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by the DFS.[7]

Section 624.307(10)(b), F.S., permits the Division to impose an administrative penalty on a person who holds a license or certificate of authority from the Department if that person fails to respond to the Division's request for information within 20 days. This has been limited by the Fifth Amendment privilege against self-incrimination. A licensed individual must produce those records that are required to be kept by law, but is not required to produce those not within the purview of statutes.[8] Conversely, a corporation has no privilege against self-incrimination, nor does a custodian of corporate records, even if the contents tend to incriminate him or her.[9]

Discretion of DFS to Act Against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters,

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[1] *See, e.g.*, Department of Financial Services, *What DFS Can Do For You*, https://www.myfloridacfo.com/division/CFO/DFS.htm (last visited March 15, 2021).
[2] Section 440.107(3), F.S.
[3] Section 440.13, F.S.
[4] Section 440.185 and 440.593, F.S.
[5] Section 440.191, F.S.
[6] Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited March 5, 2021). *See also*, Department of Financial Services, *Consumer Guides*, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm (last visited March 5, 2021).
[7] Section 624.307(10)(a), F.S.
[8] *Saviak v. Gunter*, 379 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1980).
[9] *Eller Media Co. v. Serrano*, 761 So. 2d 464 (Fla Dist. Ct. App. 3d Dist. 2000); *State v. Wellington Precious Metals, Inc.*, 487 So. 2d 326 (Fla. Dist. Ct. App. 3d Dist. 1986).

customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the insurance code, violation of lawful orders or rules of the DFS, engaging in unfair and deceptive trade practices.

DFS Licensure of Adjusting Firms

Current law authorizes, but does not require, licensure of adjusting firms.[10] According to a representative of the DFS, there are currently no licensed adjusting firms. An adjusting firm license must be renewed every three years and requires a $60 application fee.[11] An adjusting firm license application must include:[12]

- The name and address of each of the firm's majority owners, partners, officers, and directors;
- The firm's name and principal business address; and
- Any branch office locations and the names under which they will operate.

Each adjusting firm location must have a designated primary adjuster who acts as a supervising manager and is accountable for misconduct that occurs at the firm location.[13]

Chapter 626 provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.[14]

DFS Authority Regarding Misleading Insurance Agency Names

The DFS may withhold permission to operate under an agency name if the name is too similar to another already in use by a different agency; the name may mislead the public; or the name states or implies that the agency is an entity other than an insurance agency, such as an insurer, state or federal agency, or charitable organization.[15]

The Social Security Act prohibits any person from using the terms "Medicare" or "Medicaid" in an advertisement or other communication in a manner which the person knows, or should know, would convey the false impression that the communication is approved by the Centers for Medicare & Medicaid Services.[16]

Industrial Life Insurance

Industrial life insurance is a form of life insurance in which the premiums are payable on a monthly or weekly basis. These policies usually have a face amount of less than $5,000.[17] Only 38 of the 398 active life insurers maintain existing industrial life insurance policies, and no new industrial life insurance policies have been written in the last year.[18]

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[10] Section 626.8696, F.S.
[11] Section 624.501(20), F.S.
[12] Section 626.8696, F.S.
[13] Section 626.8695, F.S.
[14] Section 626.8697, F.S.
[15] Section 626.602(1)-(3), F.S.
[16] 42 U.S. Code s.1320b-10(a)(1). Upheld by *United Seniors Ass'n Inc. v. SSA*, 423 F. 3d 397, 399 (4th Cir. 2005).
[17] Section 627.502, F.S. *See also*, Department of Financial Services, *Life Insurance Overview: Types of Policies*, https://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (last visited March 5, 2021).
[18] Florida Department of Financial Services, *HB 717 Agency Analysis*, 3 (Feb. 24, 2021), (on file with the Senate Committee on Banking and Insurance).

Public Adjuster Contracts and Estimates of Damages

Current law and administrative rules provide numerous restrictions and parameters on activities of public adjusters, especially relating to solicitation of contracts and inducement to contract.[19]As an additional consumer protection, Florida law grants a policyholder a short timeframe during which he or she may cancel a contract with an adjuster without cause, penalty, or obligation. This cooling-off period permits the policy holder to cancel the contract within 3 business days of execution of the contract with an adjuster, or when the insured or claimant notifies the insurer of the claim, whichever is later. However, the cooling-off period is extended to 5 business days from the date the contract was executed, if it was entered into during a state of emergency or during the 1-year period after the date of loss.

The adjuster must disclose, in all of his or her contracts, the consumer's right to cancel the contract, and the methods by which the consumer may send a cancellation.

Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of the insurance claim. The public adjuster must retain the estimate for at least 5 years and make it available to the claimant, insured, an insurer, or the DFS upon request.

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[20] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks (which are risks where an insured needs higher coverage limits than those that are available in the admitted market).

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,[21] which means they do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.[22] Rather, surplus lines insurers are "unauthorized" insurers,[23] but may transact surplus lines insurance if they are made eligible by the OIR.

[19] Section 626.854, F.S. Laws enacted in 2008 (ch. 2008-220, Laws of Fla.), in 2009 (ch. 2009-87, Laws of Fla.), 2011 (ch. 2011-39, Laws of Fla.), and 2017 (ch. 2017-147, Laws of Fla.), provided significant changes relating to public adjusters. Rule 69B-220.201(4) and (5), F.A.C.

[20] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S. *See also*, Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, https://www.fslso.com/AboutGroup/about/surplus-lines-insurance (last visited March 15, 2021).

[21] Section 626.914(2), F.S.

[22] Section 624.09(1), F.S.

[23] Section 624.09(2), F.S.

An insurance agent[24] may "export," or place a policy with an unauthorized insurer under the Surplus Lines Law, with the consent of the insurance applicant. Before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[25] A "diligent effort" requires a search for coverage that is ultimately denied by at least three authorized insurers in the admitted market. Additionally, the insurance agent must document the following before exporting the policy to the surplus lines market:[26]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks, [27] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

Certain types of insurance, deemed "commercial risks," including medical malpractice, travel, general liability, errors and omissions, and excess or umbrella insurance coverage, are exempt from the above diligent effort requirement. An insured for these commercial risks must sign a disclosure that provides, in substantially the following form:

> You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[28]

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act[29] prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance,[30] including:

- Misrepresenting the benefits, advantages, or terms of any insurance policy;

[24] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent. A surplus lines agent requires separate licensure than a traditional insurance agent, and is permitted to secure insurance coverages with unauthorized insurers whereas traditional insurance agents are not. *See* s. 626.914(1), F.S.
[25] Section 626.916(1)(a), F.S.
[26] Section 626.916(1), F.S.
[27] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[28] Section 626.916(3)(b), F.S.
[29] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[30] Section 626.9541, F.S.

- Inducing the lapse or exchange of any insurance policy, generally so the agent can earn a commission on a replacement policy; and
- Providing more insurance coverage than a consumer requests or consents to, while also failing to inform the consumer that the additional coverage was optional ("sliding").[31]

A person who commits an act prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $20,000 for nonwillful violations, and up to $200,000 total for willful violations.[32] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[33]

Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of no more than $75,000 per violation.[34]

Property Insurance Claim Communications and Investigations

Section 627.71031, F.S., provides base requirements for communications between an insurer and consumer that has notified the insurer of a possible claim. Generally, the residential property insurance company must respond to the consumer within 14 days to acknowledge the claim and provide necessary claim forms, instructions, and telephone contact information. The insurer is then required to commence an investigation within 10 days after it received proof of loss statements from the consumer. Lastly, the insurer is required to pay or deny a claim within 90 days after notice of the claim was made; if the insurer fails to make such a payment until after 90 days have passed, the payment bears interest due to the consumer. These duties generally constitute the consumer rights outlined in the Homeowner Claims Bill of Rights.[35]

The Homeowner Claims Bill of Rights

The Homeowner Claims Bill of Rights (Bill of Rights) outlines consumers' rights and responsibilities as a homeowner's insurance policyholder during the insurance claims process.[36] An insurance company must provide a consumer with a copy of the Bill of Rights within 14 days of receiving any communication about a claim.[37] Florida law provides form language that the insurer must include in the Bill of Rights, which gives notice of the consumer's right to:[38]

- Receive written confirmation of a claim's coverage, denial, or continued investigation within 30 days of specific communication;

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[31] Section 626.9541(1)(z), F.S. *See also, Beckett v. Department of Financial Services*, 982 So. 2d 94 (Fla. 1st DCA).
[32] Each count of a nonwillful violation is limited to a fine of no more than $5,000, and each count of a willful violation is limited to a fine of no more than $20,000. Section 626.9521(2), F.S.
[33] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.
[34] Section 626.9521(3)(b), F.S.
[35] See further discussion of the Homeowner Claims Bill of Rights, *infra*.
[36] Florida Department of Financial Services, *Know Your Rights- Homeowner Claims Bill of Rights* (Dec. 2020), *available at* https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/HOABillRights.pdf (last visited March 15, 2021).
[37] Section 627.70131, F.S.
[38] Section 627.7142, F.S. These consumer rights are partially based on the insurer's duties as outlined in s. 627.70131, F.S.

- Obtain full settlement payment, or partial payment on the undisputed portion of a claim, within 90 days;
- Enter mediation of a disputed claim or neutral evaluation of a claim relating to sinkhole damage; and
- Contact the Department of Financial Services for assistance.

The Bill of Rights also includes consumer advice for best practices after a loss has been incurred.

Forum Venue Clauses

A forum selection clause is a contractual provision in which the parties agree upon the venue for possible future litigation between them.[39] Generally, ch. 47, F.S., provides that civil actions must be brought in the Florida county where the defendant resides, where the cause accrued, or where the property in question is located.[40] If the defendant is an out-of-state (foreign) corporation, venue resides where the corporation has a representative, the action accrued, or where the property is located.[41] However, "a mandatory forum selection clause must be enforced unless it is shown to be unreasonable or unjust."[42] In 2014, the Legislature codified case law on the matter, holding that a court could refuse to enforce a forum selection clause if it contravenes public policy, or is unjust and unreasonable.[43]

Several states, including Florida, have attempted to limit forum selection clauses in specific instances. Florida voids, as contrary to public policy, any contract that requires litigation against Florida contractors and related professions to be filed in non-Florida jurisdictions.[44]

Federal and State Requirements Regarding Disclosure of Personal Medical Information

The Health Insurance Portability and Accountability Act of 1996 (HIPPA) is a federal law that protects individual's health information from certain disclosures when it is held by health care providers and health insurance companies.[45] Additionally, s. 456.057, F.S., provides that patient records, when held by a healthcare professional, must not be disclosed without the consent of the patient or his or her legal representative. Neither HIPPA nor the state provision apply to insurance licensees.

Credit Reports

A credit report is a record of a consumer's credit history and other information about the consumer, including his or her name, address, social security number, employment information,

[39] Black's Law Dictionary (11th ed. 2019).
[40] Section 47.011, F.S.
[41] Section 47.051, F.S.
[42] *Illinois Union Ins. Co. v. Co-Free, Inc.*, 128 So.3d 820, 821 (Fla. 1st DCA 2014) (*citing Land O'Sun Mgmt. Corp. v. Commerce and Indus. Ins. Co.*, 961 So. 2d 1078, 1080 (Fla 1st DCA 2007). Internal citations omitted.
[43] Section 61.0401, F.S. *See also, Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986) and *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 571 U.S. 49, 134 S. Ct. 568 (2013).
[44] Section 47.025, F.S.
[45] U.S. Department of Health and Human Services, *Your Health Information Privacy Rights, available at* https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/consumer_rights.pdf (last visited March 15, 2021).

date of birth, and court judgments.[46] Three major credit bureaus—Equifax, Experian, and TransUnion—compile and sell consumer credit reports. Lenders, insurers, utility and cell phone companies, employers, and others may obtain a consumer's credit report for their use in determining (i.e., whether to extend credit), set insurance rates, or employ the consumer.[47] A consumer may also review his or her credit report at no charge once every 12 months, from each of the credit bureaus.

Security Freezes and the Keeping I.D. Safe (KIDS) Act

The Keeping I.D. Safe (KIDS) Act[48] allows a third party, such as a parent or guardian, to place a security freeze on a minor child's credit report, or credit score to prevent the information from being released without express authorization to a third party, such as an insurer. After its receipt of a security freeze request, a credit reporting agency must provide a unique personal identification number (PIN) to the minor child's representative; this PIN is required to remove the security freeze. While credit reporting agencies are prohibited from charging any fee to place or remove a security freeze, they may charge up to $10 to reissue a PIN.[49]

Florida Telemarketer Act

The Florida Telemarketer Act, ss. 501.601-501.626, F.S., prohibits commercial telephone solicitations before 8 a.m. or after 9 p.m. However, insurers and their subsidiaries and affiliates are exempt from this law.[50] Similarly, the Federal Trade Commission's Telemarketing Sales Rule prohibits telemarketing calls before 8 a.m., or after 9 p.m.[51]

Currently, Florida law prohibits public adjusters from soliciting an insured before 8 a.m. and after 8 p.m. on Monday through Saturday, and completely prohibits any solicitations on Sunday.[52]

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a not-for-profit corporation created by statute that steps into the shoes of insolvent insurers to timely pay certain property and casualty claims[53] that would otherwise be left unpaid.[54] FIGA does not offer a replacement policy, and

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[46] 15 U.S. Code s. 1681 defines a "credit report" as any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, … general reputation, [or] personal characteristics… which is used…for the purpose of…establishing the consumer's eligibility for credit or employment purposes…. The Florida KIDS Act adopts this definition of a "credit report" in s. 501.0051(1)(a), F.S.

[47] Board of Governors of the Federal Reserve System, *Credit Reports and Credit Scores: Consumer's Guide*, *available at* https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf (last visited March 15, 2021).

[48] Section 501.0051, F.S.

[49] Section 501.0051(9), F.S.

[50] Section 501.604(7), F.S.

[51] Federal Trade Commission, *The Telemarketing Sales Rule*, https://www.consumer.ftc.gov/articles/0198-telemarketing-sales-rule (last visited March 15, 2021).

[52] Section 626.854(5), F.S.

[53] A "covered claim" is an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy." Section 631.54, F.S.

[54] *See generally*, Part II, ch. 631, F.S., "Florida Insurance Guaranty Association Act." *See also*, Florida Insurance Guaranty Association, *Home*, https://figafacts.com/ (last visited March 15, 2021).

coverage offered by FIGA is generally limited to a $300,000 payment. A consumer may receive additional FIGA coverage of up to $200,000 for damages to their home's structure or the contents thereof.[55] Condominium and homeowner's association claims have a coverage cap of $100,000 multiplied by the number of units in the association.[56] All claims filed with FIGA are subject to a $100 deductible in addition to any deductible identified in the consumer's policy.[57]

III. Effect of Proposed Changes:

Consumer Protections Related to Credit Reports

Section 1 amends s. 501.0051, F.S., to prohibit a credit reporting agency from charging any fee to reissue a PIN or provide a new unique PIN to a consumer.

Section 17 amends s. 626.9741(3), F.S., to require an insurer to include the following language in its notice that a consumer's credit report or score is being requested:

> The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com.

Insurer Reponses to Requests from the Division of Consumer Services

Section 2 amends s. 624.307(10)(b), F.S., to create a duty for an entity that is licensed or issued a certificate of authority by the DFS to respond to the DFS' requests for documents. The response must include any requested documents not subject to attorney-client or work product privilege.

Claims Adjusting

Section 3 amends s. 624.501, F.S., to eliminate the $60 fee for a new, or the renewal of an existing, adjusting firm license.

This section necessitates **Section 18,** which conforms a cross reference in s. 626.9953, F.S.

Section 4 amends s. 626.015, F.S., to provide a definition of "claims adjusting" under the "Licensing Procedures Law" (ss. 626.011 – 626.711, F.S.). The term is defined as, "directly or indirectly attempting or undertaking to ascertain and determine the amount of a claim, loss or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract" for consideration. Soliciting claims adjusting services and soliciting a policyholder to file an insurance claim are also defined as claims adjusting. The bill excludes from the definition of "claims adjusting" the following paid services: a spokesperson who is used in an advertisement, a photographer or videographer who is used to capture images of damage, and services to inventory personal property or business personal

[55] Section 631.57(2), F.S.
[56] Section 631.57(3), F.S.
[57] Section 631.57(2), F.S., *see also*, Florida Insurance Guaranty Association, *Frequently Asked Questions: Are There Limits on the Amount that FIGA Will Pay?*, https://figafacts.com/frequently-asked-questions/ (last visited March 15, 2021).

property. Also excluded from the definition is a discussion or explanation of a bid for construction or repair services with a property owner or the insurer of such property by licensed contractor or a subcontractor of a licensed contractor.

The insertion of the definition of "claims adjusting" necessitates conforming cross-reference changes in the following sections of the bill:

- **Section 8**, which amends s. 626.7315, F.S.
- **Section 11**, which amends s. 626.7845, F.S.
- **Section 13**, which amends s. 626.8305, F.S.

Section 5 amends s. 626.112, F.S., to specify that entities must comply with s. 626.8696, F.S., with respect to possessing an adjusting firm license for each place of business at which it performs activity for which it is necessary to be licensed as a claims adjuster.

The section provides that an adjusting firm's branch place of business is classified as a branch firm, and does not require licensure, if the branch:

- Transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- Designates with DFS a primary adjuster operating the location as required by s. 626.8965, F.S.;
- Submits the address and telephone number of the branch location to the DFS within 30 days after insurance transactions begin at the branch location.

The bill revises Licensing Procedures Law's prohibition against unlicensed activity to include knowingly aiding or abetting an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license. A person who does so commits a third-degree felony.

This section necessitates **Section 19**, which conforms a cross reference in s. 626.9957, F.S.

Prohibiting Misleading Insurance Agency Names

Section 6 amends s. 626.602, F.S., to authorize the DFS to disapprove an insurance agency's proposed use of a name that includes the words "Medicare" or "Medicaid." Insurance agencies that operate under such a name as of July 1, 2021, may continue to use the names, but if the license expires or is suspended or revoked, the agency may not be relicensed under that name.[58]

Taking Administrative Action Against Applicants for Licensure and Licensees for Engaging in Prohibited Actions

Section 7 amends s. 626.621, F.S., to add two bases under which the DFS may suspend or revoke the license of an insurance agent, adjuster, customer representative, service representative, or managing general agent, or refuse to issue a license to an applicant:

- Taking an action that allows a consumer's or customer's personal financial or medical information to be made available or accessible to the public; and

[58] Insurance agency licenses are indefinite. Section 626.382, F.S.

- Initiating in-person or telephone solicitation with a prospective customer after 9 p.m. or before 8 a.m., unless the customer requests otherwise.

Prohibiting the Sale of Industrial Life Insurance

Sections 9, 10, and 21 respectively amend ss. 626.782, 626.783, and 627.502, F.S., and **Section 12** repeals s. 626.796, F.S., to prohibit the sale of industrial life insurance policies, effective July 1, 2021. Insurers may continue to service and collect premiums on industrial life policies written before that date. According to the DFS, industrial life insurance is not currently being sold in this state, and less than 10 percent of active life insurers maintain existing policies.

Expanding the Cancellation Period for Public Adjuster Contracts; Prohibiting Contractors from Soliciting an Insured to File a Claim

Section 14 amends s. 626.854, F.S., to increase the duration of the cooling-off period during which a consumer may cancel his or her contract with a public adjuster to 10 calendar days. Currently, the contract may be generally be canceled within 3 business days after the contract is executed or the insurer is informed of the claim, whichever is later. Current law provides a cancellation period of 5 business days during, and for one year thereafter, a state of emergency declared by the Governor.

The bill also specifies that the public adjuster's written estimate of loss must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies that is created in accordance with accepted industry standards. The public adjuster must provide the detailed written estimate to the claimant or insured within 60 days after the date of the contract.

The section also prohibits a licensed contractor or subcontractor from soliciting an insured to file a claim unless licensed and compliant as a public adjuster.

Notice to Insureds that Surplus Lines Insurers Are Not Protected by the Florida Insurance Guaranty Association

Section 15 amends s. 626.916, F.S., to require that insurance is not eligible for export to a surplus lines insurer unless the insured signs or provides documented acknowledgement of the following disclosure:

> "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

The bill deletes a disclosure that was required to export certain types of commercial lines insurance[59] to a surplus lines carrier without meeting the generally applicable requirements[60] to export a commercial policy. The deleted disclosure is similar to the one created by the bill,

[59] Those identified in s. 627.062(3)(d)1.
[60] Section 626.916(1)(a)-(d), F.S.

except that the deleted disclosure states that, "superior coverage may be available in the admitted market and at a lesser cost."

This section is effective January 1, 2022.

Unfair Insurance Trade Practices

Section 16 amends s. 626.9541, F.S., to expand the definition of sliding, a practice that violates the Unfair Insurance Trade Practices, to include:

- Initiating, effectuating, binding, or otherwise issuing an insurance policy without the prior informed consent of the person who owns the property that will be insured; and
- Mailing, transmitting, or otherwise submitting an invoice for premium payment to a mortgagee or escrow agent in order to institute an insurance policy without the prior informed consent of the owner of the property that will be insured. However, it does not include cases where the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

These new violations will be punishable as administrative violations under the general provisions of the Unfair Insurance Trade Practices Act. However, the underlying acts that give rise to those administrative violations may also give rise to charges under s. 626.9541(1)(ee), F.S., which prohibits the willful submission of fraudulent signatures on an application or policy-related document, and is punishable as a third-degree felony pursuant to s. 626.9521, F.S.

Residential Property Insurance Claim Investigations; Application to Surplus Lines

Section 22 amends s. 627.70131, F.S., to impose new requirements on residential property insurers during their claim investigations, and to apply the section's requirements to surplus lines insurers and policies providing residential property insurance coverage.

The bill clarifies the communication standards of the statue by referring to "representatives" of an insurer, rather than "an agent" of the insured. The term "representative" is defined in the same way the term "agent" is currently defined by this statute: "any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer." The current use of "agent" could confuse readers of the statute regarding whether the requirements of the section only apply to licensed agents.

The bill requires a residential property insurer begin its claim investigation within 14 days of receiving a proof of loss statement; current law provides 10 business days. As under current law, the statutory time frame for beginning an investigation does not apply if any law or the insurance policy provides otherwise, if a claim investigation is not reasonably necessary, or if circumstances beyond the insurer's control reasonably prevent the investigation from commencing.

If the claim investigation involves a physical inspection of the property, the bill requires that the insurer's licensed adjuster must provide the policyholder a printed or electronic document containing the adjuster's name and state adjuster license number. All subsequent

communications by an adjuster must include the adjuster's name and license number. The insurer must maintain a record of each adjuster who engages in the foregoing communications, and provide that list to the insured, OIR, or DFS upon request.

The bill requires the insurer to provide notices that explain when the insurer is providing a preliminary or partial estimate, or making a claim payment that is not the full and final payment for the claim. The insurer must include with any preliminary or partial estimate of damages, the following notice in 12-point bold, uppercase type:

> THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROEPRTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE TO CONTACT US.

The insurer must include with any claim payment which is not the full and final payment for the claim, the following notice in 12-point bold, uppercase type:

> WE ARE CONTINUING TO EVALUATE YOUR CLAIM NVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

The bill creates a new subsection (8) that applies the section to surplus lines insurers and authorized surplus lines insurance providing residential property insurance coverage.

Prohibition on Foreign Venue Clauses

Section 23 creates s. 627.7031, F.S., which prohibits the inclusion within any personal residential property insurance policy any clause that would require an insured to pursue litigation, arbitration, or mediation outside of Florida, if such policy was sold after July 1, 2021, in Florida, and insures only property located in this state.

This prohibition also applies to surplus lines insurers and authorized surplus lines insurance.

Homeowner Claims Bill of Rights

Section 24 amends s. 627.7142, F.S., which contains the Homeowner Claims Bill of Rights that the insurer must provide the homeowner after receiving the initial communication regarding a personal lines residential property insurance claim. Currently, the Bill of Rights must be provided within 14 days after an insurer receives an initial communication on any personal lines residential property insurance claim. Additionally, the Bill of Rights currently include notice that the consumer has the right to receive interest payments; these payments begin accruing when a consumer files a claim if the insurer does not deny the claim or pay the full settlement of the claim, or the undisputed portion of the claim, within 90 calendar days after a claim is filed.[61] Any payable interest must be paid when the claim, or undisputed portion of the claim, is paid.

[61] *See* s. 627.70131(5)(a), F.S.

The Bill of Rights is also amended to encourage insureds to take video of damage before and after any repairs, and specify that the purpose of such videos or photographs is so that they can be provided to the insurer.

This section is effective January 1, 2022.

Elimination of the $100 Florida Insurance Guaranty Fund Deductible

Section 25 amends s. 631.57, F.S., to remove the insured's obligation to pay a $100 deductible to FIGA in order to receive payment on their claim through FIGA. The insured remains obligated to pay their original insurer's deductible.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) Covered Claims

Section 26 amends s. 631.904(2), F.S., to revise the definition of a "covered claim" for purposes of the FWCIGA, to exclude from the definition the return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

Effective Date

Section 27 provides that the bill, except as otherwise provided, is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Credit Bureaus will no longer be permitted to charge a fee to re-issue a PIN to consumers.

Consumers who seek to have their claims covered by FIGA will no longer be required to pay the $100 deductible to FIGA.

Certain property adjusting businesses will be required to become licensed by the DFS and pay related application fees; those who fail to submit an application for licensure will be subject to administrative penalties.

Consumers may benefit from the extended cooling-off period, which allows them to void a contract for public adjusting services without penalty.

Certain licensees may be subject to administrative or criminal penalties as a result of the additional penalties created by this bill.

Insurers will be prohibited from selling industrial life insurance policies, although this should have a de minimis impact, as few currently offer this type of policy.

Insurers and certain agents may be required to update forms or mailers to reflect the new surplus lines export disclosure, the hurricane disclosure, the updated homeowner claims bill of rights, and the prohibition of forum selection clauses.

C. Government Sector Impact:

Eliminating the $60 fee for a new or renewal adjusting firm license may have a de minimis impact on future DFS revenues.

Eliminating the $100 FIGA deductible may have a de minimis financial impact on FIGA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 of the bill may be federally preempted pursuant to 15 U.S.C. s. 1681t.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0051, 624.307, 624.501, 626.015, 626.112, 626.602, 626.621, 626.7315, 626.782, 626.783, 626.7845, 626.8305, 626.854, 626.916, 626.9541, 626.9741, 626.9953, 626.9957, 627.062, 627.502, 627.70131, 627.7142, 631.57, and 631.904.

This bill creates section 627.7031 of the Florida Statutes.

This bill repeals section 626.796 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with directory and title amendments)

Between lines 395 and 396
insert:

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

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(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, advertise, advise, assist, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(20) The department may take administrative actions and impose fines against any persons performing claims adjusting as defined in s. 626.015(6) or any other services as described in this section without the licensure required under this section and s. 626.112.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 346 - 347

and insert:

Section 14. Subsections (6), (11), (15), and (19) of section 626.854, Florida Statutes, are amended, and subsection (20) is added to that section, to read:

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

And the title is amended as follows:

Delete line 49

and insert:

circumstances; revising services a person is prohibited from performing unless the person meets specified requirements; authorizing the department to take administrative actions and impose fines against

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persons performing specified activities without licensure; amending s. 626.916, F.S.; revising

By Senator Gruters

23-00625B-21 20211598__

A bill to be entitled

An act relating to consumer protection; amending s. 501.0051, F.S.; prohibiting consumer reporting agencies from charging to reissue or provide a new unique personal identifier to a consumer for the removal of a security freeze; amending s. 624.307, F.S.; revising a requirement for persons licensed or authorized by the Department of Financial Services or the Office of Insurance Regulation to respond to the department's Division of Consumer Services regarding consumer complaints; amending s. 624.501, F.S.; deleting a fee for adjusting firm licenses; amending s. 626.015, F.S.; defining the term "claims adjusting"; amending s. 626.112, F.S.; deleting an obsolete provision; prohibiting unlicensed activity by an adjusting firm; providing an exemption; providing an exemption from licensure for branch firms that meet certain criteria; providing an administrative penalty for failing to apply for certain licensure; providing a criminal penalty for aiding or abetting unlicensed activity; amending s. 626.602, F.S.; authorizing the department to disapprove the use of insurance agency names containing the words "Medicare" or "Medicaid"; providing an exception for certain insurance agencies for a certain period; providing for expiration of certain licenses on a certain date; amending s. 626.621, F.S.; adding grounds on which the department may take certain actions against a license, appointment, or application of certain insurance

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representatives; amending s. 626.7315, F.S.; conforming a cross-reference; amending ss. 626.782 and 626.783, F.S.; revising the definitions of the terms "industrial class insurer" and "ordinary-combination class insurer," respectively, to conform to changes made by the act; amending s. 626.7845, F.S.; conforming a cross-reference; repealing s. 626.796, F.S., relating to the representation of multiple insurers in the same industrial debit territory; amending s. 626.8305, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; revising the timeframes in which an insured or a claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation; requiring that public adjuster's contracts include a specified disclosure; specifying requirements for written estimates of loss provided by public adjusters to claimants or insureds; prohibiting certain contractors from soliciting insureds to file insurance claims under certain circumstances; amending s. 626.916, F.S.; revising disclosure requirements for certain classes of insurance before being eligible for export under the Surplus Lines Law; amending s. 626.9541, F.S.; adding certain acts or practices to the definition of sliding; amending s. 626.9741, F.S.; requiring an insurer to include certain additional information when providing an applicant or insured with certain credit report or score information; amending s. 626.9953, F.S.; correcting a cross-reference; amending ss.

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

626.9957 and 627.062, F.S.; conforming cross-references; amending s. 627.502, F.S.; prohibiting life insurers from writing new policies of industrial life insurance beginning on a certain date; making technical changes; amending s. 627.70131, F.S.; providing that a communication made to or by an insurer's representative, rather than to or by an insurer's agent, constitutes communication to or by the insurer; revising the timeframe for insurers to begin certain investigations; requiring an insurer-assigned licensed adjuster to provide the policyholder with certain information in certain investigations; requiring insurers to maintain certain records and provide certain lists upon request; requiring insurers to include specified notices when providing preliminary or partial damage estimates or claim payments; providing applicability; conforming provisions to changes made by the act; creating s. 627.7031, F.S.; prohibiting foreign venue clauses in property insurance policies; providing applicability; amending s. 627.7142, F.S.; revising information contained in the Homeowner Claims Bill of Rights; conforming provisions to changes made by the act; amending s. 631.57, F.S.; deleting a deductible on the obligation of the Florida Insurance Guaranty Association, Incorporated, as to certain covered claims; amending s. 631.904, F.S.; revising the definition of the term "covered claim"; deleting a requirement that a policy be in force on the date of

the final order of liquidation; providing effective dates.

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

Section 1. Paragraph (b) of subsection (9) of section 501.0051, Florida Statutes, is amended to read:

501.0051 Protected consumer report security freeze.—

(9)

(b) A consumer reporting agency may not charge a fee to ~~a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must~~ reissue the unique personal identifier or to provide a new unique personal identifier to the consumer ~~representative~~.

Section 2. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon

any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 for the third or subsequent violation upon any individual licensed by the department or the office.

Section 3. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license.....$60.00~~

Section 4. Present subsections (6) through (21) of section 626.015, Florida Statutes, are redesignated as subsections (7) through (22), respectively, and a new subsection (6) is added to that section, to read:

626.015 Definitions.—As used in this part:

(6) "Claims adjusting" means directly or indirectly attempting or undertaking to ascertain and determine the amount of a claim, loss, or damage payable under an insurance contract or undertaking to negotiate or effect settlement of a claim, loss, or damage under an insurance contract, if such action results in payment to or receipt of money, commission, or any other thing of value by the party or parties rendering such service or persons affiliated with such party or parties. Claims adjusting also includes soliciting claims adjusting services as described in this chapter or soliciting an insured or policyholder to file an insurance claim. Claims adjusting does

not include:

(a) Paid services as a spokesperson used as part of a written or an electronic advertisement;

(b) Paid services as a photographer or videographer used to capture images of damage;

(c) Paid services to inventory personal property or business personal property; or

(d) Discussion or explanation of a bid for construction or repair services with a property owner or the insurer of such property by a contractor licensed pursuant to part I of chapter 489 or a subcontractor for a licensed contractor.

Section 5. Present subsection (9) of section 626.112, Florida Statutes, is redesignated as subsection (10) and amended, a new subsection (9) is added to that section, and paragraph (d) of subsection (7) of that section is amended, to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents, insurance adjusting firms.—

(7)

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

(9)(a) An individual, firm, partnership, corporation, association, or other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it complies with s. 626.8696 with respect to possessing an adjusting firm license for each place of business at which it

engages in an activity that may be performed only by a licensed insurance adjuster. However, an adjusting firm that is owned and operated by a single licensed adjuster conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the adjusting firm licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed if:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a primary adjuster operating the location as required by s. 626.8695; and

3. The address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed adjusting firm within 30 days after insurance transactions begin at the branch location.

(c) If an adjusting firm is required to be licensed but fails to apply for licensure in accordance with this section, the department must impose an administrative penalty of up to $10,000 on the firm.

(10) ~~(9)~~ Any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section or who knowingly aids or abets an unlicensed person in transacting insurance or otherwise engaging in insurance activities in this state without a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (4) is added to section 626.602,

Florida Statutes, to read:

626.602 Insurance agency names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

(4) The name contains the word "Medicare" or "Medicaid." An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 7. Subsections (16) and (17) are added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(16) Taking an action that allows the personal financial or medical information of a consumer or customer to be made available or accessible to the general public, regardless of the format in which the record is stored.

(17) Initiating in-person or telephone solicitation after 9 p.m. or before 8 a.m. local time of the prospective customer unless requested by the prospective customer.

Section 8. Section 626.7315, Florida Statutes, is amended to read:

626.7315 Prohibition against the unlicensed transaction of general lines insurance.—With respect to any line of authority as defined in s. 626.015(8) ~~s. 626.015(7)~~, no individual shall, unless licensed as a general lines agent:

(1) Solicit insurance or procure applications therefor;

(2) In this state, receive or issue a receipt for any money on account of or for any insurer, or receive or issue a receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, even though the policy, certificate, or contract is not signed by him or her as agent or representative of the insurer, except as provided in s. 626.0428(1);

(3) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state;

(4) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his or her employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer;

(5) In any way, directly or indirectly, make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer;

(6) Solicit, negotiate, or in any way, directly or indirectly, effect insurance contracts, if a member of a partnership or association, or a stockholder, officer, or agent of a corporation which holds an agency appointment from any insurer; or

(7) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state or upon bonds given to persons in this state.

Section 9. Section 626.782, Florida Statutes, is amended to read:

626.782 "Industrial class insurer" defined.—An "industrial class insurer" is an insurer collecting premiums on policies of ~~writing~~ industrial life insurance, as defined in s. 627.502, written before July 1, 2021, and as to such insurance, operates under a system of collecting a debit by its agent.

Section 10. Section 626.783, Florida Statutes, is amended to read:

626.783 "Ordinary-combination class insurer" defined.—An "ordinary-combination class insurer" is an insurer writing ~~both~~ ordinary class insurance and collecting premiums on existing industrial life ~~class~~ insurance as defined by s. 627.502.

Section 11. Subsection (2) of section 626.7845, Florida Statutes, is amended to read:

626.7845 Prohibition against unlicensed transaction of life insurance.—

(2) Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(13) ~~s. 626.015(12)~~, an individual may not, unless licensed as a life agent:

(a) Solicit insurance or annuities or procure applications;

(b) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts, unless the individual is:

1. A consulting actuary advising insurers;

2. An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative to their interests and those of their members or employees under insurance benefit plans; or

3. A trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust, relative to insurance benefit plans; or

(c) In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person a viatical settlement contract as defined in s. 626.9911.

Section 12. Section 626.796, Florida Statutes, is repealed.

Section 13. Section 626.8305, Florida Statutes, is amended to read:

626.8305 Prohibition against the unlicensed transaction of health insurance.—Except as provided in s. 626.112(6), with respect to any line of authority specified in s. 626.015(9) ~~s. 626.015(8)~~, an individual may not, unless licensed as a health agent:

(1) Solicit insurance or procure applications; or

(2) In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance contracts, unless the individual is:

(a) A consulting actuary advising insurers;

(b) An employee of a labor union, association, employer, or other business entity, or the subsidiaries and affiliates of each, who counsels and advises such entity or entities relative to their interests and those of their members or employees under insurance benefit plans; or

(c) A trustee advising a settlor, a beneficiary, or a person regarding his or her interests in a trust, relative to insurance benefit plans.

Section 14. Subsections (6), (11), and (15) of section 626.854, Florida Statutes, are amended to read:

626.854 "Public adjuster" defined; prohibitions.—The

Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 calendar ~~3 business~~ days after the date on which the contract is executed ~~or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, whichever is later~~. The public adjuster's contract must contain the following language in minimum 18-point bold type: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract by providing notice to ...(name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract ~~disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract~~.

(11) Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the

contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(15) A licensed contractor under part I of chapter 489, or a subcontractor, may not adjust a claim on behalf of an insured, or solicit an insured to file a claim, unless licensed and compliant as a public adjuster under this chapter. However, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered 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.

Section 15. Effective January 1, 2022, subsection (3) of section 626.916, Florida Statutes, is amended, and paragraph (f) is added to subsection (1) of that section, to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(f) The insured has signed or otherwise provided documented acknowledgment of a disclosure in substantially the following form: "You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected

under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."

(3)(a) Subsection (1) does not apply to wet marine and transportation or aviation risks that ~~which~~ are subject to s. 626.917.

(b) Paragraphs (1)(a)-(d) do not apply to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured has complied with paragraph (1)(f) ~~must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer."~~ If the disclosure ~~notice~~ is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 16. Paragraph (z) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(z) *Sliding.*—Sliding is the act or practice of any of the following:

1. Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required.~~;~~

2. Representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required.~~; or~~

3. Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

4. Initiating, effectuating, binding, or otherwise issuing a policy of insurance without the prior informed consent of the owner of the property to be insured.

5. Mailing, transmitting, or otherwise submitting by any means an invoice for premium payment to a mortgagee or escrow agent, for the purpose of effectuating an insurance policy, without the prior informed consent of the owner of the property to be insured. However, this subparagraph does not apply in cases in which the mortgagee or escrow agent is renewing insurance or issuing collateral protection insurance, as defined in s. 624.6085, pursuant to the mortgage or other pertinent loan documents or communications regarding the property.

Section 17. Effective January 1, 2022, subsection (3) of section 626.9741, Florida Statutes, is amended to read:

626.9741 Use of credit reports and credit scores by insurers.—

(3) An insurer must inform an applicant or insured, in the same medium as the application is taken, that a credit report or score is being requested for underwriting or rating purposes. The notification to the consumer must include the following language: "The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com." An insurer that makes an adverse decision based, in whole or in part, upon a credit report must provide at no charge, a copy of the credit report to the applicant or insured or provide the applicant or insured with the name, address, and telephone number of the consumer reporting agency from which the insured or applicant may obtain the credit report. The insurer must provide notification to the consumer explaining the reasons for the adverse decision. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's adverse decision. Such notification shall include a description of the four primary reasons, or such fewer number as existed, which were the primary influences of the adverse decision. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this subsection. A credit score may not be used in underwriting or rating insurance unless the scoring process produces information in sufficient detail to permit compliance with the requirements of this subsection. It shall not be deemed an

adverse decision if, due to the insured's credit report or credit score, the insured continues to receive a less favorable rate or placement in a less favorable tier or company at the time of renewal except for renewals or reunderwriting required by this section.

Section 18. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 19. Subsection (1) of section 626.9957, Florida Statutes, is amended to read:

626.9957 Conduct prohibited; denial, revocation, or suspension of registration.—

(1) As provided in s. 626.112, only a person licensed as an insurance agent or customer representative may engage in the solicitation of insurance. A person who engages in the

solicitation of insurance as described in s. 626.112(1) without such license is subject to the penalties provided under s. 626.112(10) ~~s. 626.112(9)~~.

Section 20. Subsection (10) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(10) Any interest paid pursuant to s. 627.70131(7) ~~s. 627.70131(5)~~ may not be included in the insurer's rate base and may not be used to justify a rate or rate change.

Section 21. Section 627.502, Florida Statutes, is amended to read:

627.502 "Industrial life insurance" defined; reporting; prohibition on new policies after a certain date.—

(1) For the purposes of this code, "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that ~~which~~, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

(2) Every life insurer servicing existing ~~transacting~~ industrial life insurance shall report to the office all annual statement data regarding the exhibit of life insurance, including relevant information for industrial life insurance.

(3) Beginning July 1, 2021, a life insurer may not write a new policy of industrial life insurance.

Section 22. Effective January 1, 2022, section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1)(a) Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by a representative ~~an agent~~ of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "representative" ~~"agent"~~ means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(2) Such acknowledgment must ~~shall~~ be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment must ~~shall~~ provide necessary claim forms, and instructions, including an appropriate telephone number.

(3)(a) Unless otherwise provided by the policy of insurance or by law, within 14 ~~10 working~~ days after an insurer receives

proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number.

(c) Any subsequent communication with the policyholder regarding the claim must also include the name and license number of the adjuster communicating about the claim. Communication of the adjuster's name and license number may be included with other information provided to the policyholder.

(4) An insurer shall maintain a record or log of each adjuster who communicates with the policyholder as provided in paragraphs (3)(b) and (c) and provide a list of such adjusters to the insured, office, or department upon request.

(5) For purposes of this section, the term "insurer" means any residential property insurer.

(6)(a) When providing a preliminary or partial estimate of damage regarding a claim, an insurer shall include with the estimate the following statement printed in at least 12-point bold, uppercase type: THIS ESTIMATE REPRESENTS OUR CURRENT EVALUATION OF THE COVERED DAMAGES TO YOUR INSURED PROPERTY AND MAY BE REVISED AS WE CONTINUE TO EVALUATE YOUR CLAIM. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(b) When providing a payment on a claim which is not the

full and final payment for the claim, an insurer shall include with the payment the following statement printed in at least 12-point bold, uppercase type: WE ARE CONTINUING TO EVALUATE YOUR CLAIM INVOLVING YOUR INSURED PROPERTY AND MAY ISSUE ADDITIONAL PAYMENTS. IF YOU HAVE QUESTIONS, CONCERNS, OR ADDITIONAL INFORMATION REGARDING YOUR CLAIM, WE ENCOURAGE YOU TO CONTACT US.

(7)(a) ~~(5)(a)~~ Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply with this subsection does not form the sole basis for a private cause of action.

(b) Notwithstanding subsection (5) ~~(4)~~, for purposes of

this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim for structural or contents coverage under a commercial property insurance policy if the insured structure is 10,000 square feet or less; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering nonresidential commercial structures or contents in more than one state.

(8) This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937 providing residential coverage.

Section 23. Section 627.7031, Florida Statutes, is created to read:

627.7031 Foreign venue clauses prohibited.—After July 1, 2021, a personal residential property insurance policy sold in this state, insuring only real property located in this state, may not require an insured to pursue dispute resolution through litigation, arbitration, or mediation outside this state. This section also applies to surplus lines insurers and surplus lines insurance authorized under ss. 626.913-626.937.

Section 24. Effective January 1, 2022, section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial

communication with respect to a claim~~, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor~~. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are

beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or

supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or undisputed portion of your claim is paid.

5. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6.~~5.~~ Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7.~~6.~~ Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged

property, if feasible, keep all receipts, and take photographs or video of damage before and after any repairs to provide to your insurer.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 25. Paragraph (a) of subsection (1) and subsection (6) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the determination.

2. The obligation under subparagraph 1. includes ~~only~~ the amount of each covered claim which is ~~in excess of $100 and is~~ less than $300,000, except that policies providing coverage for homeowner's insurance must ~~shall~~ provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, includes ~~shall include~~ that amount of each covered property insurance claim which is less than $200,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered

claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. ~~In no event shall~~ The association may not be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(6) The association may extend the time limits specified in paragraph (1)(a) by up to an additional 60 days ~~or waive the applicability of the $100 deductible specified in paragraph (1)(a)~~ if the board determines it is ~~that either or both such actions are~~ necessary to facilitate the bulk assumption of obligations.

Section 26. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as

subrogation recoveries or otherwise; or any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth, except this exclusion from the definition of covered claim does not apply to employers who, prior to April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund~~; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation~~. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision applies retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 27. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1758
INTRODUCER:	Senator Brandes
SUBJECT:	Money Services Businesses
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1758 makes several amendments to the Money Services Businesses statutes related to virtual currency. The bill:

- Defines virtual currency as a medium of exchange in electronic or digital format that is not currency;
- Subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and
- Prohibits payment instruments sellers from transacting business involving virtual currency.

The bill makes additional revisions to definitions and conforming changes.

The bill takes effect January 1, 2022.

II. Present Situation:

Background on Virtual Currencies

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the U.S. dollar or a foreign currency.[1]

Cryptocurrency is a type of virtual currency that utilizes cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a blockchain.[2] Units of cryptocurrency are generally referred to as coins or tokens. Distributed ledger technology uses independent digital

[1] Internal Revenue Service, Rev. Rul. 2019-24, https://www.irs.gov/pub/irs-drop/rr-19-24.pdf (last visited March 12, 2021).
[2] *See* note 1.

systems to record, share, and synchronize transactions, the details of which are recorded in multiple places at the same time with no central data store or administration functionality.

U.S. regulators generally agree that virtual currency does not have legal tender status, even when it has an equivalent value in real currency or acts as substitute for real currency, as in the case of convertible virtual currencies like Bitcoin. The U.S. Internal Revenue Service classifies virtual currency as property.[3] The U.S. Commodity Futures Trading Commissions (CFTC) classifies virtual currency as a commodity.[4]

While the U.S. Security and Exchange Commission has recently signaled that some virtual currencies may meet the definitions of a security subject to its regulation,[5] most state securities administrators generally agree that virtual currency is not a security, even when purchased for investment purposes.[6]

Recent actions by Florida to begin addressing virtual currencies highlight the challenges authorities face in keeping up with emerging technologies. In 2017, the Florida Money Laundering Act was amended to include virtual currency,[7] which is defined to mean a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.[8] In 2018, the Chief Financial Officer announced the appointment of a cryptocurrency chief for the purpose of ensuring that cryptocurrencies are reliable forms of payment that do not expose Floridians to financial fraud.[9] Locally, the Seminole County Tax Collector's Office in April 2018, began accepting bitcoin and bitcoin cash as payment for new identification cards, license plates, and property taxes.[10] In 2019, the Florida Third District Court of Appeal in *State v. Espinoza*,[11] a criminal case involving laundering of a virtual currency, ruled that virtual currency falls within the express definitions of "monetary value" and "payment instruments" under ch. 560, F.S., governing money services businesses, thereby requiring registration of money services businesses engaged in virtual currency transactions.

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[3] Internal Revenue Service, Notice 2014-21, https://www.irs.gov/pub/irs-drop/n-14-21.pdf (last visited March 12, 2021).
[4] U.S. Commodities Futures Trading Commission, *CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets* (January 4, 2018), https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf (last visited March 11, 2021).
[5] U.S Securities and Exchange Commission, *Remarks at the Yahoo Finance All Markets Summit: Crypto* (June 14, 2018)(Statement of Director William Hinman), https://www.sec.gov/news/speech/speech-hinman-061418 (last visited March 11, 2021).
[6] North American Securities Administrators Association, *Informed Investor Advisory; Cryptocurrencies*, https://www.nasaa.org/44848/informed-investor-advisory-cryptocurrencies/ (last visited March 12, 2021).
[7] Ch. 2017-155, L.O.F.
[8] Section 896.101(2)(j), F.S.
[9] Department of Financial Services, *CFO Jimmy Patronis: Florida Needs Cryptocurrency Oversight* (June 26, 2018) https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5057 (last accessed March 12, 2019).
[10] Martin E. Comas, *Seminole Tax Collector Joel Greenberg Hires Blockchain Director as Legislators Study Technology*, Orlando Sentinel (March 4, 2019) https://www.orlandosentinel.com/news/seminole/os-ne-seminole-tax-collector-greenberg-blockchain-20190304-story.html (last accessed March 12, 2021).
[11] *State v. Espinoza*, 264 So.3d 1055 (Fla. 3d DCA 2019).

Florida's Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for the administration and enforcement of ch. 560, F.S. Under the law, a person must be licensed or exempt from licensure to engage in the activities of a money services business.[12] State and federally chartered financial depository institutions, banks, credit card banks, credit unions, trust companies, associations, and international banking corporations are exempt from licensure under ch. 560, F.S.[13]

Under pt. II of ch. 560, F.S., corporations, limited liability companies, limited liability partnerships, and foreign entities who, for compensation,[14] engage in, or in any manner advertise that they engage in the activities of a '"payment instrument seller" or in the activity of a "money transmitter," must be licensed as a money services business.

Payment Instrument Sellers

A payment instrument seller is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.[15] A payment instrument, in turn, is a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value[16] whether or not negotiable, and does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.[17]

Current law does not address virtual currency related to payment instrument services under part II of ch. 560, F.S. However in *State v. Espinoza*,[18] the court interpreted the term "monetary value" to contemplate virtual currency under s. 560.105, F.S., governing money services business, thus requiring licensure as a payment instrument seller with OFR for transactions involving a virtual currency.

Money Transmitters

A money transmitter is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency,[19] monetary value,[20] or payment instruments[21] for the purpose of transmitting the same by any means, including

[12] The term "money services business" means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter. *See* Section 560.103(22), F.S.
[13] Section 560.104, F.S.
[14] The term "compensation" includes profit or loss on the exchange of currency. Section 560.204(1), F.S.
[15] Section 560.103(30), F.S.
[16] The term "monetary value" means a medium of exchange, whether or not redeemable in currency.
[17] Section 560.103(29), F.S.
[18] *State v. Espinoza* at 1067.
[19] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. *See* Section 560.103(11), F.S.
[20] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. *See* note 22.
[21] The term "electronic instrument" means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor

transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[22] In contrast to the federal definition of money transmitter,[23] Florida's definition does not include a third-party transmission requirement.

Current law does not address virtual currency related to money transmitters under part II of ch. 560, F.S. However in *State v. Espinoza*,[24] the court interpreted the term "medium of exchange" within the definition of "monetary value" to contemplate virtual currency ch. 560, F.S., governing money services business, thus requiring licensure as a money transmitter with OFR for transactions involving a virtual currency.

Requirements of Payment Instrument Seller and Money Transmitter Applicants

To qualify as a payment instrument seller or money transmitter, an applicant must:

- Submit an application with the Office and pay a nonrefundable application fee. If the application is approved, the payment instrument seller or money transmitter may, without incurring additional licensing fees, engage in the activities of a check casher or foreign currency exchanger as authorized under pt. III of ch. 560, F.S. Additionally, the payment instrument seller or money transmitter may operate through authorized vendors. Authorized vendors acting within the scope of authority conferred by the licensee are exempt from licensure but are otherwise subject to the provisions of ch. 560, F.S.;
- Submit fingerprints for live-scan processing for persons who have a controlling interest[25] in the applicant;
- Demonstrate to the Office the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business shall be operated lawfully and fairly; [26]
- Be legally authorized to do business in this state;[27]
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;[28]
- Have an anti-money laundering program ("AML") which meets the requirements of 31 C.F.R. s. 1022.210.[29] The AML program is a licensee's written program designed to deter money laundering and the financing of terrorist activities by requiring certain record-keeping, reporting, and compliance measures; and
- Have a corporate surety bond in an amount between $50,000 and $2 million.[30] In lieu of a corporate surety bond, an applicant may deposit collateral cash, securities, or alternative security devices with a federally insured financial institution. [31]

chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use. See Section 560.103(14), F.S.

[22] Section 560.103(23), F.S.

[23] 31 CFR 1010.100(ff)(5)(i)(A)(2014)

[24] *State v. Espinoza* at 1067.

[25] The term "controlling interest" is defined in section 560.127, F.S.

[26] Section 560.1401(1), F.S.

[27] Section 560.1401(2), F.S.

[28] Section 560.1401(3), F,S

[29] Section 560.1401(4), F.S.

[30] Section 560.209(3)(a), F.S.

[31] Section 560.209(4), F.S.

Requirements of Payment Instrument Seller and Money Transmitter Licensees

A licensee must at all times maintain a net worth of at least $100,000 and an additional $10,000 per location in Florida, up to a maximum of $2 million.[32]

Pursuant to s. 560.123, F.S., the Florida Control of Money Laundering in Money Services Business Act, a licensee is required to maintain certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.

Additionally, a licensee must keep records of each transaction occurring in Florida which it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section and ch. 896, F.S.[33]

Permissive Investments

A licensee must at all times possess permissible investments (e.g. cash, certificates of deposit, shares in a money market mutual fund, etc.) with an aggregate market value, calculated in accordance with generally accepted accounting principles, of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[34] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit posted by the licensee.[35]

Permissible investments include:

- Cash.
- Certificates of deposit or other deposit liabilities of a domestic or foreign financial institution.
- Bankers' acceptances eligible for purchase by member banks of the Federal Reserve System.
- An investment bearing a rating of one of the three highest grades as defined by a nationally recognized rating service of such securities.
- Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or municipality, or any political subdivision thereof.
- Shares in a money market mutual fund.
- A demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange.

[32] Section 560.209(1), F.S.
[33] Section 560.209(3), F.S.
[34] Section 560.210(1), F.S.
[35] Section 560.210(3), F.S.

- Receivables that are due to a licensee from the licensee's authorized vendors except those that are more than 90 days past due or are doubtful of collection.
- Any other investment approved by rule.

Current law does not address virtual currency for accounting and investment purposes under s. 560.210, F.S.

Financial Technology Sandbox

In 2020, the Legislature created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.[36]

Currently, Financial Technology Sandbox licensees are exempt from the licensing requirements for payment instrument sellers and money transmitters under s. 560.204(1), F.S., only to the extent that the requirements would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the 24-month[37] sandbox period.[38]

III. Effect of Proposed Changes:

Section 1 amends s. 559.952, F.S., related to licensing exceptions for payment instrument sellers under the Financial Technology Sandbox, to conform with changes made to the referenced licensing requirement statute in Section 3 of the bill.

Section 2 amends s. 560.103, F.S., to define "virtual currency" to mean a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). "Currency" is the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. The term "virtual currency" does not include a medium of exchange in electronic or digital format that is used:

- Solely within online gaming platforms with no market or application outside such gaming platforms; or
- Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The bill amends s. 560.103(14), F.S., to revise the definition of "electronic instrument" by inserting references to currency.

The bill amends s. 560.103(21), F.S., to revise the definition of "monetary value" by inserting references to virtual currency, distinguishing it from currency.

[36] Chapter 2020-161, L.O.F.
[37] Section 559.952(3)(k), F.S.
[38] Section 559.952(4)(11), F.S.

The bill amends s. 560.103(23), F.S., to revise the definition of "money transmitter" by inserting references to payment instrument, virtual currency, currency, monetary value, and payment instruments and inserting a third-party transmission requirement. This revision has the effect of subjecting a money transmitter to licensing requirements for transactions involving a virtual currency.

The bill amends s. 560.103(29), F.S., to revise the definition of "payment instrument" by inserting references to methods of transmission and exchange and inserting references to currency. This revision, paired with the other revisions to definitions in this section, has the effect of prohibiting payment instrument sellers from selling, issuing, providing, or delivering virtual currency.

The bill amends s. 560.103(35), F.S., to revise the definition of "stored value" by inserting references to currency.

Section 3 amends s. 560.204, F.S., to make a technical change to a reference to payment instrument sellers and to revise the definition on "compensation" by inserting references to monetary value and virtual currency.

Section 4 amends s. 560.210, F.S., related to permissible investments, to require a money transmitter to hold virtual currency in the same type and amount as owed or obligated to the other location of person. The held virtual currency may not be calculated as a permissible investment for purposes of equaling the aggregate face amount of all outstanding money transmission issued by the licensee.

Section 5 provides an effective date of January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 560.143, F.S., requires the following fees for money services businesses:

- For initial licensure:
  - Application fee of $375.
  - Fingerprinting fees, to authorized live scan vendors, that average $65 per individual with a controlling interest.
  - Fingerprint retention fees as required by rule - $6 per individual with a controlling interest.
- Bi-annual renewal fees:
  - $750 renewal fee
  - Fingerprint retention fees as required by rule - $6 per individual with a controlling interest.

Additionally, licensees are required to reimburse OFR for examination expenses. The average examination fee imposed by the office for fiscal year 2019-20 (pre-COVID) was $3800.[39] This fee would be imposed on average once every five years.

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: 559.952, 560.103, 560.204, and 560.210.

[39] Office of Financial Regulation, *Bill Analysis of SB 1758* (March 5, 2021)(On file with the Senate Committee on Banking and Insurance.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Brandes

24-01390-21 20211758__

A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.204, F.S.; prohibiting certain activities by a person without obtaining a license; revising the definition of the term "compensation"; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible investments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate

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the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of~~

~~payment instruments or in~~ the activity of a payment instrument seller or money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

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

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment used for the transmission, ~~or~~ payment, ~~of money~~ or ~~the~~ exchange of currency or monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual

currency ~~instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person ~~transmitting the same~~ by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument utilized for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~or not~~ negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(35) "Stored value" means currency ~~funds~~ or monetary value represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "Virtual currency" means a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). The term does not include a medium of exchange in electronic or digital format that is used:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) Exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be

converted into or redeemed for currency, monetary value, or virtual currency.

Section 3. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 4. Present subsections (2) and (3) of section 560.210, Florida Statutes, are redesignated as subsections (3) and (4), respectively, and a new subsection (2) is added to that section, to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency, either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another location or person must at all times hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 5. This act shall take effect January 1, 2022.

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 1786
INTRODUCER:	Senator Burgess
SUBJECT:	Payments for Birth-related Neurological Injuries
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1786 increases the cap on the periodic or lump-sum payment amount[1] from $100,000 to $250,000 that the Florida Birth-Related Neurological Injury Compensation Association (NICA) may pay parents or legal guardians of an infant found to have sustained a compensable birth-related neurological injury, as determined by an administrative law judge. Further, the bill establishes a 3 percent annual increase of this cap to ensure that payments keep up with increasing costs. The provisions of the bill apply retroactively to claims filed on or after January 1, 2021.

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) pays for compensation and medically necessary medical care and other services to persons with birth-related neurological injuries when a physician participating in the Plan delivers obstetrical services in connection with the birth, and an administrative law judge determines the claim is compensable.

The bill is effective July 1, 2021.

NICA engaged an actuary to determine the viability and likely impact of increasing the parental award from $100,000 to $250,000. The increase in the parental award is expected to result in additional expected costs of approximately $2.70 million, for the 2020 birth year. However, given the current net assets of approximately $393.2 million plus the recent better than expected inflation levels, it is not likely this increase will significantly impact the overall financial position of NICA in the short term. The actuary's report recommended increasing the parental award.

[1] Also known as the parental award.

II. Present Situation:

Florida Birth-Related Neurological Injury Compensation Association

In 1988, the Legislature enacted the Florida Birth-Related Neurological Injury Compensation Plan[2] (Plan) to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries.[3] If an infant suffers such an injury, and the physician participates in NICA and delivers obstetrical services in connection with the birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury with exceptions.[4] Although the benefits paid under the Plan are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.[5]

A "birth-related neurological injury" is an injury to the brain or spinal cord of a live infant caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.[6] Such an injury addressed by this statute renders the infant permanently and substantially mentally and physically impaired.[7]

The five-member board of directors of the Florida Birth-Related Neurological Injury Compensation Association (NICA) administers the Plan.[8] Duties of NICA include:

- Administering the plan;
- Administering the funds collected;
- Reviewing and paying claims;
- Directing the investment and reinvestment of any surplus funds over losses and expenses;
- Reinsuring the risks of the plan in whole or in part;
- Suing and being sued, appearing and defending, in all actions and proceedings in its name; and
- Taking such legal action as may be necessary to avoid payment of improper claims.[9]

NICA Funding

The funding for the plan is derived from an initial appropriation of $20 million by the Legislature when the plan was created[10] and annual assessments paid by physicians and hospitals.[11] The Plan pays, on behalf of a qualifying infant, the following benefits:

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[2] Section 766.303(1), F.S.

[3] Chapter 88-1, ss. 60-75, L.O.F., was enacted by the Legislature to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics. The intent of the Legislature is to provide compensation, on a no-fault basis, for a limited class of high costs catastrophic injuries, specifically birth-related neurological injuries, that result in unusually high costs for custodial care and rehabilitation. Section 766.301 F.S.

[4] Section 766.31(1), F.S.

[5] See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

[6] Section 766.302(2), F.S

[7] *Id.*

[8] Section 766.315(1) and (2), F.S. The Chief Financial Officer appoints the members of the NICA board.

[9] Section 766.315(4), F.S.

[10] Section 766.314(5)(b), F.S.

[11] Section 766.314, F.S., requires non-participating physicians to pay $250 per year, participating physicians to pay $5,000 per year, and hospitals to pay $50 per infant delivered during the prior year.

- Medically necessary and reasonable care, services, drugs, equipment, facilities, and travel;[12]
- Periodic or lump-sum award, not to exceed $100,000, to the infant's parents or guardians;[13]
- Death benefit of $10,000 for the infant; and
- Reasonable expenses for filing the claim under the Plan, including attorney's fees.[14]

The $100,000 cash award limit was established when the NICA statutory provisions were enacted in 1988. If the initial award of $100,000 established for the first birth year of 1989 was adjusted for inflation and assuming an annual increase of three percent, this would result in an indicated award of approximately $250,000.[15]

Filing a Claim for Benefits

A claim for compensation under the Plan must be filed within five years of the birth of the infant alleged to be injured.[16] First, the parents or guardians of the infant must file a petition with the Division of Administrative Hearings (DOAH).[17] Then, DOAH serves a copy of the petition upon NICA, the physician(s) and hospital named in the petition, the Division of Medical Quality Assurance, and the Agency for Health Care Administration.[18] Within 10 days of filing the petition, the parents or guardian must provide to NICA all medical records, assessments, evaluations and prognoses, documentation of expenses, and documentation of any private or governmental source of services or reimbursement relative to the impairments.[19]

Within 45 days from the date of service of a complete claim, NICA must file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury.[20] An administrative law judge (ALJ) from DOAH will set a hearing on the claim to be conducted 60-120 days from the petition filing date.[21]

The issue of whether the claim for compensation is covered by the plan is determined exclusively in an administrative proceeding.[22] The ALJ presiding over the hearing makes the following determinations:

- Whether the injury claimed is a birth-related neurological injury;
- Whether obstetrical services were delivered by a participating physician; and

[12] The Plan excludes coverage for expenses that are compensable by state or federal governments, or by private insurers. Section 766.31(1)(a), F.S.
[13] Often the award is paid out over time to assist the parents or guardians in making necessary modifications to living quarters to accommodate a disabled child.
[14] Section 766.31, F.S.
[15] Turner Consulting, Inc., Consultants and Actuaries, *Proposed Increase in Parental Award-Section 766.31(b)(1), Florida Statutes,* (Jan. 14, 2020). On file with Banking and Insurance Committee.
[16] Section 766.313, F.S.
[17] Section 766.305, F.S.
[18] Section 766.305(2), F.S.
[19] Section 766.305(3), F.S.
[20] Section 766.305(4), F.S.
[21] Section 766.307(1), F.S.
[22] Section 766.301(1)(d), F.S.

- How much compensation, if any, is awardable under s. 766.31, F.S.
  - Whether, if raised by the claimant or other party, the factual determination regarding the notice requirement in s. 766.316, F.S. [23]

If the ALJ determines that an injury meets the definition of a birth-related neurological injury, compensation from the plan is the exclusive legal remedy.[24] If the ALJ determines that, the injury alleged is not a birth-related neurological injury or that a participating physician did not deliver the obstetrical services, the ALJ will enter an order to that effect.[25] The ALJ may also bifurcate the proceeding and address compensability and notice first, and address an award, if any, in a separate proceeding.[26] If any party chooses to appeal the ALJ's order under s. 766.309, F.S., the appeal must be filed in the District Court of Appeal.[27]

Notice Requirement

Section 766.316, F.S., requires any hospital with a participating physician on its staff and each participating physician under the plan, to provide notice to an obstetrical patient as to the limited no-fault alternative for birth-related neurological injuries. The notice must:

- Be provided on forms furnished by the association; and
- Include a clear and concise explanation of a patient's rights and limitations under the plan.

This section also provides that the notice does not need to be provided to a patient when the patient has an emergency medical condition or when notice is not practicable.

III. Effect of Proposed Changes:

Section 1 amends s. 766.31, F.S., to increase the limit for periodic payments or a lump-sum payment of an award from $100,000 to $250,000, beginning January 1, 2021. Each January 1, thereafter this award limit is increased by 3 percent.

Section 2 provides that the amendments made to s. 766.31, F.S., by this act apply to claims filed under s. 766.305, F.S., on or after January 1, 2021.

Section 3 the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[23] Section 766.309(1), F.S.
[24] Section 766.303(2), F.S., only allows a civil action in place of a claim under the plan where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property.
[25] Section 766.309(2), F.S.
[26] Section 766.309(4), F.S.
[27] Section 766.311(1), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increasing the cash payment limit from $100,000 to $250,000 would assist parents and legal guardians in meeting significant medical expenses and other necessary services and care of children with birth-related neurological injuries.

C. Government Sector Impact:

NICA Report[28]

NICA engaged actuaries to evaluate the viability and likely impact of the proposed increase in parental award, which is authorized pursuant to s. 766.31(1)(b), F.S. The actuaries concluded that, if the payment were increased from $100,000 to $250,000, this would result in additional expected costs to NICA of approximately $2.70 million for the 2020 birth year. However, the actuaries noted:

> [G]iven the current net assets of approximately $393.2 million plus the recent better than expected inflation levels, it is not likely this increase will significantly impact the overall financial position in the short-term. Given the erosion resulting from the impact of inflation on the parental award coupled with the current NICA financial position, we would recommend the proposed change from $100,000 to $250,000.

The actuaries also noted that NICA's financial position and the potential need for assessment level increases in the longer run would depend on actual investment results and inflation levels experienced over shorter term 3 to 5 year periods. The shortfall in

[28] *Supra See* note 15.

assessments (i.e., without the additional investment income realized on the net assets and/or the better than expected inflation) and the indicated funding levels have in the past been offset by the better than expected realized NICA investment returns and inflation rates. To the extent this favorable relationship continues, the actuaries contend that it is likely additional increases in assessment levels will not be required. Alternatively, the actuaries note that volatility in the prospective results or increases in benefit inflation levels may require assessment level increases at some point in the longer term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Generally, physicians and hospitals in Florida pay assessments into the Plan with some exceptions. Physicians licensed in Florida who practice obstetrics or perform obstetrical services may choose to be participating physicians and pay a higher assessment, unless exempted from payment.

VIII. Statutes Affected:

This bill substantially amends section 766.31 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.

By Senator Burgess

20-01693-21 20211786__

A bill to be entitled

An act relating to payments for birth-related neurological injuries; amending s. 766.31, F.S.; increasing the amount that may be awarded to the parents or legal guardians of an infant found to have sustained a birth-related neurological injury; requiring that such amount be revised annually; providing for retroactive application; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 766.31, Florida Statutes, is amended to read:

766.31 Administrative law judge awards for birth-related neurological injuries; notice of award.—

(1) Upon determining that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth, the administrative law judge shall make an award providing compensation for the following items relative to such injury:

(b)1. Periodic payments of an award to the parents or legal guardians of the infant found to have sustained a birth-related neurological injury, which award may ~~shall~~ not exceed $100,000. However, at the discretion of the administrative law judge, such award may be made in a lump sum. Beginning on January 1, 2021, the award may not exceed $250,000, and each January 1 thereafter the award authorized under this paragraph shall increase by 3 percent.

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2. Death benefit for the infant in an amount of $10,000.

Section 2. The amendments made to s. 766.31, Florida Statutes, by this act apply to claims filed under s. 766.305, Florida Statutes, on or after January 1, 2021.

Section 3. This act shall take effect July 1, 2021.

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 1950
INTRODUCER:	Senator Gruters
SUBJECT:	Financial Institutions
DATE:	March 15, 2021
REVISED:	

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

I. Summary:

SB 1950 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the hearing on the matter;
- Prohibits the direct or indirect charging of a customer a fee by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions;
- Clarifies when approval from the Office of Financial Regulation (OFR) is needed when acquiring assets or liabilities of another financial institution;
- Revises the definition of "financial institution" for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where certain persons are elected, to notify the OFR of persons' names and residence addresses;
- Revises existing requirements to allow credit unions to invest up to 60 percent of the equity of the credit union in in real estate and improvements;
- Revises the scope of the OFR's investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company;
- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- Defines trust representative offices and specifies that a trust representative office in Florida may only engage in specified activities that are ancillary to fiduciary business;

- Requires that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest;
- Defining a "de novo branch" for the purposes of an existing de novo interstate branching provision;
- Authorizing the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register;
- Authorizing a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States;
- Revising when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allowing international bank agencies and international branches to maintain a required deposit in banks outside of Florida; and
- Allowing the OFR to suspend the qualification of qualified limited service affiliates under certain conditions.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term "financial institution" broadly; the term includes "state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."[1]

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.[2]

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The OFR is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.[3]

[1] Section 655.005(1)(i), F.S.
[2] For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.
[3] Section 655.012(1)(a), F.S.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).[4] National banks are required to be members of the Federal Reserve System; state banks may apply for membership.[5] The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.[6]

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).[7] Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.[8]

Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[9] The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[10] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[11] Consumers may also file suit through private actions.[12]

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;
- Civil penalties of up to $10,000 per willful violation; and
- Civil penalties of up to $15,000 per willful violation where certain aggravating factors are found.[13]

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[4] 12 U.S.C. s. 481.
[5] 12 U.S.C. s. 208.3 and 222.
[6] 12 U.S.C. s. 248.
[7] *See* 12 U.S.C. s. 1751, et. seq.
[8] Section 657.033, F.S.; 12 U.S.C. s. 1784.
[9] Section 501.202, F.S.
[10] Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on March 13, 2021).
[11] Section 501.203(2), F.S.
[12] Section 501.211, F.S.
[13] Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.[14]

Exemptions under the FDUTPA

FDUTPA exempts certain entities from its governance, including:[15]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Examination of Financial Institutions

Pursuant to s. 655.045(1), the OFR is required to conduct and examination of each state financial institution at least every 18 months. Section 655.045(1)(a), however, allows the OFR to accept an examination from an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36-months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.[16]

According to OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The ongoing COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.[17]

Financial Institution Acquisition of Assets and Assumption of Liabilities

Current law allows a financial entity, under s. 655.414, F.S., to acquire "all or substantially all" of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell "all or substantially all" of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term "substantially all" is not

[14] Sections 501.211(1)-(2), and 501.2105 F.S.
[15] Section 501.212(4), F.S.
[16] Office of Financial Regulation, *Legislative Bill Analysis of HB 1641* (March 8, 2021) (on file with Senate Banking and Insurance Committee).
[17] *Id.*

defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.[18]

Money Laundering and Terrorist Financing in Financial Institutions Act

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines "financial institutions" a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.[19]

Credit Union Boards of Directors

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires that directors assuming office in a credit union must make a prescribed oath and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called "Report of Officials." The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.[20] At present Florida law does not require state-chartered credit unions to submit a similar report.

State-chartered Credit Union Investments in Real Estate and Equipment

Section 657.042(5), F.S., authorizes state-chartered credit unions to invest up to five percent of their capital in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. Exceeding this cap requires approval by the OFR. The National Credit Union Administration (NCUA) previously had a similar restriction; however the NCUA removed this restriction in 2015. In issuing its supervisory letter regarding this change to its regulations, the NCUA noted that "several state supervisory authorities (SSAs) maintain an aggregate fixed asset limit" and that the "guidance

[18] *Supra* note 16.
[19] The world's last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).
[20] *NCUA Supervisory Letter 09-CU-17*, "Credit Union Online: Credit Union Profile and 5300 Call Report," National Credit Union Administration, *available at:* https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report (August 2009).

does not supersede these limits in any way."[21] Thus, Florida-chartered credit unions are subject to stricter controls on their investments in real estate, improvements, and equipment than their Federally-chartered counterparts.

Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e. via mobile device or personal computer).[22] With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.[23]

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located[24] and part of the OFR's approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity's primary service area.[25] In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.[26] The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.[27]

Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application shall include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S. also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement (FDLE) to conduct the required investigation.

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[21] *NCUA Supervisory Letter 15-CU-06*, "Fixed Asset Management," National Credit Union Administration, *available at:* https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/fixed-asset-management (October 2015).
[22] *Survey: Bank Customers Preference for Digital Channels Continues to Grow*, American Bankers Association, https://www.aba.com/about-us/press-room/press-releases/survey-bank-customers-preference-for-digital-channels-continues-to-grow (November 5, 2019).
[23] *Id.*
[24] Section 658.19, F.S.
[25] Section 658.20, F.S.
[26] Rule 69U-105.206(2)(a), F.A.C.
[27] Rule 69U-105.206(2)(a)1.-2., F.A.C.

To approve an application, the OFR must find, in part, that:[28]

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;
- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.[29]

Trust Representative Offices

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a "trust company" is dependent on whether an entity has "trust powers" and is engaging in "trust business," defined as follows:[30]

- "Trust powers" means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.
- "Trust business" means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

[28] 658.21. F.S.
[29] *Supra* note 16.
[30] Section 658.12, F.S.

Controlling Interests in State Banks and Trust Companies

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.[31] After such hearing, if the OFR determines that the party in questions does, in fact, have control of the bank or trust company, the party must file the application required under 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR's determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.[32]

De Novo Interstate Branching by State Banks

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

[31] 658.28(3), F.S.
[32] *Supra* note 16.

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

Family Trust Companies

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.[33] The Florida Family Trust Company Act is codified in ch. 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A "family trust company" is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.[34] A "licensed family trust company" means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.[35] A "foreign licensed family trust company" means a family trust company that is licensed by a state other than Florida, or the District of Columbia.[36] Family trust companies that are not licensed and foreign family trust companies must register the OFR and renew such registration annually.[37] Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.[38]

Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

[33] Ch. 2014-97, Laws of Fla.
[34] *See* s. 662.111(12), F.S. and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members
[35] *See* s. 662.111(16), F.S.
[36] *See* s. 662.111(15), F.S.
[37] *See* ss. 662.122, 662.128, F.S.
[38] Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.[39] An international branch has the same rights and privileges as a federally-licensed international branch.[40] Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

Qualified Limited Service Affiliates of International Trust Entities (QLSA)

Part IV of Chapter 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an "international trust entity" as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S. allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.[41] While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.[42]

III. Effect of Proposed Changes:

Section 1 amends s. 120.80(3)(a) to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

[39] Section 663.061, F.S.
[40] Section 663.064, F.S.
[41] Section 663.532(1)(i)3., F.S.
[42] *Supra* note 16.

Section 2 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 3 creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the FDUTPA.

Section 4 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 5 amends s. 655.045(1)(a), F.S. to remove the specific date of July 1, 2014, which the scheduling of examinations are pegged to for financial institutions. Instead, examinations would be on a rolling basis, but still be conducted every 18 months as otherwise required. The OFR states that this revision will give it greater flexibility to schedule examinations and work cooperatively with federal regulators.[43]

The section also creates s. 655.045(1)(f), F.S., to allow the Commissioner of the OFR, under certain conditions, to determine that an emergency condition exists and delay examinations when such delay would not be inconsistent with Federal law. Such delay would persist until the earlier of when the emergency conditions cease to exist or the office determines that conditions no longer present undue risk to examiners or significantly hinder or impede the examination process or the ordinary operations of a financial institution scheduled to be examined. This provision does not appear to be dependent on an emergency declaration by the Governor pursuant to s. 262.36, F.S.

Section 6 amends s. 655.414, F.S., to revise allowing financial entities to acquire "all or substantially all" of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read "all or 50 percent more."

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell "all or substantially all" of its assets to a stock financial institution, subject to certain conditions. The bill also updates this to read "all or 50 percent more."

Section 7 amends s. 655.50, F.S., to revise the definition of "financial institution" for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is significantly narrowed to just include a state association, a bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch. This would narrow the institutions to which the Act would apply and, according to the OFR, eliminate ambiguity.[44]

Section 8 creates s. 657.021, F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, shall submit to the OFR the names and

[43] *Id.*
[44] *Id.*

residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

Section 9 amends s. 657.042, F.S., to allow credit unions to invest up to 60 percent of the equity of the credit union in in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. The bill also clarifies that leasehold interests are also subject to limitation. This revision makes the credit union limitations in this area similar to state-chartered banks.[45]

Section 10 amends s. 658.12, F.S., to create a definition for "target market" to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11 amends s. 658.20, F.S., to incorporate the definition of target market created in **Section 10** and effectively expand the scope of the OFR's investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

Section 12 amends s. 658.21, F.S. to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The revision eliminates the requirement that the 1 year of experience be within the last 5 years.

Section 13 creates s. 658.265, F.S. to define trust representative offices and specify the activities a trust representative office in Florida may engage in, which are, as follows:

- Advertising, marketing, and soliciting for fiduciary business.
- Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.
- Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.
- Inspecting or maintaining custody of fiduciary assets or holding title to real property.

The section also specifies that trust representative offices may not engage in any activities considered to be fiduciary in nature.

Section 14 amends s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not

[45] *See* s. Section 658.67(7)(a)1.

give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

Section 15 amends s. 658.2953, F.S., to create a definition of "de novo branch" to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

Section 16 amends s. 662.122, F.S., to authorize the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register. The provision does however, state that the other requirements of ch. 120, F.S. would still apply.

Section 17 amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

Section 18 amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application. The previous requirement under 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

Section 19 amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

Section 20 amends s. 663.552, F.S. to allow the OFR to summarily suspend the qualification of a qualified limited service affiliate of an international trust entity if the OFR becomes aware that a jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action. Such a summary suspension would be lifted upon the jurisdiction being removed from the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action.

Section 21 amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 22 provides for an effective date of July 1, 2021 for the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

In **Section 6** of the bill, the phrase "50 percent more" is used twice. However, it appears from context that the intention was to state "50 percent or more." The OFR suggests revising the bill to make this change.[46]

Section 16 of the bill authorizes the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register. However, s. 120.80(3), F.S. states that in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII, persons have 21 days after publication of a notice to request a hearing. Pursuant to s. 120.52, F.S., such registrations would appear to be a "license" for the purposes of ch. 120, F.S., and thus persons would have

[46] *Supra* note 16.

such a period to challenge one of these registrations.[47] However, without such publication, it is unclear when this 21-day clock would begin.

In **Section 18** of the bill, as mentioned above, the new provision may require family trust companies, licensed family trust companies, or foreign licensed family, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year. It is unclear if this was the initial intention; however, the OFR suggests revision of the bill to clarify this provision.[48]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.042, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.122, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates the following sections of the Florida Statutes: 501.2076 and 658.265.

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.

[47] Section 120.52(10), F.S. defines a license as a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.
[48] *Supra* note 16.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 190 - 559

and insert:

(f) In coordinating an examination required under this section, if a federal agency suspends or cancels a previously scheduled examination of a financial institution, the office has an additional 90 days to meet the examination requirement of this section. In such case, the requirement is deemed met by the federal agency conducting the examination upon the lifting of

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the suspension or upon the office conducting the examination instead.

(4) A copy of the report of each examination must be furnished to the financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~ of the assets or liabilities of, or a combination of assets and liabilities of, or assume all or any part of the liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

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(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have

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an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders

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or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell 50 percent or more ~~all or substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:


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655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" means a state association, a bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch ~~financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected person or persons on a form adopted by the commission and provided by the office.

Section 9. Paragraph (a) of subsection (5) of section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 60 ~~5~~ percent of the equity ~~capital~~ of the credit union may be invested in the direct ownership of, or leasehold

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interests in, land, buildings, furniture, fixtures, and equipment, and improvements thereon, used or to be used by the credit union in the transaction of its business. This limitation applies to assets subject to a lease agreement which are required to be capitalized under criteria issued by the Financial Accounting Standards Board ~~real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business~~.

Section 10. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

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

(20) "Target market" means the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall

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make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located or in the target market that the bank or trust company intends to engage in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 12. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

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

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the

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applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution ~~within the last 5 years~~.

Section 13. Section 658.265, Florida Statutes, is created to read:

658.265 Trust Representative Offices.—

(1) For purposes of this section, the term "trust representative office" means an office of a bank or trust company other than a main office or branch of a bank or trust company at which activities ancillary to fiduciary business are conducted.

(2) A trust representative office may engage in the following ancillary activities:

(a) Advertising, marketing, and soliciting for fiduciary business.

(b) Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.

(c) Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.

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(d) Inspecting or maintaining custody of fiduciary assets or holding title to real property.

(3) A trust representative office may not engage in any activities considered to be fiduciary in nature, including, but not limited to:

(a) Acting as a trustee, an executor, an administrator, a registrar of stocks and bonds, a transfer agent, a guardian, an assignee, a receiver, or a custodian under a uniform gifts to minors act;

(b) Acting as an investment adviser, if the bank or trust company receives a fee for its investment advice; or

(c) Acting in any capacity in which the bank or trust company possesses investment discretion on behalf of another.

Section 14. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) A person or a group of persons that acquires a controlling interest as contemplated by this section, either directly or indirectly, in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 15. Present paragraphs (b) and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as

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paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(b) "De novo branch" means a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of:

1. The acquisition by the financial institution of a depository institution or a branch of a depository institution; or

2. The conversion, merger, or consolidation of any such institution or branch.

Section 16. Paragraph (d) of subsection (1) of section 662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account at a bank insured by the Federal Deposit Insurance Corporation located in the United States ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 17. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) Within 45 days after the end of each calendar year, a family trust company, licensed family trust company, or foreign licensed family trust company shall file its annual renewal

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application with the office. The annual renewal application shall be filed annually no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application of the family trust company, licensed family trust company, or foreign licensed family trust company.

Section 18. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency or international branch.

The commission shall prescribe, by rule, the deposit,

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safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 19. Present subsections (4), (5), and (6) of section 663.532, Florida Statutes, are redesignated as subsections (5), (6), and (7) respectively, and a new subsection (4) is added to that section, to read:

663.532 Qualification.—

(4) The permissible activities provided in s. 663.408 relating to a specific jurisdiction must be suspended by the qualified limited service affiliate if either the qualified limited service affiliate or the office becomes aware that the jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring. Suspensions pursuant to this subsection must remain in effect until the jurisdiction is removed from the Financial Action Task Force list of High Risk Jurisdictions subject to a Call for Action or list of Jurisdictions Under Increased Monitoring.

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

And the title is amended as follows:

Delete lines 15 - 68

and insert:

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examinations; authorizing the Office of Financial Regulation to delay examinations of financial institutions under certain circumstances; specifying that examination requirements are deemed met under certain circumstances; requiring copies of certain examination reports to be furnished to financial institutions; requiring certain directors to review and acknowledge receipt of such reports; amending s. 655.414, F.S.; revising the entities that may assume liabilities, and the liabilities that may be assumed, according to certain procedures, conditions, and limitations; specifying the basis for calculating percentages of assets or liabilities; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.; requiring credit unions to submit specified information to the office after certain meetings; amending s. 657.042, F.S.; revising certain limitations on credit union investments; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; deleting a requirement that certain proposed financial institution presidents or chief executive officers have certain experience

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within a specified timeframe; creating s. 658.265, F.S.; defining the term "trust representative office"; authorizing a trust representative office to engage in certain activities; prohibiting a trust representative office from engaging in fiduciary activities; amending s. 658.28, F.S.; requiring a person or group to notify the office upon acquiring a controlling interest in a bank or trust company in this state; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits; amending s. 663.532, F.S.; requiring limited service affiliates to suspend certain permissible activities under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; amending s. 736.0802, F.S.; conforming a

By Senator Gruters

23-01207B-21 20211950__

A bill to be entitled

An act relating to financial institutions; amending s. 120.80, F.S.; providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; amending s. 475.01, F.S.; conforming a cross-reference; creating s. 501.2076, F.S.; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; amending s. 518.117, F.S.; conforming a cross-reference; amending s. 655.045, F.S.; revising the interval for the Office of Financial Regulation to conduct certain examinations; authorizing the Commissioner of the Office of Financial Regulation to delay examinations of financial institutions under certain circumstances; requiring copies of certain examination reports to be furnished to financial institutions; requiring certain directors to review and acknowledge receipt of such reports; amending s. 655.414, F.S.; revising the entities that may assume liabilities, and the liabilities that may be assumed, according to certain procedures, conditions, and limitations; specifying the basis for calculating percentages of assets or liabilities; amending s. 655.50, F.S.; revising the definition of the term "financial institution"; amending s. 657.021, F.S.; requiring credit unions to submit specified information to the office after

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certain meetings; amending s. 657.042, F.S.; revising certain limitations on credit union investments; amending s. 658.12, F.S.; defining the term "target market"; amending s. 658.20, F.S.; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or target market and the ability of such service area or target market to support new and existing bank facilities; amending s. 658.21, F.S.; deleting a requirement that certain proposed financial institution presidents or chief executive officers have certain experience within a specified timeframe; creating s. 658.265, F.S.; defining the term "trust representative office"; authorizing a trust representative office to engage in certain activities; prohibiting a trust representative office from engaging in fiduciary activities; amending s. 658.28, F.S.; requiring a person or group to notify the office upon acquiring a controlling interest in a bank or trust company in this state; amending s. 658.2953, F.S.; defining the term "de novo branch"; amending s. 662.122, F.S.; providing an exception to publication requirements under ch. 120 for applications to register certain family trust companies; amending s. 662.1225, F.S.; revising the type of institution with which certain family trust companies are required to maintain a deposit account; amending s. 662.128, F.S.; revising the timeframe for filing renewal applications

for certain family trust companies; amending s. 663.07, F.S.; revising the banks with which international bank agencies or branches shall maintain certain deposits; amending s. 663.532, F.S.; requiring the office to suspend qualifications for limited service affiliates under certain circumstances; specifying that such suspensions remain in effect until certain conditions are met; requiring the office to revoke such qualifications after a certain timeframe; amending s. 736.0802, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may

request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an application for license for a new bank, new trust company, new credit union, new savings and loan association, or new licensed family trust company must be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. An application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, a new credit union, or a new licensed family trust company by the appropriate insurer.

4. In the case of an application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent

or more of any class of voting securities, and in the case of an application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of such foreign national to appear personally at or participate through video conference in the hearing shall be grounds for denial of the application. Notwithstanding s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 2. Subsection (4) of section 475.01, Florida Statutes, is amended to read:

475.01 Definitions.—

(4) A broker acting as a trustee of a trust created under chapter 689 is subject to the provisions of this chapter unless the trustee is a bank, state or federal association, or trust company possessing trust powers as defined in s. 658.12(24) ~~s. 658.12(23)~~.

Section 3. Section 501.2076, Florida Statutes, is created to read:

501.2076 Violations involving consumer financial institution account fees.—The imposition of a fee or other charge by a third party agent or entity directly or indirectly

upon a consumer for an online audit verification of an account maintained by a financial institution as defined in s. 655.005 or of the associated balance of such account is a violation of this part.

Section 4. Section 518.117, Florida Statutes, is amended to read:

518.117 Permissible investments of fiduciary funds.—A fiduciary that is authorized by lawful authority to engage in trust business as defined in s. 658.12(21) ~~s. 658.12(20)~~ may invest fiduciary funds in accordance with s. 660.417 so long as the investment otherwise complies with this chapter.

Section 5. Paragraph (a) of subsection (1) and subsection (4) of section 655.045, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

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

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

(a) The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. If the office accepts an examination report in accordance with this paragraph, ~~However, at least once during each 36-month period beginning July 1, 2014,~~ the office shall conduct the subsequent ~~an~~ examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized under s. 655.057.

(f) If the commissioner determines that emergency conditions exist which would cause undue risk to examiners or significantly hinder or impede an examination or the ordinary operations of a state-chartered financial institution or its departments, sections, functions, offices, or facilities, the commissioner may delay an examination of such financial institution if the delay is not inconsistent with federal law. Such delay may continue until the earlier of when the emergency conditions cease to exist or the office determines that conditions no longer present undue risk to examiners or significantly hinder or impede the examination process or the ordinary operations of the financial institution and its departments, sections, functions, offices, and facilities.

(4) A copy of the report of each examination must be

furnished to the financial institution ~~entity~~ examined and presented to the board of directors at its next regular or special meeting. Each director shall review the report and acknowledge receipt of the report and such review by signing and dating the prescribed signature page of the report and returning a copy of the signed page to the office.

Section 6. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a financial institution ~~entity~~ may acquire all or 50 percent more ~~substantially all~~ of the assets or liabilities of, or a combination of assets and liabilities of, or assume all or any part of the liabilities of, any other financial institution in accordance with the procedures and subject to the following conditions and limitations:

(1) Percentages of assets or liabilities must be calculated based on the most recent quarterly reporting date.

(2) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on terms that are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the

plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution.

(e) If a stock financial institution is the transferring financial institution and the proposed sale is not for cash, a clear and concise statement that dissenting stockholders of the institution are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the acquisition, assumption, or sale and such other information and provisions as necessary to execute the transaction or as required by the office.

(3) ~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to their activities and their deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity to amend the plan to overcome such objections.

(4) ~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution at an annual meeting or at a special meeting called to consider such action. Upon a majority vote of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote of the members present at the meeting, the plan is adopted.

(5) ~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution, the president or vice president and the cashier, manager, or corporate secretary of such institution shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions have complied with all applicable state and federal law and rules, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution may abandon such a transaction without further action or approval by the members or

stockholders, subject to the rights of third parties under any contracts relating thereto.

(6) ~~(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution, all participants must also comply with requirements imposed by federal and other state law for the acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution is a federal or out-of-state state-chartered financial institution and the transferring state financial entity will be liquidated, approval of the office is not required.

(7) ~~(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell all or 50 percent more ~~substantially all~~ of its assets to a stock financial institution until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations also refer to credit unions but, in the case of a credit union, the provision concerning proxy statements does not apply.

Section 7. Paragraph (c) of subsection (3) of section 655.50, Florida Statutes, is amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.—

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

(c) "Financial institution" means a state association, a

bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch ~~financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state~~.

Section 8. Present subsections (2) through (8) of section 657.021, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

657.021 Board of directors; executive committee.—

(2) Within the 30 days following the annual meeting or any other meeting at which any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, the credit union shall submit to the office the names and residence addresses of the elected person or persons on a form adopted by the commission and provided by the office.

Section 9. Paragraph (a) of subsection (5) of section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE CREDIT UNION.—

(a) Up to 60 ~~5~~ percent of the equity ~~capital~~ of the credit union may be invested in the direct ownership of, or leasehold interests in, land, buildings, furniture, fixtures, and equipment, and improvements thereon, used or to be used by the credit union in the transaction of its business. This limitation applies to assets subject to a lease agreement which are

required to be capitalized under criteria issued by the Financial Accounting Standards Board ~~real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business~~.

Section 10. Present subsections (20) through (24) of section 658.12, Florida Statutes, are redesignated as subsections (21) through (25), respectively, and a new subsection (20) is added to that section, to read:

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

(20) "Target market" means the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11. Paragraphs (b) and (c) of subsection (1) of section 658.20, Florida Statutes, are amended to read:

658.20 Investigation by office.—

(1) Upon the filing of an application, the office shall make an investigation of:

(b) The need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be

located or in the target market that the bank or trust company intends to engage in business.

(c) The ability of the primary service area or target market to support the proposed bank or trust company and all other existing bank or trust facilities that serve the same primary service area or target market ~~in the primary service area~~.

Section 12. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

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

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the control of money laundering and terrorist financing; chapter 896, relating to offenses related to financial institutions; or similar state or federal law. At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years before the date of the application, the office may

modify the requirement and allow the applicant to have only one director who has direct financial institution experience within the last 5 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution ~~within the last 5 years~~.

Section 13. Section 658.265, Florida Statutes, is created to read:

658.265 Trust Representative Offices.—

(1) For purposes of this section, the term "trust representative office" means an office of a bank or trust company other than a main office or branch of a bank or trust company at which activities ancillary to fiduciary business are conducted.

(2) A trust representative office may engage in the following ancillary activities:

(a) Advertising, marketing, and soliciting for fiduciary business.

(b) Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.

(c) Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.

(d) Inspecting or maintaining custody of fiduciary assets or holding title to real property.

(3) A trust representative office may not engage in any activities considered to be fiduciary in nature, including, but

not limited to:

(a) Acting as a trustee, an executor, an administrator, a registrar of stocks and bonds, a transfer agent, a guardian, an assignee, a receiver, or a custodian under a uniform gifts to minors act;

(b) Acting as an investment adviser, if the bank or trust company receives a fee for its investment advice; or

(c) Acting in any capacity in which the bank or trust company possesses investment discretion on behalf of another.

Section 14. Present subsections (2), (3), and (4) of section 658.28, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

658.28 Acquisition of control of a bank or trust company.—

(2) A person or a group of persons that acquires a controlling interest as contemplated by this section, either directly or indirectly, in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. Such an interest does not give rise to a presumption of control until the person or group of persons votes the shares or the office has issued a certificate of approval in response to an application pursuant to subsection (1).

Section 15. Present paragraphs (b) and (c) of subsection (11) of section 658.2953, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection, to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(b) "De novo branch" means a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of:

1. The acquisition by the financial institution of a depository institution or a branch of a depository institution; or

2. The conversion, merger, or consolidation of any such institution or branch.

Section 16. Subsection (6) is added to section 662.122, Florida Statutes, to read:

662.122 Registration of a family trust company or a foreign licensed family trust company.—

(6) Registration applications filed pursuant to this section need not be published in the Florida Administrative Register but shall otherwise be subject to chapter 120.

Section 17. Paragraph (d) of subsection (1) of section 662.1225, Florida Statutes, is amended to read:

662.1225 Requirements for a family trust company, licensed family trust company, or foreign licensed family trust company.—

(1) A family trust company or a licensed family trust company shall maintain:

(d) A deposit account at a bank insured by the Federal Deposit Insurance Corporation located in the United States ~~with a state-chartered or national financial institution that has a principal or branch office in this state~~.

Section 18. Subsection (1) of section 662.128, Florida Statutes, is amended to read:

662.128 Annual renewal.—

(1) Within 45 days after the end of each calendar year, a family trust company, licensed family trust company, or foreign licensed family trust company shall file its annual renewal application with the office. The annual renewal application shall be filed annually no later than 45 days after the anniversary of the filing of either the initial application or the prior year's renewal application of the family trust company, licensed family trust company, or foreign licensed family trust company.

Section 19. Subsection (1) of section 663.07, Florida Statutes, is amended to read:

663.07 Asset maintenance or capital equivalency.—

(1) Each international bank agency and international branch shall:

(a) Maintain with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States ~~in this state~~, in such amounts as the office specifies, evidence of dollar deposits or investment securities of the type that may be held by a state bank for its own account pursuant to s. 658.67. The aggregate amount of dollar deposits and investment securities for an international bank agency or international branch shall, at a minimum, equal the greater of:

1. Four million dollars; or

2. Seven percent of the total liabilities of the international bank agency or international branch excluding accrued expenses and amounts due and other liabilities to affiliated branches, offices, agencies, or entities; or

(b) Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the

international bank agency or international branch.

The commission shall prescribe, by rule, the deposit, safekeeping, pledge, withdrawal, recordkeeping, and other arrangements for funds and securities maintained under this subsection. The deposits and securities used to satisfy the capital equivalency requirements of this subsection shall be held, to the extent feasible, in one or more state or national banks located in this state or in a federal reserve bank.

Section 20. Subsection (3) of section 663.532, Florida Statutes, is amended to read:

663.532 Qualification.—

(3) A qualification under this part must be summarily suspended by the office if the qualified limited service affiliate made a material false statement in the written notice or the office becomes aware that a jurisdiction of an international trust entity served by the qualified limited service affiliate is included on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action. The summary suspension must remain in effect until a final order is entered by the office or the jurisdiction is removed from the Financial Action Task Force's list of High-Risk Jurisdictions subject to a Call for Action. For purposes of s. 120.60(6), a material false statement made in the qualified limited service affiliate's written notice constitutes an immediate and serious danger to the public health, safety, and welfare. If a qualified limited service affiliate made a material false statement in the written notice, the office must enter a final order revoking the qualification and may issue a fine as prescribed by s. 655.041

or issue an order of suspension, removal, or prohibition under s. 655.037 to a financial institution-affiliated party of the qualified limited service affiliate. A suspension based on the inclusion of a jurisdiction on the list of High-Risk Jurisdictions subject to a Call for Action will remain in effect for no longer than 12 months. After 12 months, the office must enter a final order revoking the qualification, or the qualified limited service affiliate must requalify under this part.

Section 21. Paragraph (a) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)(a) An investment by a trustee authorized by lawful authority to engage in trust business, as defined in s. 658.12(21) ~~s. 658.12(20)~~, in investment instruments, as defined in s. 660.25(6), that are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, is not presumed to be affected by a conflict between personal and fiduciary interests provided the investment otherwise complies with chapters 518 and 660 and the trustee complies with the requirements of this subsection.

Section 22. This act shall take effect July 1, 2021.