Tab 1	**SB 418** by **Simpson**; (Compare to CS/CS/H 00997) Essential Health Benefits Under Health Insurance Policies and Contracts

166758	D	S	RCS	BI, Simpson	Delete everything after	03/25 06:03 PM

Tab 2	**SB 772** by **Stargel**; (Similar to CS/CS/H 00431) Liens Against Motor Vehicles and Vessels

888030	D	S	RCS	BI, Stargel	Delete everything after	03/25 06:03 PM

Tab 3	**SB 874** by **Rouson**; (Similar to CS/H 00469) Consumer Finance Loans

402070	A	S	RS	BI, Rouson	Delete L.146 - 245:	03/25 06:03 PM
431878	AA	S	OO	BI, Rouson	Delete L.114:	03/25 06:03 PM
153120	SA	S	RCS	BI, Rouson	Delete L.146 - 672:	03/25 06:03 PM

Tab 4	**SB 1034** by **Gruters**; (Identical to H 01039) Assignment of Consumer Debts

~~671276~~	D	S	WD	BI, Gruters	Delete everything after	03/25 06:03 PM
~~805758~~	SD	S	WD	BI, Gruters	Delete everything after	03/25 06:03 PM
593470	D	S	RCS	BI, Gruters	Delete everything after	03/25 06:03 PM

Tab 5	**SB 1210** by **Book**; (Identical to H 00983) Ratification of Rules of the Department of Financial Services

Tab 6	**SB 1476** by **Flores**; (Similar to H 01145) Citizens Property Insurance Corporation

877038	A	S	RCS	BI, Flores	Delete L.71 - 74:	03/25 06:03 PM

Tab 7	**SB 1636** by **Perry**; (Compare to H 01399) Workers' Compensation

800706	D	S		BI, Perry	Delete everything after	03/22 04:03 PM

Tab 8	**SB 1690** by **Broxson**; (Similar to CS/H 00925) Warranty Associations

229342	D	S	RCS	BI, Broxson	Delete everything after	03/25 06:03 PM

Tab 9	**SB 1704** by **Wright**; (Compare to CS/H 01393) Department of Financial Services

196676	D	S	RCS	BI, Wright	Delete everything after	03/25 06:03 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 418** Simpson (Compare CS/CS/H 997)	Essential Health Benefits Under Health Insurance Policies and Contracts; Specifying conditions under which health insurers and health maintenance organizations may comply with requirements under the federal Patient Protection and Affordable Care Act to provide essential health benefits, etc. BI 03/25/2019 Fav/CS HP RC	Fav/CS Yeas 7 Nays 0
2	**SB 772** Stargel (Similar CS/H 431)	Liens Against Motor Vehicles and Vessels; Authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; prohibiting a motor vehicle repair shop from violating certain provisions; revising notice requirements for enforcing a lien by sale of a motor vehicle; revising requirements for notice of lien for recovering, towing, or storing a vehicle or vessel, etc. BI 03/25/2019 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
3	**SB 874** Rouson (Similar CS/H 469)	Consumer Finance Loans; Creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; requiring the office to examine program licensees at certain intervals, beginning on a specified date, etc. BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS FT RC	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1034** Gruters (Identical H 1039)	Assignment of Consumer Debts; Clarifying that an assignee must give a debtor certain notice within a specified timeframe before the assignee brings legal action to collect the debt, etc. BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
5	**SB 1210** Book (Identical H 983)	Ratification of Rules of the Department of Financial Services; Ratifying a specified rule relating to implementation of expanded workers' compensation benefits for first responders for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc. BI 03/25/2019 Favorable RC	Favorable Yeas 6 Nays 0
6	**SB 1476** Flores (Similar H 1145)	Citizens Property Insurance Corporation; Specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties, etc. BI 03/25/2019 Fav/CS CA RC	Fav/CS Yeas 6 Nays 1
7	**SB 1636** Perry (Compare H 1399)	Workers' Compensation; Revising a prohibition against persons receiving certain fees, consideration, or gratuities under the Workers' Compensation Law; increasing the maximum number of weeks of benefits payable for temporary total disability, temporary partial disability, and temporary total disability; requiring injured employees and other claimants to sign and attest to a specified statement relating to the payment of attorney fees before engaging an attorney or other representative for certain purposes, etc. BI 03/25/2019 Temporarily Postponed JU RC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1690** Broxson (Similar CS/H 925)	Warranty Associations; Revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account; prohibiting home warranties from excluding coverage solely because of the presence of rust or corrosion, except under certain circumstances; revising the basis for calculating the required assets in a service warranty association's premium reserve account, etc. BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS CM RC	Fav/CS Yeas 7 Nays 0
9	**SB 1704** Wright (Compare CS/H 1393)	Department of Financial Services; Requiring the Division of Treasury to maintain, rather than turn over to the Division of Accounting and Auditing, warrants drawn by the Chief Financial Officer; adding the Chief Financial Officer to a list of persons receiving the annual financial audit of the Department of the Lottery; specifying the date by when the State Board of Administration must annually publish audited financial statements for the Florida Retirement System, etc. BI 03/25/2019 Fav/CS IT RC	Fav/CS Yeas 6 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 418

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Essential Health Benefits under Health Insurance Policies and Contracts

DATE: March 27, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 418 requires the Office of Insurance Regulation to conduct a study to evaluate Florida's essential health benefits (EHB) benchmark plan and submit a report to the Governor, the President of the Senate, and the Speaker of the House. The study must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost.

Starting in plan year 2020, the federal government is providing states with greater flexibility in the selection of its EHB-benchmark plan. This flexibility may foster innovation in plan design and greater access to affordable coverage in the states. These options include:

- Selecting an EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more categories of EHBs under its EHB-benchmark plan used for the 2017 plan year with the same category or categories of EHB from the EHB-benchmark plan that another state used for the 2017 plan year; or
- Selecting a set of benefits that would become the state's EHB-benchmark plan.[1]

The bill also provides insurers and HMOs issuing or delivering individual or group policies or contracts in Florida that provide EHBs additional flexibility in developing affordable coverage options, which are substantially equivalent to the state EHB-benchmark plan, that could be submitted to the OIR for review and approval.

[1] The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed February 11, 2019).

II. Present Situation:

Regulation of Insurance in Florida

The Florida Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities.[2]

2019 Individual and Small Group Markets

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018. In August 2018, the OIR announced that premiums for the individual PPACA compliant plans would increase an average of 5.2 percent effective January 1, 2019.[3] The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield offers individual coverage in all 67 counties.[4] During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.[5]

The OIR approved the 2019 rates for 14 small group insurers.[6] The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and United Healthcare (and affiliates) offer small group plans in every county.

Patient Protection and Affordable Care Act (PPACA)

The federal PPACA was signed into law on March 23, 2010.[7] Among its significant changes to the U.S. health care system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. Further, PPACA requires ten categories of essential health benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.[8] The PPACA preempts any state law that prevents the

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[2] The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

[3] Office of Insurance Regulation, Individual PPACA Market Monthly Premiums for Plan Year 2019, available at https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf (last viewed February 11, 2019). See also OIR Press Release, OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates, available at https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234 (last viewed February 11, 2019).

[4] OIR, Individual Market County Offerings, available at https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf, (last viewed February 11, 2019).

[5] CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period*, January 3, 2019, at https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period (last viewed February 14, 2019).

[6] OIR, Small Group PPACA Market Monthly Premiums for Plan Year 2019, dated August 22, 2018, available at OIR https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf (last viewed February 14, 2019).

[7] P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

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

application of a provision of PPACA. [9]

Essential Health Benefits

The PPACA requires non-grandfathered health plans in the individual and small group markets to cover essential health benefits (EHB), which include items and services in the following ten benefit categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Pregnancy, maternity, and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management; and
- Pediatric services, including oral and vision care.[10]

State EHB-Benchmark Plans, Generally

Rules adopted by the U.S. Department of Health and Human Services (HHS)[11] define EHB based on state-specific EHB benchmark plans. In plan year 2017, 2018, and 2019, the EHB-benchmark plan is a plan that was sold in 2014. The HHS codified regulations to allow each state to select a benchmark plan that serves as a reference plan. According to the HHS, this approach seeks to balance coverage of EHB categories and affordability and provide flexibility for states as primary regulators of health insurance. States can choose a benchmark plan from among the following health insurance plans:

- The largest plan by enrollment in any of the three largest small group insurance products in the State's small group market;
- Any of the largest three state employee plans by enrollment;
- Any of the largest three national FEHBP plan options by enrollment; or
- The largest insured commercial non-Medicaid health maintenance organization (HMO) operating in the state.

All ten essential health benefit categories must be included as a part of EHB; therefore, if the selected or default benchmark plan does not initially cover a category, the benchmark must be supplemented.[12] If one or more categories of benefits is missing in the benchmark plan, the insurer or HMO must supplement it.[13] States are required to supplement pediatric dental and

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[9] PPACA s. 1321(d)

[10] What Marketplace health insurance plans cover, available at: https://www.healthcare.gov/coverage/what-marketplace-plans-cover/ (last viewed February 11, 2019).

[11] 45 CFR 156.100.

[12] 45 CFR 156.110(b).

[13] 45 CFR 156.110(b)-(c).

vision with the Federal Employees Dental and Vision Insurance Program (FEDVIP) dental plan[14] with the largest national enrollment or the benefits in the Children's Health Insurance Program.[15]

In Florida, the state did not select a plan; therefore, the default benchmark plan is the largest small group plan, which is supplemented to include pediatric dental. The small group plan includes all of the mandated coverage required under Florida law.

EHB-Benchmark Plans in 2020 and Thereafter

For plan year 2020 and after, the HHS provides states with greater flexibility for states to update their EHB benchmark plans, if they so choose.[16] Such modifications are subject to HHS review and approval to become effective. States that opt not to exercise this flexibility continue to use the same benchmark plan applicable for the prior year.[17]

Under the new regulations, a state may modify its EHB-benchmark plan by:
- Selecting the EHB-benchmark plan that another state used for the 2017 plan year;
- Replacing one or more EHB categories of benefits in its EHB-benchmark plan used for the 2017 plan year with the same categories of benefits from another state's EHB-benchmark plan used for the 2017 plan year; or
- Selecting a set of benefits that would become the state's EHB-benchmark plan.[18]

The regulation allows an issuer of a plan offering EHB to substitute benefits for those provided in the EHB-benchmark plan under the following conditions:
- The substituted benefit is not a prescription drug benefit.[19]
- An issuer may substitute a benefit within the same category, unless prohibited by state law.
- For plan years beginning on or after January 1, 2020, an issuer may substitute benefits between categories if the state in which the plan will be offered has notified HHS that substitution between EHB categories is permitted.

If a state selects a new EHB benchmark plan for submission to the HHS, the plan will be required to include coverage for all ten EHB categories of benefits, and the state will be required to confirm its plan to include coverage for each EHB category.[20] Further, a state is required to confirm that its new EHB-benchmark plan meets the applicable requirements[21] on scope of benefits, including that the state's EHB-benchmark plan provide a scope of benefits that is equal

[14] Federal Employees Dental and Vision Insurance Program, available at https://www.benefeds.com/Portal/EducationSupport?EnsSubmit=EducationSupportMainCnt&ctoken=WyGpd9Pk (last viewed March 20, 2019).
[15] The program, established pursuant to Title XXI of the U.S. Social Security Act, is a program administered by the United States Department of Health and Human Services that provides matching funds to states for health insurance to families with children.
[16] The Center for Consumer Information and Insurance Oversight, Information on Essential Health Benefits (EHB) Benchmark Plans, available at https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed February 11, 2019). For plan year 2020, no state has opted to permit insurers or HMOs to substitute benefits between benefit categories.
[17] 45 CFR 156.111(c).
[18] 45 CFR 156.111(a).
[19] 45 CFR 156.115
[20] 45 CFR 156.111(e)(1).
[21] 45 CFR 156.111(b)

to, or greater than, to the extent any supplementation is required to provide coverage within each EHB category, the scope of benefits provided under a typical employer plan.[22] Because of these requirements, HHS concludes that the options at 45 CFR s. 156.111(a) do not allow a state to reduce substantially the level of coverage, and instead allow a state the option to adjust its EHB-benchmark plan.[23]

Issuer Options

If an issuer (health insurer or HMO) offers a policy or contract that includes substituted benefits, the issuer must:

- Provide benefits that are substantially equivalent to the EHB-benchmark plan;
- Provide an appropriate balance among the EHB categories such that benefits are not unduly weighted toward any category; and
- Provide benefits for diverse segments of the population.[24]

The issuer is required to submit to the state insurance regulator, evidence of actuarial equivalence certified by a member of the American Academy of Actuaries, and that the plan meets other specified requirements.

III. Effect of Proposed Changes:

For purposes of Sections 1 and 2, the term, EHB-benchmark plans has the same meaning as provided in 45 C.F.R. s. 156.20. This regulation provides that an EHB-benchmark plan is the standardized set of essential health benefits that must be met by a qualified health plan, as defined in 45 C.F.R. s. 155.20, or other issuer as required by 45 CFR s. 147.150.

Section 1 creates an undesignated section that requires the OIR to conduct a study to evaluate the state's current EHB-benchmark plan for nongrandfathered individual and group plans and options for changing the EHB-benchmark plan pursuant to 45 CFR s. 156.111 for future years.

- Consider EHB-benchmark plans and benefits under the 10 essential health benefits categories established under 45 C.F.R. s. 156.110(a), which are used by the other 49 states;
- Compare the costs of benefits within such categories and overall costs of EHB-benchmark plans used by other states with the costs of benefits within the categories and overall costs of the current EHB-benchmark plan of this state; and
- Solicit and consider proposed individual and group health plans from health insurers and health maintenance organizations in developing recommendations for changes to the current EHB-benchmark plan.

The OIR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes recommendations for changing the current EHB-benchmark plan. The report is due by October 30, 2019. The OIR must also include an analysis as whether proposed plans submitted by health insurers and HMOs pursuant to Section 2 of the bill meet the requirements for EHB-benchmark plans under 45 C.F.R. s. 156.111(b).

[22] 45 CFR 156.111(e)(2).
[23] 83 FR at 17011.
[24] 45 CFR 156.111(e).

Section 2 creates s. 627.443, F.S., to authorize an insurer or HMO, which issues or delivers individual or group policies or individual or group contracts in Florida, options for providing the ten categories of essential health benefits mandated by PPACA. The insurer or HMO may provide essential health benefits by:

- Selecting one or more services or coverages for each of the required ten essential health benefits categories from the list of essential health benefits required by any single state or multiple states;
- Selecting one or more services or categories from any one or more of the required categories of EHBs from one state or multiple states; or
- Selecting any combination of services or coverages required by any one or a combination of states to provide the required categories of EHBs.

An insurer or HMO is authorized to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of EHB required under PPACA in a policy or contract issued in this state.

Further, the section authorizes health insurers and HMOs to submit the policies or contracts authorized under this section to the OIR for consideration as part of the OIR's study of the state's EHBs, required under section 1 of the bill. A health insurer or HMO may also submit to the OIR for evaluation a policy or contract as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 3 provides the bill takes effect 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:

Once the state submits a new EHB-benchmark plan and the federal government approves it, it is anticipated that insurers and HMOs will be able to offer consumers more innovative coverage options at affordable prices for coverage that is substantially equivalent to the new state EHB-benchmark plan.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 1, lines 67 – 73, reference health plans created by health insurers and HMOs "under this section." Section 1 of the bill requires an OIR study of the essential health benefits benchmark plan; plans would not be created pursuant to the study. Submission by health insurers and HMOs of plans for consideration in the study is addressed in lines 54-57.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.6054 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 25, 2019:
The CS:
- Requires the OIR to study options for revising the EHB-benchmark plan and present recommendations to the Legislature and Governor.
- Allows insurers or HMOs to develop policies or contracts using alternate EHB-benchmark plans and to submit them to OIR for consideration as equivalent to the current EHB-benchmark plan or to any EHB-benchmark plan created in the future.
- Revises the effective date of the bill from July 1, 2019, to effective upon becoming a law.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Study of state essential health benefits benchmark plan; report.—

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

(a) “EHB-benchmark plan” has the same meaning as provided in 45 C.F.R. s. 156.20.

(b) “Office” means the Office of Insurance Regulation.

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(2) The office shall conduct a study to evaluate this state's current EHB-benchmark plan for nongrandfathered individual and group health plans and options for changing the EHB-benchmark plan pursuant to 45 C.F.R. s. 156.111 for future plan years. In conducting the study, the office shall:

(a) Consider EHB-benchmark plans and benefits under the 10 essential health benefits categories established under 45 C.F.R. s. 156.110(a) which are used by the other 49 states;

(b) Compare the costs of benefits within such categories and overall costs of EHB-benchmark plans used by other states with the costs of benefits within the categories and overall costs of the current EHB-benchmark plan of this state; and

(c) Solicit and consider proposed individual and group health plans from health insurers and health maintenance organizations in developing recommendations for changes to the current EHB-benchmark plan.

(3) By October 30, 2019, the office shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which must include recommendations for changing the current EHB-benchmark plan to provide comprehensive care at a lower cost than this state's current EHB-benchmark plan. In its report, the office shall provide an analysis as to whether proposed health plans it receives under paragraph (2)(c) meet the requirements for an EHB-benchmark plan under 45 C.F.R. s. 156.111(b).

(4) Health plans created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the study under this section; and

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(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 2. Section 627.443, Florida Statutes, is created to read:

627.443 Essential health benefits.—

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

(a) “EHB-benchmark plan” has the same meaning as provided in 45 C.F.R. s. 156.20.

(b) “PPACA” has the same meaning as in s. 627.402.

(2) A health insurer or health maintenance organization issuing or delivering an individual or a group health insurance policy or health maintenance contract in this state may create a new health insurance policy or health maintenance contract that:

(a) Must include at least one service or coverage under each of the 10 essential health benefits categories under 42 U.S.C. s. 18022(b) which are required under PPACA;

(b) May fulfill the requirement in paragraph (a) by selecting one or more services or coverages for each of the required categories from the list of essential health benefits required by any single state or multiple states; and

(c) May comply with paragraphs (a) and (b) by selecting one or more services or coverages from any one or more of the required categories of essential health benefits from one state or multiple states.

(3) This section specifically authorizes an insurer or health maintenance organization to include any combination of services or coverages required by any one or a combination of states to provide the 10 categories of essential health benefits

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required under PPACA in a policy or contract issued in this state.

(4) Health insurance policies and health maintenance contracts created by health insurers and health maintenance organizations under this section:

(a) May be submitted to the office for consideration as part of the office's study of this state's essential health benefits benchmark plan; and

(b) May also be submitted to the office for evaluation as equivalent to the current state EHB-benchmark plan or to any EHB-benchmark plan created in the future.

Section 3. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to essential health benefits under health plans; defining the terms "EHB-benchmark plan" and "office"; requiring the Office of Insurance Regulation to conduct a study evaluating this state's current benchmark plan for essential health benefits under the federal Patient Protection and Affordable Care Act (PPACA) and options for changing the benchmark plan for future plan years; requiring the office, in conducting the study, to consider plans and certain benefits used by other states and compare costs with those of this state; requiring the office

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to solicit and consider proposed health plans from health insurers and health maintenance organizations in developing recommendations; requiring the office, by a certain date, to provide a report with certain recommendations and a certain analysis to the Governor and the Legislature; providing that health plans created by health insurers and health maintenance organizations may be submitted to the office for certain purposes; creating s. 627.443, F.S.; defining the terms “EHB-benchmark plan” and “PPACA”; authorizing health insurers and health maintenance organizations to create new health insurance policies and health maintenance contracts meeting certain criteria for essential health benefits under PPACA; providing that such criteria may be met by certain means; providing construction; providing that such policies and contracts created by health insurers and health maintenance organizations may be submitted to the office for certain purposes; providing an effective date.

By Senator Simpson

10-00477A-19 2019418__

A bill to be entitled

An act relating to essential health benefits under health insurance policies and contracts; creating s. 627.6054, F.S.; defining the term “PPACA”; specifying conditions under which health insurers and health maintenance organizations may comply with requirements under the federal Patient Protection and Affordable Care Act to provide essential health benefits; providing construction; providing an effective date.

WHEREAS, the Legislature recognizes that the federal Patient Protection and Affordable Care Act requires that all persons in the individual and small group health insurance markets have access to 10 categories of essential health benefits as set forth in 42 U.S.C. s. 18022(b), and

WHEREAS, each state is granted discretion to determine the specific benefits in each category deemed essential to the state, NOW, THEREFORE,

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

Section 1. Section 627.6054, Florida Statutes, is created to read:

627.6054 Essential health benefits.—

(1) As used in this section, the term “PPACA” has the same meaning as in s. 627.402.

(2) A health insurer or health maintenance organization issuing or delivering an individual or a group health insurance policy or contract in this state:

10-00477A-19 2019418__

(a) Must include at least one service or coverage under each of the 10 essential health benefits categories under 42 U.S.C. s. 18022(b) which are required under PPACA;

(b) May fulfill the requirement in paragraph (a) by selecting one or more services or coverages for each of the required categories from the list of essential health benefits required by any single state or multiple states; and

(c) May comply with paragraphs (a) and (b) by selecting one or more services or coverages from any one or more of the required categories of essential health benefits from one state or multiple states.

(3) This section specifically authorizes an insurer or health maintenance organization to comply with this section by including any combination of services or coverages required by any one or a combination of states to provide the 10 categories of essential health benefits required under PPACA in a policy or contract issued in this state.

Section 2. This act shall take effect July 1, 2019.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 772

INTRODUCER: Banking and Insurance Committee and Senator Staragel

SUBJECT: Liens Against Motor Vehicles and Vessels

DATE: March 25, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 772 makes several changes as it relates to performance liens used by motor vehicle repair shops and towing - storage companies.

The bill:

- Allows lienholders to post a bond for the release of a vehicle subject to a claim of lien for repair;
- Adds information that must be included in notices of claim of lien and sale;
- Revises procedures for identifying unknown vehicle and vessel owners and lienholders;
- Requires notices of claim of lien and sale to be sent within specified timeframes;
- Allows both electronic and paper title to evidence an interest in a vehicle or vessel;
- Requires repair shops to allow inspection of vehicles subject to a claim of lien following a written inspection request;
- Requires motor vehicle repair shops to release all personal property found in the vehicle to the owner or lienholder.
- Permits administrative fees of no more than $250 for the repair, towing, or storage of vehicles, prohibits fees not expressly authorized, and caps the total amount of fees that may be charged at $250;
- Allows owners and lienholders to post a bond for the release of a vehicle or vessel subject to a claim of lien for towing and storage charges at any time before the sale of the vehicle or vessel;

- Requires lienors to file specified documentation with the Department of Highway Safety and Motor Vehicles (DHSMV) prior to transferring title to a vehicle or vessel sold to satisfy a lien for repairs, towing, or storage;
- Prohibits the DHSMV from transferring title to a vehicle or vessel without certain documents; and
- Requires a third-party mailing service certified by the DHSMV to send all notices of lien and sale.

The bill provides an effective date of January 1, 2020.

II. Present Situation:

Liens

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.

Motor vehicle repair shops (repair shops) may place liens on motor vehicles (vehicles) for labor or services performed on the vehicles under a written repair estimate to recover the costs of repair and storage. Similarly, the operators of towing and storage companies (towing-storage operators) may place liens on vehicles or vessels to recover the costs of towing and storage. Notice of the claim of lien must be sent to interested parties by certified mail within a specified timeframe, and the vehicle or vessel may be sold if no one claims it or the balance owed for repairs, towing, or storage remains unpaid. Notice of the sale must be sent to interested parties and published in a newspaper in the county where the sale is to occur prior to the date of the sale.

Motor Vehicle Repair Shops

Motor vehicle repair shops[1] (repair shops) are regulated by the Department of Agriculture and Consumer Services under the Florida Motor Vehicle Repair Act,[2] which requires all repair shops, with minor exceptions, to register with the Department of Agriculture and Consumer Services.

When a customer[3] requests that a repair shop perform repairs to a motor vehicle[4] (vehicle) that will cost more than $100, the repair shop must prepare a written estimate of the cost of the

[1] Section 559.903(6), F.S., defines "motor vehicle repair shop" as any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.
[2] Ss. 559.901 through 559.9221, F.S.
[3] "Customer" means the person who signs the written repair estimate or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work. S. 559.903(1), F.S.
[4] "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons and property, and propelled by power other than muscular power. "Motor vehicle" also means a recreational vehicle primarily used as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. S. 320.01(1)(a) and (b), F.S.

repairs before beginning any work, unless the customer waives his or her right to such an estimate.[5] Following the completion of any repairs, the repair shop must give each customer a legible copy of an invoice for the repairs.[6]

Unlawful Acts and Practices

It is unlawful for any repair shop or its employees to:
- Make or charge for repairs not expressly or impliedly authorized by the customer;[7]
- Misrepresent that repairs have been made to a vehicle;[8]
- Fraudulently alter a customer contract, estimate, invoice, or other document;[9] or
- Make or authorize a false, deceptive, or misleading written or oral statement.[10]

Liens Claimed by Motor Vehicle Repair Shop

Claim of Lien; Notice

At any time after completion of repairs made to a motor vehicle under a written estimate, a repair shop may claim a lien on the vehicle for the cost of the repairs.[11] A repair shop must give notice of a claim of lien to:
- The registered owner of the vehicle;
- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The Department of Highway Safety and Motor Vehicles (DHSMV); and
  - Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the National Motor Vehicle Title Information System[12] (NMVTIS) or an equivalent commercially available system.[13]

The notice of claim of lien must be sent by certified mail within 7 business days, excluding Saturdays and Sundays, from the date storage charges begin to accrue and must contain:
- The vehicle's description;[14]
- The name and address of the vehicle's owner, the customer listed on the repair order, and any person claiming an interest in or lien on the vehicle;[15]

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[5] Ss. 559.905(1) and 559.905(3), F.S.
[6] S. 559.911, F.S.
[7] S. 559.920(2), F.S.
[8] S. 559.920(3), F.S.
[9] S. 559.920(6), F.S.
[10] S. 559.920(8), F.S.
[11] This is a possessory lien, meaning a repair shop can only claim a lien on a vehicle if it has actual or constructive possession of the vehicle. Ss. 713.58(1) and (3), F.S.; *State v. Miller*, 373 So.2d 677, 678 (Fla. 1979) ("appellee invoked the provisions of s. 713.58, F.S., which grants a possessory lien in favor of persons providing labor and services on personal property").
[12] "National Motor Vehicle Title Information System" means the federally authorized electronic National Motor Vehicle Title Information System. S. 713.78(1)(d), F.S.
[13] "Equivalent commercially available system" means a service that charges a fee to provide vehicle information and that, at a minimum, maintains records from those states participating in data sharing with the NMVTIS. Ss. 718.78(1)(e) and 713.78(4)(a), F.S.
[14] S. 713.585(1)(a), F.S.
[15] S. 713.585(1)(b), F.S.

- The repair shop's name, address, and telephone number;[16]
- The date, time, and location of proposed or scheduled sale of the vehicle, if known;[17] and
- Notice that:
  - The repair shop claims a lien on the vehicle for labor and services performed and storage charges, if any, and the amount that, if paid, would satisfy the lien;[18]
  - The lien is subject to enforcement and the vehicle may be sold to satisfy the lien;[19]
  - The owner of the vehicle or any person claiming an interest in or lien on the vehicle has a right to a hearing at any time before the sale;[20]
  - The owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting a bond;[21]
  - Any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be owed to the lienor will be deposited with the clerk of the circuit court for disposition;[22] and
  - A lienholder, if any, has the right to demand a hearing or to post a bond.[23]

If a repair shop fails to give notice of the claim of lien to any person claiming a lien on the vehicle within 7 business days after the storage charges begin to accrue, the repair shop is precluded from charging for more than 7 days of storage.[24] However, failure to timely provide the notice does not affect charges owed for repairs.[25]

Unidentified Owner or Lienholder

A repair shop that cannot identify a vehicle's owner or lienholder must, after 7 business days from the date storage charges begin to accrue on the vehicle, notify local law enforcement by certified mail or acknowledged hand delivery that:
- The repair shop was unable to identify the owner or lienholder;
- A physical search of the vehicle did not disclose ownership information; and
- The repair shop made a good faith effort to identify the owner or lienholder.[26]

A good faith effort means the repair shop checked the:
- DHSMV database for the identity of the owner and lienholder;[27]
- NMVTIS or an equivalent commercially available system to determine the state of registration if there is no current registration on file with the DHSMV;[28] and
- Vehicle for:

[16] S. 713.585(1)(c), F.S.
[17] S. 713.585(1)(f), F.S.
[18] S. 713.585(1)(d), F.S.
[19] S. 713.585(1)(e), F.S.
[20] S. 713.585(1)(g), F.S.
[21] S. 713.585(1)(h), F.S.
[22] S. 713.585(1)(i), F.S.
[23] S. 713.585(1)(j), F.S.
[24] S. 713.585(13), F.S.
[25] *Id.*
[26] S. 713.585(2), F.S.
[27] S. 713.585(2)(a), F.S.
[28] S. 713.585(2)(b), F.S.

- Any type of tag, tag record, temporary tag, or regular tag;[29]
- An inspection sticker or other stickers and decals that could indicate the state of possible registration;[30] and
- Any papers that could be in the glove box, trunk, or other areas for the state of registration.[31]

Failure of the repair shop to make a good faith effort to identify the owner or lienholder of the vehicle precludes it from assessing any storage charges.[32]

Inspection of Vehicle; Release of Personal Property

Currently, registered owners, customers, and persons claiming an interest in or lien on a vehicle on which a repair shop claims a lien for repairs and storage do not have a statutory right to inspect the vehicle. Neither do they have an express statutory right to retrieve personal property left in a vehicle at the time the vehicle came into the possession of a repair shop before the release of the vehicle. Further, repair shops are not required to accept title[33] in a specified form as evidence of a person's interest in a vehicle.

Bond to Release Vehicle

A customer may have his or her vehicle released from a lien claimed by a repair shop for repair work performed under a written estimate by filing with the clerk of the court in the circuit in which the repairs occurred a bond, payable to the shop claiming the lien and conditioned for the payment of any judgment which may be entered on the lien.[34] When a customer posts such a bond, the clerk of the court must notify the repair shop of the bond and direct the repair shop to release the vehicle.[35] The shop has 60 days to file suit to recover the bond, or else the bond will be discharged.[36] The prevailing party in the suit may be awarded damages, court costs, and reasonable attorney fees.[37]

A customer may also initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to do so.[38] If the customer prevails in such proceedings, he or she may be entitled to damages, court costs, and reasonable attorney fees.[39] If the repair shop prevails, the repair shop may be entitled to its reasonable attorney fees.[40]

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[29] S. 713.585(2)(c), F.S.
[30] S. 713.585(2)(d), F.S.
[31] S. 713.585(2)(e), F.S.
[32] S. 713.585(13), F.S.
[33] Section 319.001(1), F.S., defines "certificate of title" as the record that evidences ownership of a vehicle, and can be either a paper certificate authorized by the DHSMV or an electronic certificate stored in the DHSMV database.
[34] S. 559.917(1)(a), F.S.
[35] *Id.*
[36] S. 559.917(1)(b), F.S.
[37] *Id.*
[38] S. 559.917(2), F.S.
[39] *Id.*
[40] *Id.*

However, persons of record claiming a lien against a vehicle are not entitled to post a bond for the release of the vehicle or to initiate judicial proceedings pursuant to this section.

Sale of the Vehicle; Notice

If the date of the sale was not included in the notice of claim of lien, the repair shop must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The DHSMV; or
  - A corresponding agency of any other state in which the vehicle appears to have been registered after checking the NMVTIS or an equivalent commercially available system.[41]

The repair shop must also publish notice of the time and place of the sale, at least 15 days before the date of the sale, in a newspaper of general circulation in the county in which the vehicle is held.[42]

Proceeds of Sale

Following the sale of a vehicle to satisfy a lien for repairs or storage, the repair shop must deposit the proceeds of the sale, minus the amount owed for repairs and storage and all reasonable costs incurred in conducting the sale, with the clerk of the circuit court.[43] The clerk of the circuit court must hold the proceeds for the owner of the vehicle or any lienholder whose lien is discharged by the sale and may disburse the proceeds only upon a court order.[44]

Transfer of Title

When a vehicle is sold to satisfy a lien for repairs or storage, the purchaser takes title to the vehicle free and clear of all liens unless otherwise provided by court order.[45]

To transfer title to the vehicle following a sale, the repair shop must file with the DHSMV:

- A certified copy of:
  - The certificate of compliance filed with the clerk of court; and
  - The report of sale;
    - Proof of the required check of the NMVTIS or an equivalent commercially available system; and
    - Any other proof required by DHSMV rules and regulations.[46]

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[41] S. 713.585(3), F.S.
[42] S. 713.585(4), F.S.
[43] S. 713.585(8), F.S.
[44] *Id.*
[45] S. 713.585(12), F.S.
[46] S. 713.585(9), F.S.

Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by the counties in which they operate and are regulated by county ordinances.[47] These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.[48]

There is no right at common law to a lien on a vehicle or vessel for towing and storage charges.[49] Such a lien is instead a statutory creation.[50]

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Claim of Lien; Notice

A person who regularly engages in transporting vehicles[51] or vessels[52] by wrecker,[53] tow truck, or car carrier (towing-storage operator) may claim a lien for reasonable towing and storage fees upon any vehicle or vessel recovered, removed, or stored for more than 6 hours at the request of:

- The owner of the vehicle or vessel;[54]
- The owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked;[55]
- A landlord, or a person authorized by a landlord, when the vehicle or vessel remained on leased premises after the tenancy terminated;[56] or
- A law enforcement agency.[57]

A towing-storage operator who claims a lien for recovery, towing, or storing services must send notice of the claim of lien to:

- The registered owner;
- The insurance company insuring the vehicle or vessel; and
- All persons claiming a lien on the vehicle or vessel, as disclosed by the records of:
    - The DHSMV; or

[47] See, e.g., Hillsborough County, *Towing Companies*, https://www.hillsboroughcounty.org/en/residents/citizens/consumer-issues/towing-companies (last visited March 21, 2019); Orange County, *Towing Information*, http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk (last visited March 21, 2019).
[48] See, e.g., Miami-Dade County, *Towing License*, https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited March 21, 2019).
[49] Fla. Jur. 2d Liens for Recovering, Towing, or Storing Vehicle, Generally s. 31.
[50] S. 713.78, F.S.
[51] “Vehicle” means any mobile item, whether motorized or not, which is mounted on wheels. S. 713.78(1)(a), F.S.
[52] “Vessel” means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a “documented vessel” as defined in s. 327.02, F.S., and s. 713.78(1)(b), F.S.
[53] “Wrecker” means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment. S. 713.78(1)(c), F.S.
[54] S. 713.78(2)(a), F.S.
[55] S. 713.78(2)(b), F.S. Removal must comply with s. 715.07, F.S.
[56] S. 713.78(2)(c), F.S. Removal must comply with ss. 83.806 or 715.104, F.S.
[57] S. 713.78(2)(d), F.S.

- Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the NMVTIS or an equivalent commercially available system.[58]

The notice of claim of lien must be sent by certified mail within 7 business days after the date of storage of the vehicle or vessel and state:

- The towing-storage operator possesses the vehicle or vessel;
- That a lien is claimed on the vehicle or vessel;
- That charges have accrued, and the amount of the charges;
- That the lien is subject to enforcement by law;
- That the owner and any lienholder have the right to a hearing; and
- That any vehicle or vessel that remains unclaimed, or for which the charges remain unpaid, may be sold.[59]

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,[60] the law enforcement agency where the vehicle or vessel is stored must contact the DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.[61] The DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.[62] The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.[63]

Unidentified Owner or Lienholder

Any towing-storage operator who cannot identify the owner or lienholder of a vehicle or vessel must, after 7 working days of the initial tow or storage, notify law enforcement in the jurisdiction where the vehicle or vessel is stored by certified mail or acknowledged hand delivery that:

- The towing-storage operator was unable to identify the owner or lienholder;
- A physical search of the vehicle or vessel did not disclose ownership information; and
- The towing-storage operator made a good faith effort to identify the owner or lienholder.[64]

A good faith effort means the towing-storage operated checked the:

- DHSMV database;[65]

[58] S. 713.78(4)(a), F.S.
[59] S. 713.78(4)(c), F.S.
[60] Within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. S. 715.07(2)(a)2., F.S.
[61] S. 713.78(4)(b), F.S.
[62] *Id.*
[63] *Id.*
[64] S. 713.78(4)(d), F.S.
[65] S. 713.78(4)(d)1., F.S.

- Electronic NMVTIS or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle on file with the DHSMV;[66]
- Vehicle or vessel for:
  - Any type of tag, tag record, temporary tag, or regular tag;[67]
  - An inspection sticker or other stickers and decals that may indicate the state of registration;[68]
  - Any papers that may be in the glove box, trunk, or other areas for a state registration;[69] and
  - A vehicle identification number,[70] a vessel registration number,[71] or a hull identification number;[72]
- If towed at the request of law enforcement, any law enforcement report:
  - For a tag number or other information identifying the vehicle or vessel, if the vessel was towed at the request of a law enforcement officer;[73]
  - To see if any driver's license information indicates an out-of-state address, if there is no address on the impound report;[74] and
  - Trip sheet or tow ticket of the tow truck operator to see if a tag was on the vehicle or vessel at the beginning of the tow.[75]

Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.[76]

Inspection of Vehicles and Vessels; Release of Property

A towing-storage operator must permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents,[77] to inspect the towed vehicle or vessel.[78] A towing-storage operator must also release to the owner, lienholder, or the agent of the owner or lienholder all personal property not affixed to a vehicle or vessel that was in the vehicle or vessel at the time the towing-storage operator obtained possession of it.[79] However, the towing-storage operator is not required to accept an electronic title as proof of ownership or lien; thus, the towing-storage operator may require parties wishing to inspect the vehicle or vessel to present a paper title before allowing the inspection.

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[66] S. 713.78(4)(d)2., F.S.
[67] S. 713.78(4)(d)3., F.S.
[68] S. 713.78(4)(d)7., F.S.
[69] S. 713.78(4)(d)8., F.S.
[70] S. 713.78(4)(d)9., F.S.
[71] S. 713.78(4)(d)10., F.S.
[72] S. 713.78(4)(d)11., F.S.
[73] S. 713.78(4)(d)4., F.S.
[74] S. 713.78(4)(d)6., F.S.
[75] S. 713.78(4)(d)5., F.S.
[76] S. 713.78(9), F.S.
[77] An agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths.
[78] S. 713.78(10), F.S.
[79] *Id.*

Bond to Release Vehicle or Vessel

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within 10 days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.[80] The vehicle or vessel must be released if, after filing a complaint, the owner or lienholder files a bond with the clerk of the court to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in litigation.[81] After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.[82]

Sale of Vehicles and Vessels; Notice

A towing-storage operator may sell at public auction a stored vehicle or vessel which remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:
- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.[83]

If a law enforcement agency notified of a towing-storage operator's inability to identify an owner or lienholder pursuant to s. 713.78(4)(d), F.S., fails to respond to such notice prior to the date of sale, the towing-storage operator may proceed with the sale.[84]
If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:
- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of the DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of the NMVTIS or an equivalent commercially available system.[85]

The towing-storage operator must also publish notice of the time and place of the sale, at least 10 days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.[86]

Proceeds of Sale

If the owner or lienholder of the vehicle or vessel sold at auction is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.[87] The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale.[88]

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[80] S. 713.78(5)(a), F.S.
[81] S. 713.78(5)(b), F.S
[82] *Id.*
[83] S. 713.78(6), F.S.
[84] Department of Highway Safety and Motor Vehicles, Procedure TL-26.
[85] *Id.*
[86] S. 713.78(6), F.S.
[87] *Id.*
[88] *Id.*

Transfer of Title

Title to a vehicle or vessel sold to satisfy a lien for recovery, towing, or storage transfers to the purchaser free of all liens unless otherwise provided by court order.[89] To transfer title to such a vehicle, the towing-storage operator must apply to the tax collector or local license plate agency.[90] However, if the vehicle does not sell, the towing-storage operator must apply for a certificate of title in its own name.[91]

Fraud Allegations

Some repair shops and towing-storage operators have been accused of exploiting existing lien law to wrest away vehicle finance and leasing companies' (lenders) security or ownership interest in vehicles upon which liens have been placed.[92] These practices allegedly take two forms: fraudulent delivery of the notice of lien and fraudulent or inflated charges.[93]

In some instances, lenders allegedly receive an envelope by certified mail, sign for its receipt, and open it to discover the envelope is empty or contains meaningless documents.[94] However, the service provider may use the signed certified mail receipt as proof the lender received a notice of claim of lien and proceed with the sale of the vehicle when it goes unclaimed.[95] In this situation, a lender is effectively denied the opportunity to satisfy the lien or challenge it in court and may be ultimately forced to abandon its interest in the vehicle because it failed to take action within statutorily prescribed timeframes.[96]

Another allegation is that in other instances, the service provider gives proper notice of claim of lien to the owner, lender, and other interested parties; however, the costs associated with the services provided may be fraudulent or significantly inflated.[97] In such cases, the cost to satisfy the lien may exceed the amount owed to the lender by the owner and, in some cases, the market value of the vehicle.[98] Lenders receiving notice of lien in these circumstances must decide whether to satisfy the lien and recover the vehicle, post a bond to recover the vehicle and challenge the lien in court, or abandon the vehicle.[99] However, the lender may have limited information about the accuracy of the charges to use in making its decision.[100]

Such lien fraud allegedly costs consumer and lenders tens of millions of dollars every year and increases the cost of credit for consumers wishing to finance the purchase of a motor vehicle.[101]

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[89] *Id.*
[90] DHSMV, *supra*, at 87.
[91] *Id.*
[92] Letter from Danielle Arlowe, Senior Vice President of State Government Affairs for the American Financial Services Association, Re: Motor Vehicle Lien Fraud (Feb. 11, 2019).
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id*.
[101] Letter from Danielle Arlowe, Senior Vice President of State Government Affairs for the American Financial Services Association, Re: House Bill 431- Motor Vehicle Lien Fraud (Feb. 11, 2019).

III. Effect of Proposed Changes:

Liens Claimed by Motor Vehicle Repair Shops

Claim of Lien; Notice

The bill continues to require notices of claims of lien required by s. 713.585(1), F.S., to be sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle within 7 business days after the date storage charges begin to accrue on the vehicle. However, the bill requires such notice to be sent at least 30 days before the date of the sale and allows repair shop agents to provide the notice.

The bill revises content requirements for a notice of claim of lien. In addition to existing requirements, the notice must:

- Include the vehicle identification number (VIN) of the vehicle subject to the lien clearly identified and printed in the delivery address box on the return receipt card[102] and on the outside of the envelopes; and
- Contain:
  - The repair shop's registration number, owner's name, and physical address and the entity name of the business where the repairs or storage occurred, which must also be on the outside of the envelopes;
  - The name of the person or entity that authorized the labor or services;
  - The date the vehicle was dropped off for repairs and the date the repairs were completed;
  - An itemized statement of the amount claimed to be owed to the repair shop;
  - Notice that the repair shop will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written inspection request; and
  - The address where the vehicle is physically located.

Unidentified Owner or Lienholder

The bill modifies the timeframe for a repair shop that cannot identify a vehicle's owner or lienholder to provide the notice to local law enforcement required by s. 713.585(2), F.S., by requiring notice to be sent within 7 business days after the date that storage charges begin to accrue on the vehicle.

The bill also modifies the timeframe for a repair shop to make a good faith effort to identify the owner or lienholder of a vehicle required by s. 713.585(2), F.S., by requiring the repair shop to do so within 7 business days after the date of storage of the vehicle. The bill in s. 713.585(13), F.S., continues to prohibit a repair shop that fails to comply with this requirement from charging for more than 7 days of storage.

Inspection of Vehicles; Release of Personal Property and Vehicle

The bill authorizes the registered owner, customer, and persons claiming an interest in or lien on a vehicle subject to a lien for repairs or storage to request an inspection of the vehicle at any time before the proposed or scheduled date of sale of the vehicle. The bill requires repair shops to make the vehicle available for inspection during regular business hours within 3 business days

[102] The VIN must be clearly visible on the electronic image of the return receipt card.

after receiving a written inspection request from such persons, and requires a repair shop to accept either an electronic or paper title as evidence of a person's interest in a vehicle.

The bill also requires a repair shop to release to a vehicle's owner or lienholder, or the agent of an owner or lienholder:
- All personal property found in but not affixed to a vehicle; and
- The vehicle, upon payment of the charges owed.

Bond to Release Vehicle

The bill amends s. 559.917, F.S., to add any person of record claiming a lien against a vehicle to the list of persons who may have a vehicle released by filing a bond with the clerk of the court in the circuit in which the repairs occurred. The bill also allows such persons to initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to release the vehicle. However, the bill does not authorize the registered owner to take such actions, unless the registered owner is also the customer.

Sale of Vehicles; Notice

The bill amends s. 713.585(3), F.S., prohibits sale of a vehicle to satisfy a lien for repairs or storage within 60 days after completion of the repair work. The bill also modifies the timeframe applicable to notices of sale required by s. 713.585(3), F.S., by specifying that the requisite parties must receive the notice of sale at least 15 days before the date of the sale.

The bill adds requirements for the notice of sale. Such notice must contain:
- The VIN of the vehicle subject to the sale clearly identified and printed in the delivery address box of the return receipt card and on the outside of the envelopes;[103] and
- The repair shop's registration number, owner's name, and physical address, and the entity name of the business where the repair work or storage occurred, which must also be on the outside of the envelope.

The bill requires a repair shop to publish a notice of sale in a newspaper circulated in the county where the repair shop completed the repairs and in the county where the sale of the vehicle will occur. The bill also adds to the list in s. 713.585(9), F.S., of what must be included in or filed with the certificate of compliance filed with the clerk of the court following publication:
- The VIN of the vehicle to be sold;
- A copy of the notice of lien and the notice of sale; and
- A copy of all return receipts for mailing the notices, which must include the VIN.

Transfer of Title

To transfer title to a vehicle following the public sale to satisfy a lien for repairs or storage under s. 713.585(9), F.S., the bill requires a repair shop to file with the DHSMV a copy of:
- The certificate of compliance, which includes the VIN;
- The notice of lien;
- The notice of sale; and

[103] *Id.*

- All return receipts for mailing the notices, which must include the VIN.

The bill also prohibits the DHSMV from approving such a title transfer if the application does not include a copy of:

- The notice of claim of lien;
- The notice of sale; and
- All return receipts for mailing of the notices, indicating their timely receipt and the VIN.[104]

Fees

The bill authorizes a repair shop, or its agent, to charge an administrative fee not to exceed $250. The bill defines "administrative fee' as a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount due for storage, repairs, adjustments, or modifications to the vehicle. However, the bill precludes the repair shop from charging fees not authorized by s. 713.585, F.S. Further, the bill prohibits a repair shop from charging fees authorized by s. 713.585, F.S., which, added together, total more than $250.

Third-Party Mailing Service

The bill requires repair shops and their agents to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The bill defines a third-party mailing service as a business entity certified by the DHSMV that:

- Accesses National Motor Vehicle Title Insurance System records to obtain the last state of record of a vehicle;
- Accesses the owner, lienholder, and insurer information for a vehicle from the DHSMV;
- Electronically generates the notices of lien and sale;
- Prints and sends the notices of lien and sale to each owner, lienholder, and insurer of record by certified mail; and
- Electronically returns tracking information or other proof of mailing and delivery of the notices to the repair shops.

The bill requires third-party mailing services to apply to the DHSMV for certification before providing notices of lien and sale on behalf of repair shops. The DHSMV may certify an applicant if it:

- Provides the DHSMV with evidence that is has been issued a current and valid $1,000,000 bond by a surety insurer authorized to do business in Florida;
- Submits a positive audit of the applicant's internal controls performed within the last year by an independent certified public accountant licensed pursuant to ch. 473, F.S.; and
- Successfully demonstrates the ability to electronically provide required data to the DHSMV via an electronic data exchange process using a web interface.

The bill authorizes DHSMV to deny or revoke a third-party mailing service's certification if it determines that it committed an act of fraud or misrepresentation related to a notice required by this section. A certification is valid for 1 year, and the DHSMV may not renew the certification if the service does not maintain the minimum qualifications for initial certification.

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[104] The VIN on the return receipts must match the VIN of the vehicle subject to the transfer of title and must be clearly visible on the electronic image of the turn receipt card available on the United States Postal Service (USPS) website.

The bill requires a third-party mailing service to maintain all records of notices of lien and of sale for 5 years, and allows record retention in an electronic format.

Unlawful Acts and Practices

The bill amends s. 559.920, F.S., to make it unlawful for a repair shop and its employees to violate any provision of s. 713.585, F.S., regarding the enforcement of liens for repair and storage costs by sale of the vehicles subject to the liens. A violation of s. 713.585, F.S., constitutes a violation of the Florida Motor Vehicle Repair Act.

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Claim of Lien; Notice

The bill continues to require towing-storage operators to send the notice of claim of lien required by s. 713.78(4), F.S., to the registered owner, the insurance company insuring the vehicle, and all lienholders within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, the bill requires such notice to be sent at least 15 days before the date of the sale.

The bill revises requirements for a notice of claim of lien. In addition to existing requirements, a notice must:

- Include a clearly identified and printed VIN, if the claim of lien is for a vehicle:
  - In the delivery address box of the return receipt card;
  - On the outside of the envelope; and
  - On the electronic image of the return receipt card;
- State the name, physical address, and telephone number of the towing-storage operator and the entity name of the business where the towing and storage occurred, which must also appear on the outside of the envelope;
- State the name of the person or entity that authorized the towing-storage operator to take possession of the vehicle or vessel;
- List the address where the vehicle or vessel is physically located;
- State that charges have accrued and include an itemized statement of said charges; and
- State that any vehicle or vessel that goes unclaimed, or for which the charges owed remain unpaid, may be sold:
  - 35 days after the vehicle or vessel is stored if the vehicle or vessel is more than 3 years old; or
  - 50 days after the vehicle or vessel is stored if the vehicle or vessel is 3 years old or less.

The bill amends s. 713.78(9), F.S., to prohibit a towing-storage operator that fails to provide a notice of claim of lien from charging for more than 7 days of storage. Such failure does not prohibit the towing-storage operator from charging for towing the vehicle or vessel.

Inspection of Vehicles and Vessels; Release of Property

The bill requires a towing-storage operator to accept either an electronic or paper title as evidence of a person’s interest in a vehicle or vessel.

Bond to Release Vehicles or Vessels

The bill in s. 713.78(5), F.S., authorizes an owner or lienholder to post a bond for release of a vehicle or vessel with the clerk of the court at any time before the sale of the vehicle or vessel. The owner or lienholder is no longer required to file a complaint before posting such a bond.

Sale of Vehicles; Notice

The bill adds requirements for a notice of sale required by s. 713.78(6), F.S. The notice must:

- Include the VIN of the vehicle subject to sale in the delivery address box of the return receipt card, on the outside of the envelope, and on the electronic image of the return receipt card, if the claim of lien is for a vehicle; and
- State the name, physical address, and telephone number of the towing-storage operator, which must also be on the envelope.

Transfer of Title

The bill adds subsection (14) to s. 713.78, F.S., which provides that to transfer title to a vehicle or vessel after a public sale to satisfy a lien for recovery, towing, or storage charges, a towing-storage operator must file with the DHSMV:

- Copies of:
  - The notice of lien;
  - The notice of sale; and
  - All return receipts for mailing of the notices, which must include the VIN if the claim of lien was for a vehicle; and
- Proof of the required check of the records of the NMVTIS or an equivalent commercially available system.

The bill also prohibits the DHSMV from approving such a title transfer if the application does not include copies of:

- The notice of lien;
- The notice of sale; and
- All return receipts for mailing of the notices, indicating their timely receipt and the VIN.[105]

Fees

The bill authorizes a towing-storage operator, or its agent, to assess an administrative fee not to exceed $250 to the amount due for towing and storing a vehicle.[106] The bill defines "administrative fee" as a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount for towing and storing the vehicle or vessel. However, the bill precludes the towing-storage operator from charging fees not authorized by ss. 125.013, 166.043, and 713.78, F.S. Further, the bill prohibits towing-storage operators from charging fees authorized by these sections which, added together, total more than $250.

[105] If the claim of lien is for a vehicle, the VIN on the return receipts must match the VIN of the vehicle subject to the title transfer and must be clearly visible on the electronic image of the return receipt card available on the USPS website.

[106] The bill does not permit a towing-storage operator to charge such a fee for towing or storing a vessel.

Third-Party Mailing Service

The bill requires towing-storage operators to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The definition of "third-party mailing service," the requirements for certification and the denial, revocation, and renewal of certification, and the record maintenance provisions are identical to the bill's provisions applicable to third-party mailing services sending notices of lien and sale for a repair shop.

The bill provides an effective date of January 1, 2020.

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 may reduce losses experienced by motor vehicle and vessel lienholders, including lenders, as it may reduce fraudulent practices relating to notices of lien and sale. The bill may also reduce costs to consumers hoping to finance the purchase of a vehicle.

The bill may impact repair shops and towing-storage operators by capping the amount of administrative costs and fees they may add to the amount due for repair, towing, or storage of a vehicle or vessel.

C. Government Sector Impact:

The bill requires DHSMV to certify a third-party mailing service before it can send notices of lien and sale on behalf of lienors. Currently DHSMV does not certify third-party mailing services. The bill will likely have a negative fiscal impact on DHSMV; however, the actual fiscal impact is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.917, 559.920, 713.585, and 713.78.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS:
- Replaces references to the date a notice of lien or sale is received with references to the dates such notices are sent;
- Eliminates an alternative 10-day timeframe for lienors to provide a notice of lien;
- Adds information that must be in a notice of lien, including the date the vehicle was dropped off for repairs, the date the repairs were completed, and the address where the vehicle is physically located;
- Requires a towing-storage operator to send a notice of lien at least 15 days before the date of the sale of a vehicle or vessel;
- Requires motor vehicle repair shops to make a vehicle available for inspection within 3 business days after receipt of a written inspection request from the owner, the customer, or a person claiming an interest in the vehicle;
- Requires lienors to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel;
- Requires lienors to use a third-party mailing service, certified by DHSMV, to send notices of lien and sale, defined the term "third-party mailing service," and established a certification process;
- Requires motor vehicle repair shops to release to the owner, lienholder, or their respective agents all personal property found in but not affixed to a vehicle;
- Requires motor vehicle repair shops to release a vehicle upon payment of the charges owed for services;
- Changes the effective date from July 1, 2019, to January 1, 2020; and

- Makes non-substantive grammatical changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.917, Florida Statutes, is amended to read:

559.917 Bond to release possessory lien claimed by motor vehicle repair shop.—

(1)(a) A ~~Any~~ customer or a person of record claiming a lien against a motor vehicle may obtain the release of the ~~her or his~~

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motor vehicle from any lien claimed under part II of chapter 713 by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien. The bond shall be in the amount stated on the invoice required by s. 559.911, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. The customer or person shall not be required to institute judicial proceedings in order to post the bond in the registry of the court and shall not~~, nor shall the customer~~ be required to use a particular form for posting the bond~~,~~ unless the clerk provides ~~shall provide~~ such form to the customer or person for filing. Upon the posting of such bond, the clerk of the court shall automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the ~~customer's~~ motor vehicle.

(b) The lienor shall have 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond shall be discharged.

(2) The failure of a lienor to release or return to the customer or person the motor vehicle upon which any lien is claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, shall subject the lienor to judicial proceedings which may be brought by the customer or person to compel compliance

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with the certificate. Whenever a customer or person brings an action to compel compliance with the certificate, the customer or person need only establish that:

(a) Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;

(b) A certificate was issued pursuant to this section;

(c) The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant to this section; and

(d) The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or person, upon a judgment in her or his favor in an action brought under this subsection, may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees sustained by her or him by reason of such wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to reasonable attorney ~~attorney's~~ fees.

(3) A ~~Any~~ motor vehicle repair shop that ~~which~~, or an ~~any~~ employee or agent thereof who is authorized to release the motor vehicle who, upon receiving a copy of a certificate giving notice of the posting of the bond in the required amount and directing release of the motor vehicle, fails to release or return the property to the customer or person pursuant to this section commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A ~~Any~~ customer or person who stops payment on a credit

card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond pursuant to this section shall be prohibited from any recourse under this section with respect to the motor vehicle repair shop.

Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It shall be a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department.~~;~~

(2) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.~~;~~

(3) Misrepresent that repairs have been made to a motor vehicle.~~;~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle.~~;~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer’s continued use of the vehicle may be harmful or cause great damage to the vehicle.~~;~~

(6) Fraudulently alter any customer contract, estimate, invoice, or other document.~~;~~

(7) Fraudulently misuse any customer’s credit card.~~;~~

(8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the

exercise of reasonable care should be known, to be untrue, deceptive or misleading.~~;~~

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.~~;~~

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.~~;~~

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile’s odometer reading at the time of repair.~~;~~

(12) Fail or refuse to give to a customer a copy of any document requiring the customer’s signature upon completion or cancellation of the repair work.~~;~~

(13) Willfully depart from or disregard accepted practices and professional standards.~~;~~

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified.~~;~~

(15) Conduct the business of motor vehicle repair in a location other than that stated on the registration certificate.~~;~~

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer’s established repair

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procedures or specifications and allowable tolerances for the particular model and year.~~; or~~

(17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

(18) Violate any provision of s. 713.585.

Section 3. Subsections (1) through (4), (9), and (13) of section 713.585, Florida Statutes, are amended, and subsections (14) through (18) are added to that section, to read:

713.585 Enforcement of lien by sale of motor vehicle.—A person claiming a lien under s. 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale of the vehicle in accordance with the following procedures:

(1) The lienor or the lienor's agent must give notice of the lien, by certified mail, return receipt requested, ~~within 7 business days, excluding Saturday and Sunday, from the beginning date of the assessment of storage charges on said motor vehicle,~~ to the registered owner of the vehicle, to the customer as indicated on the order for repair, and to all other persons claiming an interest therein ~~in~~ or lien thereon, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency of any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being the current state where the vehicle is titled. Such notice must ~~contain~~:

(a) Be sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon within 7 business days, excluding Saturday and Sunday, after the

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date on which storage charges begin to accrue on the vehicle. However, in no event shall the notice of lien be sent less than 30 days before the sale of the motor vehicle.

(b) Be sent by certified mail, return receipt requested, with the vehicle identification number of the motor vehicle subject to the lien clearly printed in the delivery address box or section of the return receipt card; on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon; and on the electronic image of the return receipt card available on the United States Postal Service website.

(c)~~(a)~~ Contain a description of the vehicle, including, at minimum, its year, make, vehicle identification number, and ~~the vehicle's~~ location.

(d)~~(b)~~ Contain the name and address of the owner of the vehicle, the customer as indicated on the order for repair, and any person claiming an interest therein ~~in~~ or lien thereon.

(e)~~(c)~~ Contain the name, address, and telephone number of the lienor.

(f)~~(d)~~ Contain notice that the lienor claims a lien on the vehicle for labor and services performed and storage charges, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the vehicle from the lien claimed by the lienor.

(g) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name, as registered with the Division of Corporations, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle.

(h) Contain the name of the person or entity that authorized the labor or services on the vehicle.

(i) Contain an itemized statement of the amount claimed to be owed to the lienor, including the date the vehicle was dropped off for repairs; the date the repairs were completed; the amount due for repairs, adjustments, or modifications to the vehicle; any administrative fees; and any daily storage charges.

(j)~~(e)~~ Contain notice that the lien claimed by the lienor is subject to enforcement pursuant to this section and that the vehicle may be sold to satisfy the lien.

(k)~~(f)~~ Contain ~~If known,~~ the date, time, and location of any proposed or scheduled sale of the vehicle. A vehicle may not be sold earlier than 60 days after completion of the repair work.

(l)~~(g)~~ Contain notice that the owner of the vehicle or any person claiming an interest therein ~~in~~ or lien thereon has a right to a hearing at any time before the scheduled date of sale by filing a demand for hearing with the clerk of the circuit court in the county in which the vehicle is held and mailing copies of the demand for hearing to all other owners and lienors as reflected on the notice.

(m)~~(h)~~ Contain notice that the owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting bond in accordance with s. 559.917.

(n)~~(i)~~ Contain notice that any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be due and owing to the lienor will be deposited with the clerk of the circuit court for disposition upon court order pursuant to subsection (8).

(o) ~~(j)~~ Contain notice that a lienholder, if any, has the right, as specified in subsection (5), to demand a hearing or to post a bond.

(p) Contain a statement that the lienor will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle from a notice recipient, who may present either an electronic or a paper title as evidence of his or her interest in and right to inspect the vehicle.

(q) Contain the address at which the vehicle is physically located.

(2) If attempts to locate the owner or lienholder are unsuccessful after a check of the records of the Department of Highway Safety and Motor Vehicles and any state disclosed by the check of the National Motor Vehicle Title Information System or an equivalent commercially available system, the lienor must notify the local law enforcement agency in writing by certified mail or acknowledged hand delivery that the lienor has been unable to locate the owner or lienholder, that a physical search of the vehicle has disclosed no ownership information, and that a good faith effort, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system, has been made. A description of the motor vehicle which includes the year, make, and identification number must be given on the notice. This

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notification must take place within 7 business days, excluding Saturday and Sunday, after ~~from~~ the ~~beginning~~ date on which ~~of the assessment of~~ storage charges begin to accrue on the ~~said motor~~ vehicle. For purposes of this subsection ~~paragraph~~, the term “good faith effort” means that the following checks have been performed by the company to establish the prior state of registration and title:

(a) A check of the department’s ~~Department of Highway Safety and Motor Vehicles~~ database for the owner and any lienholder.~~;~~

(b) A check of the federally mandated electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current title or registration record for the vehicle on file with the department. ~~of Highway Safety and Motor Vehicles;~~

(c) A check of the vehicle for any type of tag, tag record, temporary tag, or regular tag.~~;~~

(d) A check of the vehicle for an inspection sticker or other stickers and decals that could indicate the state of possible registration.~~; and~~

(e) A check of the interior of the vehicle for any papers that could be in the glove box, trunk, or other areas for the state of registration.

(3) A vehicle may not be sold earlier than 60 days after completion of the repair work. If the date of the sale was not included in the notice of lien required in subsection (1), notice of the sale must be sent by certified mail, return receipt requested, at least ~~not less than~~ 15 days before the

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date of sale, to the customer as indicated on the order for repair~~,~~ and to all other persons claiming an interest in or lien on the motor vehicle, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or of a corresponding agency of any other state in which the vehicle appears to have been registered after completion of a check of the National Motor Vehicle Title Information System or an equivalent commercially available system. Such notice must:

(a) Be sent by certified mail, return receipt requested, with the vehicle identification number of the motor vehicle subject to the sale clearly identified and printed in the delivery address box or section of the return receipt card and on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon and clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(b) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name, as registered with the Division of Corporations, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope containing the notice of sale in the return address section of the envelope.

(4) The lienor, at least 15 days before the proposed or scheduled date of sale of the vehicle, shall publish the notice required by this section once in a newspaper circulated in the county where the vehicle repair work was completed and the sale is to take place ~~held~~. A certificate of compliance with the notification provisions of this section, which includes the

vehicle identification number, verified by the lienor, together with a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), and a copy of all return receipts ~~receipt~~ for mailing of the notices ~~notice~~ required by this section, which must include proof of publication, and checks of the Department of Highway Safety and Motor Vehicles and the National Motor Vehicle Title Information System or an equivalent commercially available system, must be duly and expeditiously filed with the clerk of the circuit court in the county where the vehicle is held. The lienor, at the time of filing the certificate of compliance, must pay to the clerk of that court a service charge of $10 for indexing and recording the certificate.

(9)(a) A copy of the certificate of compliance, which must include the vehicle identification number, and the report of sale, certified by the clerk of the court, a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), and a copy of all return receipts for mailing of the notices required by this section, and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the application fails to include a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3) and a copy of all return receipts for mailing of the notices. The vehicle identification number on the return receipts must match the vehicle identification number of the vehicle that is the subject of the transfer of title and must be clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(13) A failure to make good faith efforts as defined in subsection (2) precludes the imposition of any storage charges against the vehicle. If a lienor fails to provide notice to any person claiming a lien on a vehicle under subsection (1) within 7 business days after the date ~~assessment~~ of storage of the vehicle ~~charges has begun~~, ~~then~~ the lienor may not charge the person ~~is precluded from charging~~ for more than 7 days of storage, but such failure ~~to provide timely notice~~ does not affect charges made for repairs, adjustments, or modifications to the vehicle or the priority of liens on the vehicle.

(14) At any time before the proposed or scheduled date of sale of a vehicle, the owner, the customer, or a person claiming an interest therein or lien thereon may request to inspect the vehicle. The lienor must make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle.

(15)(a) A lienor or the lienor’s agent may charge an administrative fee to the registered owner, the insurance company insuring the vehicle, or a person of record claiming a lien against the vehicle to obtain release of the vehicle. Such administrative fee may not exceed $250. For purposes of this paragraph, the term “administrative fee” means a lien fee or any fee imposed by the lienor or the lienor’s agent for

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administrative costs added to the amount due for storage, repairs, adjustments, or modifications to the vehicle.

(b) A lienor or the lienor’s agent may not charge fees or costs, other than those authorized in this section, that exceed $250.

(16) A motor vehicle or vessel repair shop; garage; automotive service, storage, or parking place; or towing-storage operator must use a third-party service approved by the Department of Highway Safety and Motor Vehicles to transmit all notices required by this section. If there are no third-party services approved by the department, a lienor may mail the notices and must provide evidence of compliance with this section upon submission of an application for certificate of title or certificate of destruction.

(a) For purposes of this subsection, the term “third-party service” means a qualified business entity that, upon a request submitted through a website by a motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place:

1. Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle.

2. Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the Department of Highway Safety and Motor Vehicles.

3. Electronically generates the notice required of the motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place by this section through the website.

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4. Prints and sends the notice required under this section to any owner, lienholder, and insurer of record by certified mail.

5. Electronically returns tracking information or other proof of mailing and delivery of the notices to the motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place.

6. Electronically reports to the Department of Highway Safety and Motor Vehicles via an electronic data exchange process using a web interface the following information related to the towing-storage notice, as applicable:

a. The vehicle identification number or vessel hull identification number;

b. The license plate number;

c. The name and address of the towing-storage operator or lienor;

d. The physical location of the vehicle;

e. The date of the tow;

f. The amount of storage fees owed at the time of the notice; and

g. The date the notices were mailed and delivered.

(b) A third-party service must apply to the department and be approved by the department in order to provide notices under this section. The department shall prescribe the format for such applications. The department may approve a third-party service applicant as qualified to provide the services described in paragraph (a) based upon the following:

1. Providing the department a $1 million bond;

2. Submitting an acceptable Internal Control and Data

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Security Audit (Level 2) or equivalent from a licensed certified public accountant; and

3. Successfully demonstrating the ability to electronically provide required data to the department via an electronic data exchange process using a web interface.

(c) The department may deny, suspend, or revoke approval of a third-party service if the department determines that the third-party service has committed an act of fraud or misrepresentation related to a notice required by this section.

(d) A third-party service must maintain all records related to providing notices under this section for 5 years and allow the department to inspect and copy such records upon request. The records may be maintained in electronic format.

(e) A third-party service must annually provide the department with evidence that it maintains a $1 million bond and must submit an Internal Control and Data Security Audit (Level 2) or equivalent from a licensed certified public accountant annually to continue its approved status each year.

(f) A third-party service must maintain a publicly available website that allows an owner, registrant, lienholder, insurance company, or any agent thereof to search for notices sent pursuant to this section. The search results must return the same information provided to the department, excluding any personal identifying information.

(17) A lienor must release to the owner, lienholder, or agent thereof all of the personal property found in but not affixed to the vehicle. Upon payment of the charges owed, the lienor must release the vehicle to the paying owner, lienholder, or agent thereof.

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(18) A lienor must accept either an electronic or a paper title as evidence of a person’s interest in a vehicle.

Section 4. Subsection (4), paragraphs (a) and (b) of subsection (5), and subsections (6) and (9) of section 713.78, Florida Statutes, are amended, and subsections (14) through (17) are added to that section, to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) A ~~Any~~ person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, return receipt requested, to the registered owner, the insurance company insuring the vehicle notwithstanding ~~the provisions of~~ s. 627.736, and ~~to~~ all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

(b) Whenever a ~~any~~ law enforcement agency authorizes the removal of a vehicle or vessel or whenever a ~~any~~ towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety

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and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor notwithstanding ~~the provisions of~~ s. 627.736.

(c) The notice of lien must be sent by certified mail, return receipt requested, to the registered owner, the insurance company insuring the vehicle notwithstanding s. 627.736, and all other persons claiming a lien thereon ~~shall be sent~~ within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than 15 days before the sale of ~~to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against~~ the vehicle or vessel. The notice must state:

1. If the claim of lien is for a vehicle, the vehicle identification number of the vehicle subject to the lien clearly

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printed in the delivery address box or section of the return receipt card; on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon; and on the electronic image of the return receipt card available on the United States Postal Service website.

2. The name, physical address, and telephone number of the lienor, and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope sent to the registered owner and all other persons claiming an interest in or lien on the vehicle or vessel.

3. ~~It shall state~~ The fact of possession of the vehicle or vessel.

4. The name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.~~,~~

5. That a lien as provided in subsection (2) is claimed.~~,~~

6. That charges have accrued and include an itemized statement of the amount thereof.~~,~~

7. That the lien is subject to enforcement under ~~pursuant to~~ law~~,~~ and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).~~, and~~

8. That any vehicle or vessel that ~~which~~ remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens ~~after~~ 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

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9. The address at which the vehicle or vessel is physically located.

(d) The notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 15 days before the sale of the vehicle or vessel.

(e) ~~(d)~~ If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 business ~~working~~ days, excluding Saturday and Sunday, after ~~of~~ the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term “good faith effort” means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the department’s ~~Department of Highway Safety and Motor Vehicles~~ database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file

with the department ~~of Highway Safety and Motor Vehicles~~.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to determine whether ~~see if~~ a tag was on the vehicle or vessel at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine whether ~~see if~~ an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

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(5)(a) The owner of a vehicle or vessel removed pursuant to ~~the provisions of~~ subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county in which the vehicle or vessel is stored to determine whether ~~if~~ her or his property was wrongfully taken or withheld ~~from her or him~~.

(b) At any time before the sale of the vehicle or vessel ~~Upon filing of a complaint~~, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel. At the time of such release, after reasonable inspection, she or he shall give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or the contents thereof.

(6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant to subsection (2) and ~~which~~ remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge ~~after~~ 35 days after ~~from the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if

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the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after ~~following the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or less. The sale shall be at public sale for cash. If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled. Notice of the sale must ~~shall~~ be sent by certified mail, return receipt requested. If the claim of lien is for a vehicle, the notice must have clearly identified and printed the vehicle identification number of the motor vehicle subject to the lien in the delivery address box or section of the return receipt card; on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon; and on the electronic image of the return receipt card available on the United States Postal Service website. The notice must be sent to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency at least ~~and shall be mailed not less than~~ 15 days before the sale of the vehicle or vessel ~~date of the sale~~. The notice must state the name, physical address, and telephone number of the lienor, and the vehicle identification number if the claim of lien is for a vehicle, all of which must also

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appear on the outside of the envelope containing the notice of sale in the return address section of the envelope. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days before ~~prior to~~ the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner or lienholder is absent, and the clerk shall hold such proceeds subject to the claim of the owner or lienholder legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order. The owner or lienholder may file a complaint after the vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court may award damages, attorney ~~attorney's~~ fees, and costs in favor of the prevailing party.

(9) Failure to make good faith ~~best~~ efforts to comply with the notice requirements of this section precludes ~~shall preclude~~ the imposition of any storage charges against the ~~such~~ vehicle or vessel. If a lienor fails to provide notice to a person claiming a lien on a vehicle or vessel in accordance with

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subsection (4), the lienor may not charge the person for more than 7 days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.

(14)(a) A copy of the notice of lien required by subsection (4) and the notice of sale required by subsection (6), and a copy of all return receipts for mailing of the notices required by this section, which must include the vehicle identification number, and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the application fails to include a copy of the notice of lien required by subsection (4) and the notice of sale required by subsection (6) and a copy of all return receipts for mailing of the notices required by this section. The vehicle identification number on the return receipts must match the vehicle identification number of the vehicle that is the subject of the transfer of title and must be clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(15)(a) A lienor or the lienor’s agent may charge an administrative fee to the registered owner, the insurance company insuring the vehicle or vessel, or a person claiming a lien against the vehicle or vessel to obtain release of the vehicle or vessel. Such administrative fee may not exceed $250. For purposes of this paragraph, the term “administrative fee” means a lien fee or any fee imposed by the lienor or the lienor’s agent for administrative costs added to the amount due for towing and storing the vehicle or vessel.

(b) A lienor or the lienor’s agent may not charge fees or costs, other than those authorized in this section or ss. 125.0103 and 166.043, that exceed $250.

(16) A motor vehicle or vessel repair shop; garage; automotive service, storage, or parking place; or towing-storage operator must use a third-party service approved by the Department of Highway Safety and Motor Vehicles to transmit all notices required by this section. If there are no third-party services approved by the department, a lienor may mail the notices and must provide evidence of compliance with this section upon submission of an application for certificate of title or certificate of destruction.

(a) For purposes of this subsection, the term “third-party service” means a qualified business entity that, upon a request submitted through a website by a motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place:

1. Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle.

2. Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the Department of Highway Safety and Motor Vehicles.

3. Electronically generates the notice required of the

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motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place by this section through the website.

4. Prints and sends the notice required under this section to any owner, lienholder, and insurer of record by certified mail.

5. Electronically returns tracking information or other proof of mailing and delivery of the notices to the motor vehicle or vessel repair shop, towing-storage operator, garage, or automotive service, storage, or parking place.

6. Electronically reports to the Department of Highway Safety and Motor Vehicles via an electronic data exchange process using a web interface the following information related to the repair and storage notice, as applicable:

a. The vehicle identification number or vessel hull identification number;

b. The license plate number;

c. The name and address of the repair shop or lienor;

d. The physical location of the vehicle or vessel;

e. The date the vehicle or vessel was dropped off for repairs;

f. The date the repairs were completed;

g. The amount owed for the repairs;

h. The date of the assessment of storage charges;

i. The amount of storage fees at the time of the notice; and

j. The date the notices were mailed and delivered.

(b) A third-party service must apply to the department and be approved by the department in order to provide notices under

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this section. The department shall prescribe the format for such applications. The department may approve a third-party service applicant as qualified to provide the services described in paragraph (a) based upon the following:

1. Providing the department a $1 million bond;

2. Submitting an acceptable Internal Control and Data Security Audit (Level 2) or equivalent from a licensed certified public accountant; and

3. Successfully demonstrating the ability to electronically provide required data to the department via an electronic data exchange process using a web interface.

(c) The department may deny, suspend, or revoke approval of a third-party service if the department determines that the third-party service has committed an act of fraud or misrepresentation related to a notice required by this section.

(d) A third-party service must maintain all records related to providing notices under this section for 5 years and allow the department to inspect and copy such records upon request. The records may be maintained in electronic format.

(e) A third-party service must annually provide the department with evidence that it maintains a $1 million bond and must submit an Internal Control and Data Security Audit (Level 2) or equivalent from a currently licensed certified public accountant annually to continue its approved status each year.

(f) A third-party service must maintain a publicly available website that allows an owner, registrant, lienholder, insurance company, or any agent thereof to search for notices sent pursuant to this section. The search results must return the same information provided to the department, excluding any

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personal identifying information.

(17) A lienor must accept either an electronic or a paper title as evidence of a person's interest in a vehicle or vessel.

Section 5. This act shall take effect January 1, 2020.

================= 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 liens against motor vehicles and vessels; amending s. 559.917, F.S.; authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; amending s. 559.920, F.S.; prohibiting a motor vehicle repair shop from violating certain provisions; amending s. 713.585, F.S.; revising notice requirements for enforcing a lien by sale of a motor vehicle; revising requirements for notice of lien and notice of sale of a motor vehicle; requiring the lienor to make the motor vehicle available for inspection by notice recipients; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; defining the term "administrative fee"; requiring a lienor to use a third-party service to provide notices of lien and sale; providing an exception; defining the term "third-party service"; establishing qualifications for

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approval of third-party services; authorizing the Department of Highway Safety and Motor Vehicles to deny, suspend, or revoke approval under certain circumstances; providing certain recordkeeping requirements; requiring a third-party service to annually take certain actions to continue to be approved; requiring a third-party service to maintain a website that offers specified information; requiring a lienor to release certain personal property; requiring release of the vehicle upon payment of charges; requiring a lienor to accept an electronic or paper title as evidence of a person’s interest in a vehicle; amending s. 713.78, F.S.; revising requirements for notice of lien for recovering, towing, or storing a vehicle or vessel; revising requirements for notice of the sale of such vehicle or vessel; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; defining the term “administrative fee”; requiring a lienor to use a third-party service to provide notices of lien and sale; providing an exception; defining the term “third-party service”; establishing qualifications for approval of third-party services; authorizing the department to deny, suspend, or revoke approval under certain circumstances; providing certain recordkeeping requirements; requiring a third-party service to annually take certain actions to continue to be approved; requiring a third-party service to maintain

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a website that offers specified information; requiring a lienor to accept an electronic or paper title as evidence of a person’s interest in a vehicle or vessel; providing an effective date.

By Senator Stargel

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A bill to be entitled

An act relating to liens against motor vehicles and vessels; amending s. 559.917, F.S.; authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; amending s. 559.920, F.S.; prohibiting a motor vehicle repair shop from violating certain provisions; amending s. 713.585, F.S.; revising notice requirements for enforcing a lien by sale of a motor vehicle; revising requirements for notice of lien and notice of sale of a motor vehicle; requiring the lienor to make the motor vehicle available for inspection by notice recipients; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; amending s. 713.78, F.S.; revising requirements for notice of lien for recovering, towing, or storing a vehicle or vessel; revising requirements for notice of the sale of such vehicle or vessel; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; providing an effective date.

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

Section 1. Section 559.917, Florida Statutes, is amended to read:

559.917 Bond to release possessory lien claimed by motor

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

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vehicle repair shop.—

(1)(a) A ~~Any~~ customer, or a person of record claiming a lien against a motor vehicle, may obtain the release of the ~~her or his~~ motor vehicle from any lien claimed under part II of chapter 713 by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien. The bond shall be in the amount stated on the invoice required by s. 559.911, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. The customer or person shall not be required to institute judicial proceedings in order to post the bond in the registry of the court and shall not~~, nor shall the customer~~ be required to use a particular form for posting the bond~~,~~ unless the clerk provides ~~shall provide~~ such form to the customer or person for filing. Upon the posting of such bond, the clerk of the court shall automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the ~~customer's~~ motor vehicle.

(b) The lienor shall have 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond shall be discharged.

(2) The failure of a lienor to release or return to the customer or any person the motor vehicle upon which any lien is

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

claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, shall subject the lienor to judicial proceedings which may be brought by the customer or person to compel compliance with the certificate. Whenever a customer or any person brings an action to compel compliance with the certificate, the customer or person need only establish that:

(a) Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;

(b) A certificate was issued pursuant to this section;

(c) The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant to this section; and

(d) The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or any person, upon a judgment in her or his favor in an action brought under this subsection, may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees sustained by her or him by reason of such wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to reasonable attorney ~~attorney's~~ fees.

(3) A ~~Any~~ motor vehicle repair shop that ~~which~~, or an ~~any~~ employee or agent thereof who is authorized to release the motor vehicle who, upon receiving a copy of a certificate giving notice of the posting of the bond in the required amount and directing release of the motor vehicle, fails to release or

return the property to the customer or any person pursuant to this section commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A ~~Any~~ customer or any person who stops payment on a credit card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond pursuant to this section shall be prohibited from any recourse under this section with respect to the motor vehicle repair shop.

Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It shall be a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department.~~;~~

(2) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.~~;~~

(3) Misrepresent that repairs have been made to a motor vehicle.~~;~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle.~~;~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.~~;~~

(6) Fraudulently alter any customer contract, estimate, invoice, or other document.~~;~~

(7) Fraudulently misuse any customer’s credit card.~~;~~

(8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading.~~;~~

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.~~;~~

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.~~;~~

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile’s odometer reading at the time of repair.~~;~~

(12) Fail or refuse to give to a customer a copy of any document requiring the customer’s signature upon completion or cancellation of the repair work.~~;~~

(13) Willfully depart from or disregard accepted practices and professional standards.~~;~~

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified.~~;~~

(15) Conduct the business of motor vehicle repair in a location other than that stated on the registration

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certificate.~~;~~

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer’s established repair procedures or specifications and allowable tolerances for the particular model and year.~~; or~~

(17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

(18) Violate any provision of s. 713.585.

Section 3. Subsections (1) through (4), (9), and (13) of section 713.585, Florida Statutes, are amended, and subsections (14) and (15) are added to that section, to read:

713.585 Enforcement of lien by sale of motor vehicle.—A person claiming a lien under s. 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale of the vehicle in accordance with the following procedures:

(1) Regardless of whether the lienor intends to collect storage fees, the lienor or the lienor’s agent or designee must give notice of the lien, by certified mail, return receipt requested, ~~within 7 business days, excluding Saturday and Sunday, from the beginning date of the assessment of storage charges on said motor vehicle,~~ to the registered owner of the vehicle, to the customer as indicated on the order for repair, and to all other persons claiming an interest therein ~~in~~ or lien thereon, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency of any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent

commercially available system as being the current state where the vehicle is titled. Such notice must ~~contain~~:

(a) Be received by the registered owner, the customer, and all other persons claiming an interest therein or lien thereon within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or within 10 business days, excluding Saturday and Sunday, after the date of completion of the repairs, whichever is earlier. However, in no event shall the notice of lien be received less than 30 days before the sale of the motor vehicle.

(b) Be sent by certified mail, return receipt requested, with the vehicle identification number of the motor vehicle subject to the lien clearly identified and printed in the delivery address box or section of the return receipt card and on the outside of the envelope received by the registered owner, the customer, and all other persons claiming an interest therein or lien thereon and clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(c) ~~(a)~~ Contain a description of the vehicle, including, at minimum, its year, make, vehicle identification number, and ~~the vehicle's~~ location.

(d) ~~(b)~~ Contain the name and address of the owner of the vehicle, the customer as indicated on the order for repair, and any person claiming an interest therein ~~in~~ or lien thereon.

(e) ~~(c)~~ Contain the name, address, and telephone number of the lienor.

(f) ~~(d)~~ Contain notice that the lienor claims a lien on the vehicle for labor and services performed and storage charges, if

any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the vehicle from the lien claimed by the lienor.

(g) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name, as registered with the Division of Corporations, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope containing the notice of lien in the return address section of the envelope.

(h) Contain the name of the person or entity that authorized the labor or services on the vehicle.

(i) Contain an itemized statement of the amount claimed to be owed to the lienor, including the amount for repairs, adjustments, or modifications to the vehicle, any administrative fee, and any daily storage charges.

(j) ~~(e)~~ Contain notice that the lien claimed by the lienor is subject to enforcement pursuant to this section and that the vehicle may be sold to satisfy the lien.

(k) ~~(f)~~ Contain ~~If known,~~ the date, time, and location of any proposed or scheduled sale of the vehicle. A vehicle may not be sold earlier than 60 days after completion of the repair work.

(l) ~~(g)~~ Contain notice that the owner of the vehicle or any person claiming an interest therein ~~in~~ or lien thereon has a right to a hearing at any time before the scheduled date of sale by filing a demand for hearing with the clerk of the circuit court in the county in which the vehicle is held and mailing copies of the demand for hearing to all other owners and lienors as reflected on the notice.

(m) ~~(h)~~ Contain notice that the owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting bond in accordance with s. 559.917.

(n) ~~(i)~~ Contain notice that any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be due and owing to the lienor will be deposited with the clerk of the circuit court for disposition upon court order pursuant to subsection (8).

(o) ~~(j)~~ Contain notice that a lienholder, if any, has the right, as specified in subsection (5), to demand a hearing or to post a bond.

(p) Contain notice that the lienor will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle from any recipient of the notice.

(2) If attempts to locate the owner or lienholder are unsuccessful after a check of the records of the Department of Highway Safety and Motor Vehicles and any state disclosed by the check of the National Motor Vehicle Title Information System or an equivalent commercially available system, the lienor must notify the local law enforcement agency in writing by certified mail or acknowledged hand delivery that the lienor has been unable to locate the owner or lienholder, that a physical search of the vehicle has disclosed no ownership information, and that a good faith effort, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system, has been made. A description of

the motor vehicle which includes the year, make, and identification number must be given on the notice. This notification must take place within 7 business days, excluding Saturday and Sunday, after ~~from~~ the ~~beginning~~ date of storage of the vehicle or within 10 business days, excluding Saturday and Sunday, after the date of completion of the repairs, whichever is earlier ~~the assessment of storage charges on said motor vehicle~~. For purposes of this subsection ~~paragraph~~, the term “good faith effort” means that the following checks have been performed by the company to establish the prior state of registration and title:

(a) A check of the Department of Highway Safety and Motor Vehicles database for the owner and any lienholder.~~;~~

(b) A check of the federally mandated electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current title or registration record for the vehicle on file with the Department of Highway Safety and Motor Vehicles.~~;~~

(c) A check of the vehicle for any type of tag, tag record, temporary tag, or regular tag.~~;~~

(d) A check of the vehicle for an inspection sticker or other stickers and decals that could indicate the state of possible registration.~~; and~~

(e) A check of the interior of the vehicle for any papers that could be in the glove box, trunk, or other areas for the state of registration.

(3) In no event shall a vehicle be sold earlier than 60 days after completion of the repair work. If the date of the

sale was not included in the notice of lien required in subsection (1), notice of the sale must be sent by certified mail, return receipt requested, and must be received at least ~~not less than~~ 15 days before the date of sale by~~, to~~ the customer as indicated on the order for repair~~,~~ and by ~~to~~ all other persons claiming an interest in or lien on the motor vehicle, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or of a corresponding agency of any other state in which the vehicle appears to have been registered after completion of a check of the National Motor Vehicle Title Information System or an equivalent commercially available system. Such notice must:

(a) Be sent by certified mail, return receipt requested, with the vehicle identification number of the motor vehicle subject to the sale clearly identified and printed in the delivery address box or section of the return receipt card and on the outside of the envelope received by the registered owner, the customer, and all other persons claiming an interest therein or lien thereon and clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(b) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name, as registered with the Division of Corporations, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope containing the notice of sale in the return address section of the envelope.

(4) The lienor, at least 15 days before the proposed or scheduled date of sale of the vehicle, shall publish the notice

required by this section once in a newspaper circulated in the county where the vehicle repair work was completed and the sale is to take place ~~held~~. A certificate of compliance with the notification provisions of this section, which includes the vehicle identification number, verified by the lienor, together with a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), and a copy of all return receipts ~~receipt~~ for mailing of the notices ~~notice~~ required by this section, which must include the vehicle identification number, proof of publication, and checks of the Department of Highway Safety and Motor Vehicles and the National Motor Vehicle Title Information System or an equivalent commercially available system, must be duly and expeditiously filed with the clerk of the circuit court in the county where the vehicle is held. The lienor, at the time of filing the certificate of compliance, must pay to the clerk of that court a service charge of $10 for indexing and recording the certificate.

(9)(a) A copy of the certificate of compliance, which must include the vehicle identification number, and the report of sale, certified by the clerk of the court, a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), and a copy of all return receipts for mailing of the notices required by this section, which must include the vehicle identification number, and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the application fails to include a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3) and a copy of all return receipts for mailing of the notices required by this section indicating timely receipt of the notices. The vehicle identification number on the return receipts must match the vehicle identification number of the vehicle that is the subject of the transfer of title and must be clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(13) A failure to make good faith efforts as defined in subsection (2) precludes the imposition of any storage charges against the vehicle. If a lienor fails to provide notice to any person claiming a lien on a vehicle under subsection (1) within 7 business days after the date ~~assessment~~ of storage of the vehicle ~~charges has begun~~, ~~then~~ the lienor may not charge the person ~~is precluded from charging~~ for more than 7 days of storage, but failure to provide timely notice does not affect charges made for repairs, adjustments, or modifications to the vehicle or the priority of liens on the vehicle.

(14) At any time before the proposed or scheduled date of sale of a vehicle, the owner, the customer, or any person claiming an interest therein or a lien thereon may request to inspect the vehicle during regular business hours. The lienor must make the vehicle available for inspection within 3 business days after receiving a written request to inspect the vehicle.

(15)(a) A lienor or the lienor’s agent or designee may charge an administrative fee, which means a lien fee or any fee imposed by the lienor or the lienor’s agent or designee for administrative costs added to the amount due for storage, repairs, adjustments, or modifications to the vehicle, charged to the registered owner, the insurance company insuring the vehicle, or a person of record claiming a lien against the vehicle to obtain release of the vehicle. Such administrative fee may not exceed $250. A lienor may not charge any fee other than those specifically authorized in this section.

(b) A lienor or the lienor’s agent or designee may not charge fees or costs, other than charges for storage, repairs, adjustments, or modifications to the vehicle, as authorized in this section, which total more than $250.

Section 4. Subsection (4), paragraphs (a) and (b) of subsection (5), and subsections (6) and (9) of section 713.78, Florida Statutes, are amended, and subsections (14) and (15) are added to that section, to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) A ~~Any~~ person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, return receipt requested, to the registered owner, the insurance company insuring the vehicle notwithstanding ~~the provisions of~~ s. 627.736, and ~~to~~ all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and

Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

(b) Whenever a ~~any~~ law enforcement agency authorizes the removal of a vehicle or vessel or whenever a ~~any~~ towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor notwithstanding ~~the provisions of~~ s. 627.736.

(c) The notice of lien must be sent by certified mail,

return receipt requested, and must be received by the registered owner, the insurance company insuring the vehicle notwithstanding s. 627.736, and all other persons claiming a lien thereon ~~shall be sent~~ within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel or within 10 business days, excluding Saturday and Sunday, after the date of completion of services, whichever is earlier. However, in no event shall the notice of lien be received less than 30 days before the sale of ~~to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against~~ the vehicle or vessel. The notice must:

1. If the claim of lien is for a vehicle, have clearly identified and printed the vehicle identification number of the motor vehicle subject to the lien:

a. In the delivery address box or section of the return receipt card.

b. On the outside of the envelope received by the registered owner, the insurance company, and all other persons claiming an interest therein or lien thereon.

c. On the electronic image of the return receipt card available on the United States Postal Service website.

2. State the name, physical address, and telephone number of the lienor and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope containing the notice of lien in the return address section of the envelope.

3. ~~It shall~~ State the fact of possession of the vehicle or vessel.

4. State the name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.

5. State~~,~~ that a lien as provided in subsection (2) is claimed.

6. State~~,~~ that charges have accrued and include an itemized statement of the amount thereof, including daily storage charges.

7. State that the lien is subject to enforcement pursuant to law~~,~~ and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).

8. State~~, and~~ that any vehicle or vessel that ~~which~~ remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens ~~after~~ 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

(d) The notice of lien may not be received by the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 30 days before the sale of the vehicle or vessel.

(e)~~(d)~~ If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 business ~~working~~ days, excluding Saturday and Sunday, after ~~of~~ the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand

delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term “good faith effort” means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the Department of Highway Safety and Motor Vehicles database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file with the Department of Highway Safety and Motor Vehicles.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to see if a tag was on the vehicle or vessel at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine

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whether ~~see if~~ an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

(5)(a) The owner of a vehicle or vessel removed pursuant to ~~the provisions of~~ subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county in which the vehicle or vessel is stored to determine whether ~~if~~ her or his property was wrongfully taken or withheld from her or him.

(b) At any time before the sale of the vehicle or vessel ~~Upon filing of a complaint~~, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the

amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel. At the time of such release, after reasonable inspection, she or he shall give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or the contents thereof.

(6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant to subsection (2) and that ~~which~~ remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge ~~after~~ 35 days after ~~from the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after ~~following the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or less. The sale shall be at public sale for cash. If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available

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

system as being titled. Notice of the sale must ~~shall~~ be sent by certified mail, return receipt requested. If the claim of lien is for a vehicle, the notice must have clearly identified and printed the vehicle identification number of the motor vehicle subject to the lien in the delivery address box or section of the return receipt card; on the outside of the envelope received by the registered owner and all other persons claiming an interest therein or lien thereon; and on the electronic image of the return receipt card available on the United States Postal Service website. The notice must be received by ~~to~~ the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency at least ~~and shall be mailed not less than~~ 15 days before the sale of the vehicle or vessel ~~date of the sale~~. The notice must state the name, physical address, and telephone number of the lienor, and the vehicle identification number if the claim of lien is for a vehicle, all of which must also appear on the outside of the envelope containing the notice of sale in the return address section of the envelope. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days before ~~prior to~~ the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, shall be deposited with the

clerk of the circuit court for the county if the owner or lienholder is absent, and the clerk shall hold such proceeds subject to the claim of the owner or lienholder legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order. The owner or lienholder may file a complaint after the vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court may award damages, attorney ~~attorney's~~ fees, and costs in favor of the prevailing party.

(9) Failure to make good faith ~~best~~ efforts to comply with the notice requirements of this section precludes ~~shall preclude~~ the imposition of any storage charges against the ~~such~~ vehicle or vessel. If a lienor fails to provide notice to any person claiming a lien on a vehicle or vessel in accordance with subsection (4), the lienor may not charge the person for more than 7 days of storage, but failure to provide timely notice does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.

(14)(a) A copy of the notice of lien required by subsection (4) and the notice of sale required by subsection (6), and a copy of all return receipts for mailing of the notices required by this section, which must include the vehicle identification number, and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor

Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the application fails to include a copy of the notice of lien required by subsection (4) and the notice of sale required by subsection (6) and a copy of all return receipts for mailing of the notices required by this section indicating timely receipt of the notices. The vehicle identification number on the return receipts must match the vehicle identification number of the vehicle that is the subject of the transfer of title and must be clearly visible on the electronic image of the return receipt card available on the United States Postal Service website.

(15)(a) A lienor or the lienor's agent or designee may charge an administrative fee, which means a lien fee or any fee imposed by the lienor or the lienor's agent or designee for administrative costs added to the amount due for towing and storing the vehicle charged to the registered owner, the insurance company insuring the vehicle or vessel, or a person claiming a lien against the vehicle or vessel to obtain release of the vehicle or vessel. Such administrative fee may not exceed $250.

(b) A lienor or the lienor's agent or designee may not charge fees or costs, other than charges for towing and storage, or any other fee or cost not authorized in this section or ss. 125.0103 and 166.043, which total more than $250.

Section 5. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

February 15, 2019

The Honorable Doug Broxson
Senate Committee Banking and Insurance, Chair
318 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Broxson:

I respectfully request that SB 772, related to *Liens Against Motor Vehicles and Vessels*, be placed on the Banking and Insurance meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel

Kelli Stargel
State Senator, District 22

Cc: James Knudson/Staff Director
Sheri Green/ AA

REPLY TO:
❐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

772
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Liens Against Motor Vehicles

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adam
Street

Tlh FL 32301
City State Zip

Phone

Email bbevis@aif

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Mar 2019
Meeting Date

772
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Liens against Autos

Name Sandra Mortham

Job Title

Address 6675 Weeping Willow Way
Street

Tallahassee FL 32311
City State Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FIADA (Fl Independent Auto Dealers Assoc)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2019
Meeting Date

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

772
Bill Number (if applicable)

Topic ______

Amendment Barcode (if applicable) ______

Name Paul Sanford

Job Title ______

Address 106 S Monroe St
Street

Phone 850-222-7200

Tallahassee, FL 32301
City State Zip

Email ______

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

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

Representing J.M. Family Enterprises

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/25/2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 772

Meeting Date — Bill Number (if applicable)

Topic: Liens Against Motor Vehicles + Vessels

Amendment Barcode (if applicable):

Name: David Custin

Job Title: David R. Custin + Associates, Inc.

Address: 6401 SW 113 PL (Street)

Phone: 305-607-8576

Miami (City) FL (State) 33173 (Zip)

Email: CustinDR@DavidRCustin.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against

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

Representing: Tremont Towing, Inc. and Beach Towing, Inc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

772
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Liens

Name: Carolyn Johnson

Job Title: Policy Director

Address:
Street

City *State* *Zip*

Phone:

Email:

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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 874

INTRODUCER: Banking and Insurance Committee and Senator Rouson

SUBJECT: Consumer Finance Loans

DATE: March 25, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 874 establishes the Access to Responsible Credit Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and assist consumers in building their credit. The Office of Financial Regulation (OFR) is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans of at least $300 and no more than $10,000, at a maximum fixed interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of 6 percent of the principal amount of the program loan exclusive of the origination fee or $90, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a terms of:
  - At least 120 days but not more than 36 months for loans with a principal balance upon origination of at least $300, but not more than $3,000; or
  - At least 12 months but not more than 60 months for loans with a principal balance upon origination of more than $3,000.
- All program loans may not impose a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower’s ability and willingness to repay. A program licensee must not make a program loan if the borrower’s monthly debt service, including the program loan, exceeds 50 percent of the borrower’s gross

monthly income when borrowing less than $3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.

- The OFR may examine any program licensee accepted into the program.
- A program licensee may use an access partner to perform marketing, servicing, and other services on behalf of the program licensee.
- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S., must demonstrate financial responsibility and experience, and must not be subject to any enforcement action by a state or federal regulatory agency.

Currently, the Florida Consumer Finance Act (act) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is allowed in Florida. The act sets forth maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less. The allowable interest rates on such loans are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal from $3,001 to $4,000; and
- 18 percent per year on that part of principal from $4,001 to $25,000.
  The pilot program would increase these maximum allowed percentages by 6 percent per tier.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of TILA,[1] is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[2] Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.[3] Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.[4]

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities. The Division of Financial Institutions of the OFR charters regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes). [5] The OFR may examine,

[1] 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.
[2] 15 U.S.C. s. 1601(a).
[3] 15 U.S.C. s. 1604-1606.
[4] 12 C.F.R. s. 1026.4.
[5] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.[6]

Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum."[7] The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal between $3,001 to $4,000; and
- 18 percent a year on that part of principal between $4,001 to $25,000.[8]

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.[9] The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.[10] Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:[11]

- 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 and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges 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 dishonored check charge of up to $20.

Lastly, the act requires all consumer finance loans must be repaid in equal monthly installments, except for repayment on lines of credit.[12]

[6] These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.
[7] Section 516.01(2), F.S.
[8] Section 516.031(1), F.S.
[9] Section 516.031(2), F.S.
[10] *Id.*
[11] Section 516.031(3), F.S.
[12] Section 516.36, F.S.

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[13] The pilot program covers consumer loans of $250-$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[14] The new pilot program covers consumer loans of $300-$2,500 and allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[15]

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans ($300-$499) decreased by 42.3 percent, while larger loans ($500-$999) increased by 106 percent.
- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans ($1,500-$2,499) saw a more even APR distribution.
- *Delinquency rates*: In 2014, 22.5 percent were delinquent for 7 days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores*: The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the 4-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms: 120 days to 179 days, essentially 0 percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.
- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than 10.

[13] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 10, 2019).
[14] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 10, 2019).
[15] Id.

Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.[16]

III. Effect of Proposed Changes:

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least $300 and up to a maximum of $10,000 at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

Access to Responsible Credit Pilot Program (Section 1)

Creates s. 516.405, F.S., which states that the Access to Responsible Credit Pilot Program is created within the OFR to allow more Floridians to obtain responsible consumer finance loans with principal amounts of at least $300 but not more than $10,000.

Definitions (Section 2)

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Access partner
- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program
- Pilot program license
- Program branch office license
- Program licensee
- Program loan
- Refinance program loan

Regulation of Program Licensees (Lenders) and Access Partners (Sections 3 and 5)

Program Licensees **(Section 3)**

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S. Licensees must demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.[17] Licensees may not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension,

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[16] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited March 10, 2019).

[17] Section 516.07, F.S., of the consumer finance act subjects licensees to disciplinary action or denial of licensure for failure to demonstrate such actions.

or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program. Application forms are to be adopted by rule. Each branch office of a program licensee must be included in the program application to the OFR.

The bill requires applicants to be accepted as a "data furnisher" with a consumer-reporting agency[18] before the OFR may approve an applicant as a program licensee.

The office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

- Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.
- Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld.
- Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

The bill directs the Financial Services Commission to adopt rules to implement this section.

Access Partners **(Section 5)**

The bill allows a program licensee to engage in arrangements with access partners. All such arrangements must be in writing; must contain a provision that the access partner agrees to comply with s. 516.44, F.S., and must contain a provision allowing the OFR access to the access partner's books and records related to the access partner's operations under the agreement with the program licensee.

An access partner may engage in the following activities:

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;

[18] The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact the program licensee to determine the status of a program loan application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system;
- Obtain a borrower's signature on documents prepared by the program licensee and deliver final copies of the documents to the borrower;
- Disburse program loan proceeds to a borrower, and receive program loan payments from a borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

Any program payments received by an access partner must be applied to the program loan and be deemed received by the program licensee at the time the access partner receives the payment. When payment is made, an access partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if an access partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. An access partner must maintain records related to disbursements and payments for 2 years.

Access partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and access partner. The bill requires an access partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where an access partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate an access partner. Compensation paid to an access partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must not be paid to an access partner until the program loan is consummated.

The bill prohibits an access partner from engaging in the following activities:
- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee;
- Negotiate a loan term between a program licensee and a prospective borrower;
- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower; and
- Requiring a borrower to pay any fees other than those permitted under the bill.

The program licensee is responsible for any violations of ch. 516, F.S., committed by an access partner.

Terms and Conditions of the Small Dollar Loans (Section 4)

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

Unsecured Loan Term, Repayment Schedule, and Right of Rescission

- A program loan must be unsecured.
- For a loan with a principal amount upon origination that is at least $300 but no more than $3,000, a program loan must have a minimum term of 120 days and a maximum term of 36 months, for a loan with a principal balance upon origination of more than $3,000, the minimum term is 12 months and the maximum term is 60 months.
- All loans may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every 2 weeks, semimonthly or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.

Interest Rates

A program loan must apply an interest rate which must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day. The maximum per annum interest rate various with the portion of the unpaid principal on the loan, as follows:

- For the portion of the principal up to and including $3,000, the maximum annual interest rate is 36 percent.
- For the portion of the principal over $3,000, and up to and including $4,000, the maximum annual interest rate is 30 percent.
- For the portion of the principal over $4,000 and up to and including $10,000, the maximum interest rate is 24 percent.

If multiple interest rates are applied to the loan principal, the lender may charge interest at the single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total of interest as would result from the application of multiple interest rates, based on the assumption that all payments are made as agreed.

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least 1 percent up to 6 percent if all the following conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan;
- The prior program loan was outstanding for at least one half of its original term before its repayment.

Prohibition Against Multiple, Contemporaneous Program Loans from the Same Licensee

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

Refinancing

The bill allows the refinancing of program loan under specified circumstances if the new loan in underwritten in accordance with the underwriting requirements created by the bill. A program licensee may refinance a program loan only if all of the following conditions are met at the time the borrower submits an application to refinance:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;
- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least 9 months on the program loan;
- The borrower is current on his or her outstanding program loan.

Consumer Disclosures and Receipts

The bill requires a program licensee must provide the same disclosures as required in s. 516.15, F.S.,[19] however the bill does allow the disclosures to be provided disclosures in other languages the loans were negotiated in.

The bill requires a program licensee or approved access partner to provide the borrower an electronic or physical receipt of payment at the time the borrower makes a payment. The receipt must include specified information that includes the borrower's name, the amount paid, the date of payment, the program loan balance before and after payment, they type of payment made, and a statement informing the borrower how to contact the lender to ask questions regarding the loan. The program licensee must maintain an electronic record of each receipt, which must include a copy of the receipt and the date and time the receipt was made.

Fees

The bill allows a program licensee to contract for and receive an origination fee, which may not exceed 6 percent of the principal amount, exclusive of the origination fee, or $90, whichever is less. A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

The bill caps the fee for insufficient funds at $20, and any delinquency charge is capped at $15 for each calendar month for payments in default for at least 10 days. In attempting to collect

[19] Section. 516.15(1), F.S., deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity; the nature of the security, if any, for the loan; the name and address of the borrower and of the licensee; and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Credit Education

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

Program Loan Underwriting

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee, exceeds 50 percent of the borrower's gross monthly income when borrowing less than $3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:
- Electronic means or services that provide reliable evidence of the borrower's actual income; or
- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

Waiver of Borrower's Rights

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 6)

The legislation authorizes the OFR to examine program licensees, each branch office of the program licensee, and access partners. The scope of any investigation or examination of a program licensee or access partner is to be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with the program. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. Any such disciplinary action is subject to s. 120.60, F.S. The program licensee is also subject to disciplinary action for a violations of s. 516.44, F.S., committed by any of its access partners.

The office may take any of the following actions against an access partner:
- Bar the access partner from performing services under the program.
- Bar the access partner from performing services at one or more of its specific locations.

The bill authorizes the OFR to waive branch examinations if the OFR finds such examination are unnecessary for the protection of the public due to the centralized operation of the program licensee or other factors acceptable to the office.

The bill provides the OFR rulemaking authority to implement the examination requirements.

Reporting Requirements (Sections 4, 5, and 7)

Credit Reporting (Section 4)

The bill requires a program licensee to report a borrower’s payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower’s payment history.

Notice to the OFR (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with an access partner. Such information includes the access partner’s identifying information, and a provision that allows the OFR to request any other information. The program licensee must conduct due diligence with respect to the access partner and confirm to the OFR that the access partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the access partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the access partner has committed a criminal act and that there has not been notification that the access partner is under criminal investigation. The access partner must report changes in this information to the program licensee.

OFR Program Report (Section 7)

A program licensee is required to file, on or before March 15 of each year beginning in year 2021, a report with the OFR in a manner prescribed by rule.

The bill directs the OFR to post a report on its website by January 1, 2022, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of applicants approved for program licensure.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses:
  - Pay medical expenses.
  - Pay for vehicle repair or a vehicle purchase.
  - Pay bills.
  - Consolidate debt.
  - Build or repair credit history.
  - Pay other expenses.
- The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.
- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between 7 to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.

The bill provides rulemaking authority for the OFR to implement the reporting requirements.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2027, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act shall take effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill may need a companion public records exemption bill as information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Without a companion public records exemption bill this information could be subject to public inspection.

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:

Indeterminate at this time. The number of lenders, access partners, and borrowers who would participate in this pilot program is unknown at this time. The intent of the program is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by 6 percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least 1 percent up to 6 percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

Office of Financial Regulation resources will be required to process applications; process access partner notices; process complaints; examine records of program licensees and access partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. Additionally, the bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) system internal system and website. The bill will also require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program. Implementing such changes would cost an estimated $380,000 non-recurring and $501,776.96 annually recurring cost to the OFR.[20]

The bill also provides that the program loan contracts, written disclosures, and statements may be provided to the borrower in English or in the language in which the loan is negotiated; however, the bill does not authorize the OFR to collect fees for translating the contracts as part of its examination requirement.

It is unclear if criminal history information is intended to be obtained through state or state and national criminal history record checks, accessible through FDLE. Section 943.051, F.S., established FDLE as the central repository of criminal history information for the state of Florida. Both FDLE and the FBI (when FDLE begins participation in the federal program) retain the fingerprints, search the fingerprints against incoming arrests, and FDLE will notify the agency if the retained fingerprints match an incoming arrest. The cost for such background checks is $37.25 and typically borne by the applicant. The bill does not address the cost for background checks and it is presumed this cost would be borne by FDLE who conducts the check. If this is the case the fiscal impact to FDLE would be significant, however, indeterminate depending on the number of applicants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.405, 516.41, 516.42, 516.43, 516.44, 516.45, and 516.46.

[20] Office of Financial Regulation, *Bill Analysis of SB 874*, March 4, 2019 (on file with the Banking and Insurance committee).

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS:
- Requires a program licensee and program branch office licensee must demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of ch. 517, F.S.
- Allows the office to deny a license if a licensee or applicant has pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld.
- Adds a maximum term of 36 months for loan with a principal balance upon origination of at least $300, but no more than $3,000.
- Specifies that the OFR may examine program licensees, branch offices, and access partners in accordance with ch. 517, F.S.

B. Amendments:

None.

402070

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment

Delete lines 146 - 245
and insert:

(c) Demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(d) Not be subject to the issuance of a cease and desist

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order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application in a form and manner prescribed by commission rule which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant’s main address.

3. The applicant’s telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant’s contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person of the applicant.

(b) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to

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s. 516.05 must concurrently submit the following digital applications in a form and manner specified in this chapter to the office:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form. The application for a program branch office

402070

license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

(a) Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(b) Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was

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withheld.

(c) Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days, but not more than 60 months, for a loan with a principal

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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Amendment to Amendment (402070)

Delete line 114
and insert:
1. A term of at least 120 days, but not more than 36

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Rouson) recommended the following:

Senate Substitute for Amendment (402070) (with title amendment)

Delete lines 146 - 672
and insert:

(c) Demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

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(d) Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application in a form and manner prescribed by commission rule which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant's main address.

3. The applicant's telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant's contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person of the applicant.

(b) A person who desires to participate in the program but

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who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications in a form and manner specified in this chapter to the office:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed

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application form. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

(a) Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(b) Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any

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act of moral turpitude, regardless of whether adjudication was withheld.

(c) Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days, but not more than 36 months, for a loan with a principal balance upon origination of at least $300, but not more than $3,000.

2. A term of at least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than $3,000.

(c) A program loan must not impose a prepayment penalty. A program loan must be repayable by the borrower in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due either every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower's right to

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rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and returning the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest rate charged on a program loan to the borrower, which must be fixed for the duration of the program loan, is 36 percent on that portion of the unpaid principal balance up to and including $3,000; 30 percent on that portion of the unpaid principal balance exceeding $3,000 and up to and including $4,000; and 24 percent on that portion of the unpaid principal balance exceeding $4,000 and up to and including $10,000. The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum annual interest rates in this paragraph, the computations used must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the program licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(g) The program licensee shall reduce the interest rates specified in paragraph (e) on each subsequent program loan to the same borrower by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:

1. The subsequent program loan is originated within 180 days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-half of its original term before its repayment.

(h) The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan pursuant to s. 516.031(5).

2. For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan.

3. For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.

4. The borrower is current on payments for his or her

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existing program loan.

5. The program licensee must underwrite the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, the program licensee or, if applicable, its approved access partner shall make available to the borrower by electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, the program licensee must maintain an electronic record for each receipt made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt made available to the borrower must show all of the following:

1. The name of the borrower.

2. The name of the access partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

8. The following statement, prominently displayed in a type size equal to or larger than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

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(2) WRITTEN DISCLOSURES AND STATEMENTS.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided by a program licensee to a borrower in English or in the language in which the loan is negotiated.

(b) The program licensee shall provide to a borrower all the statements required of licensees under s. 516.15.

(3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program licensee may:

(a) Contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $90.

(b) Not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A program licensee may:

(a) Notwithstanding s. 516.031, require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 in a calendar month for one or more payments that are in default for at least 10

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days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or seminar to the borrower. The borrower is not required to participate in such education program or seminar. A credit education program or seminar offered pursuant to this paragraph must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower’s payment performance to at least one consumer reporting agency.

(b) The office may not approve an applicant for the program license before the applicant has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower’s payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee must underwrite each program loan to determine a borrower’s ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income for a loan of not more than $3,000, or exceed 36 percent of the borrower's gross monthly income for a loan of more than $3,000.

(b)1. The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee must verify the borrower's income to determine the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. The Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) WAIVERS.—

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(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, a court, or any other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower’s or applicant’s refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise communicate with, the office, a court, or any other governmental entity. The exercise of a person’s right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the

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contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Access partners.—

(1) ACCESS PARTNER AGREEMENT.—All arrangements between a program licensee and an access partner must be specified in a written access partner agreement between the parties. The agreement must contain the following provisions:

(a) The access partner agrees to comply with this section and all rules adopted under this section regarding the activities of access partners.

(b) The office has access to the access partner's books and records pertaining to the access partner's operations under the agreement with the program licensee in accordance with s. 516.45(3) and may examine the access partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more access partners as provided in this section. An access partner may perform one or more of the following services for the program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program

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licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information needed in order to complete a program loan application.

(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by an access partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a

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prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to an access partner under paragraph (2)(j) must be applied to the borrower’s program loan and deemed received by the program licensee as of the date on which the payment is received by the access partner.

(b) An access partner that receives a loan payment from a borrower must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to an access partner under this subsection is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

(d) An access partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for at least 2 years.

(4) PROHIBITED ACTIVITIES.—An access partner may not:

(a) Provide counseling or advice to a borrower or prospective borrower with respect to any loan term.

(b) Provide loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiate a loan term between a program licensee and a prospective borrower.

(d) Offer information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program licensee with whom it has an access partner agreement.

(e) Require a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

(5) DISCLOSURE STATEMENTS.—

(a) At the time that the access partner receives or processes an application for a program loan, the access partner shall provide the following statement to the applicant on behalf of the program licensee, in at least 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

> Your loan application has been referred to us by ...(name of access partner).... We may pay a fee to ...(name of access partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of access

partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate an access partner in accordance with a written agreement and a compensation schedule that is agreed to by the program licensee and the access partner, subject to the requirements in paragraph (b).

(b) The compensation of an access partner by a program licensee is subject to the following requirements:

1. Compensation may not be paid to an access partner in connection with a loan application unless the program loan is consummated.

2. The access partner's location for services and other information required in subsection (7) must be reported to the office.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of an access partner must notify the office, in a form and manner prescribed by commission rule, within 15 days after entering into a contract with an access partner regarding all of the following:

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(a) The name, business address, and licensing details of the access partner and all locations at which the access partner will perform services under this section.

(b) The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority to execute, the access partner agreement.

(c) The name and contact information of one or more employees of the access partner who are responsible for that access partner’s referring activities on behalf of the program licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following apply:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner.

2. The commencement of an administrative or a judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the access partner or an affiliated party.

4. The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the

access partner.

6. Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation, including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of an access partner; or a person who has a controlling interest in an access partner.

(e) Any other information requested by the office, subject to the limitations specified in s. 516.45(3).

(8) NOTICE OF CHANGES.—An access partner must provide the program licensee with a written notice sent by registered mail within 30 days after any change is made to the information specified in paragraphs (7)(a)-(c) and within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d).

(9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program licensee is responsible for any act of its access partner if such act is a violation of this chapter.

(10) RULEMAKING.—The commission shall adopt rules to implement this section.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations, investigations, and grounds for

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disciplinary action.—

(1) Notwithstanding any other law, the office may examine each program licensee that is accepted into the program and each branch office of the program licensee in accordance with this chapter.

(2) Notwithstanding any other law, the office may examine each access partner that is accepted into the program in accordance with this chapter.

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

And the title is amended as follows:

Delete lines 53 - 55

and insert:

creating s. 516.45, F.S.; authorizing the office to examine each program licensee, branch office, and access partner;

By Senator Rouson

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.405, F.S.; creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative intent; creating s. 516.41, F.S.; providing definitions; creating s. 516.42, F.S.; requiring persons to obtain a program license from the office before making program loans; providing licensure requirements; requiring a program licensee’s program branch offices to be licensed; providing program branch office license and license renewal requirements; providing circumstances under which the office may deny initial and renewal applications; requiring the Financial Services Commission to adopt rules; creating s. 516.43, F.S.; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; requiring program licensees to provide certain credit education information to borrowers and to report payment performance of borrowers to a consumer reporting agency; prohibiting the office from approving a program licensee applicant before the applicant has been accepted as a data furnisher by a consumer reporting agency; requiring program licensees to underwrite program loans; prohibiting program licensees from making program loans under certain

circumstances; requiring program licensees to seek certain information and documentation; prohibiting program licensees from requiring certain waivers from borrowers; providing applicability; creating s. 516.44, F.S.; requiring all arrangements between program licensees and access partners to be specified in written access partner agreements; providing requirements for such agreements; specifying access partner services that may be used by program licensees; specifying procedures for borrowers’ payment receipts or access partners’ disbursement of program loans; providing recordkeeping requirements; prohibiting certain activities by access partners; providing disclosure statement requirements; providing requirements and prohibitions relating to compensation paid to access partners; requiring program licensees to provide the office with a specified notice after contracting with access partners; defining the term “affiliated party”; requiring access partners to provide program licensees with a certain written notice within a specified time; providing that program licensees are responsible for acts of their access partners; requiring the commission to adopt rules; creating s. 516.45, F.S.; requiring the office to examine program licensees at certain intervals, beginning on a specified date; providing an exception; limiting the scope of certain examinations and investigations; authorizing the office to take certain disciplinary action against program licensees and access partners; requiring the commission to adopt rules; creating s. 516.46, F.S.; requiring program licensees to file an annual report with the office beginning on a specified date; requiring the office to post an annual report on its website by a specified date; specifying information to be contained in the reports; requiring the commission to adopt rules; providing for future repeal of the pilot program; providing an effective date.

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

Section 1. Section 516.405, Florida Statutes, is created to read:

516.405 Access to Responsible Credit Pilot Program.—

(1) The Access to Responsible Credit Pilot Program is created within the Office of Financial Regulation to allow more Floridians to obtain responsible consumer finance loans in principal amounts of at least $300 but not more than $10,000.

(2) The pilot program is intended to assist consumers in building their credit and to provide additional consumer protections for these loans that exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions.—As used in ss. 516.405-516.46, the term:

(1) “Access partner” means an entity that, at the entity’s physical business location or through online access, cellular

telephone, or other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. The term does not include a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(2) “Consumer reporting agency” has the same meaning as the term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” in the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(3) “Credit score” has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(4) “Data furnisher” has the same meaning as the term “furnisher” in 12 C.F.R. s. 1022.41(c).

(5) “Pilot program” or “program” means the Access to Responsible Credit Pilot Program.

(6) “Pilot program license” or “program license” means a license issued under ss. 516.405-516.46 authorizing a program licensee to make and collect program loans.

(7) “Program branch office license” means a license issued under the program for each location, other than a program licensee’s or access partner’s principal place of business:

(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee’s name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced by the program licensee; or

(c) At which program loans are originated, negotiated, funded, or serviced by the program licensee.

(8) “Program licensee” means a person who is licensed to make and collect loans under this chapter and who is approved by the office to participate in the program.

(9) “Program loan” means a consumer finance loan with a principal amount of at least $300, but not more than $10,000, originated pursuant to ss. 516.405-516.46, excluding the amount of the origination fee authorized under s. 516.43(3).

(10) “Refinance program loan” means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements.—

(1) A person may not advertise, offer, or make a program loan, or impose any charges or fees pursuant to s. 516.43, unless the person obtains a pilot program license from the office.

(2) In order to obtain a pilot program license, a person must:

(a)1. Be licensed to make and collect consumer finance loans under s. 516.05; or

2. Submit the application for the license required in s. 516.05 concurrently with the application for the program license.

(b) Be accepted as a data furnisher by a consumer reporting agency.

(c) Not be the subject of any insolvency proceeding or a pending criminal prosecution.

(d) Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application, in a form and manner prescribed by commission rule, which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant’s main address.

3. The applicant’s telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant’s contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person

of the applicant.

(b) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications to the office, in a form and manner specified in this chapter:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that

maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant’s main address.

(c) The applicant’s telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant’s contact person.

(f) The applicant’s license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant’s business is:

(a) The subject of any insolvency proceeding;

(b) The subject of a pending criminal prosecution in any jurisdiction until conclusion of such criminal prosecution; or

(c) Subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant’s ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days for a loan with a principal balance upon origination of at least $300, but not more than $3,000.

2. A term of at least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of more than $3,000.

(c) A program loan must not impose a prepayment penalty. A program loan must be repayable by the borrower in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due either every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower’s right to rescind the program loan by notifying the program licensee of the borrower’s intent to rescind the program loan and returning the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest

rate charged on a program loan to the borrower, which must be fixed for the duration of the program loan, is 36 percent on that portion of the unpaid principal balance up to and including $3,000; 30 percent on that portion of the unpaid principal balance exceeding $3,000 and up to and including $4,000; and 24 percent on that portion of the unpaid principal balance exceeding $4,000 and up to and including $10,000. The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum annual interest rates in this paragraph, the computations used must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the program licensee may charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(g) The program licensee shall reduce the interest rates specified in paragraph (e) on each subsequent program loan to the same borrower by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:

1. The subsequent program loan is originated within 180

days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-half of its original term before its repayment.

(h) The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan pursuant to s. 516.031(5).

2. For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on his or her existing program loan.

3. For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.

4. The borrower is current on payments for his or her existing program loan.

5. The program licensee must underwrite the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, the program licensee or, if applicable, its approved access partner shall

make available to the borrower by electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, the program licensee must maintain an electronic record for each receipt made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt made available to the borrower must show all of the following:

1. The name of the borrower.

2. The name of the access partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

8. The following statement, prominently displayed in a type size equal to or larger than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

(2) WRITTEN DISCLOSURES AND STATEMENTS.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided by a program licensee to a borrower in English or in the language in which the loan is negotiated.

(b) The program licensee shall provide to a borrower all the statements required of licensees under s. 516.15.

(3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program licensee may:

(a) Contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $90.

(b) Not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A program licensee may:

(a) Notwithstanding s. 516.031, require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 in a calendar month for one or more payments that are in default for at least 10 days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an

independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or seminar to the borrower. The borrower is not required to participate in such education program or seminar. A credit education program or seminar offered pursuant to this paragraph must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency.

(b) The office may not approve an applicant for the program license before the applicant has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee must underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income for a loan of not more than $3,000, or exceed 36 percent of the borrower's gross monthly income for a loan of more than $3,000.

(b)1. The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee must verify the borrower's income to determine the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. The Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) WAIVERS.—

(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a

complaint with or otherwise communicate with the office, a court, or any other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower's or applicant's refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise communicate with, the office, a court, or any other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Access partners.—

(1) ACCESS PARTNER AGREEMENT.—All arrangements between a

program licensee and an access partner must be specified in a written access partner agreement between the parties. The agreement must contain the following provisions:

(a) The access partner agrees to comply with this section and all rules adopted under this section regarding the activities of access partners.

(b) The office has access to the access partner's books and records pertaining to the access partner's operations under the agreement with the program licensee in accordance with s. 516.45(3) and may examine the access partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more access partners as provided in this section. An access partner may perform one or more of the following services for the program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information needed in order to complete a program loan application.

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(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by an access partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to an access partner under paragraph (2)(j) must be applied to the borrower's program loan and deemed received by the program licensee as of the date on which the payment is received by the access partner.

(b) An access partner that receives a loan payment from a borrower must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to an access partner under this subsection is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

(d) An access partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for at least 2 years.

(4) PROHIBITED ACTIVITIES.—An access partner may not:

(a) Provide counseling or advice to a borrower or prospective borrower with respect to any loan term.

(b) Provide loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiate a loan term between a program licensee and a prospective borrower.

(d) Offer information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program

licensee with whom it has an access partner agreement.

(e) Require a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

(5) DISCLOSURE STATEMENTS.—

(a) At the time that the access partner receives or processes an application for a program loan, the access partner shall provide the following statement to the applicant on behalf of the program licensee, in at least 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

> Your loan application has been referred to us by ...(name of access partner).... We may pay a fee to ...(name of access partner)... for the successful referral of your loan application. If you are approved for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of access partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate an access partner in accordance with a written agreement and a compensation schedule that is agreed to by the program licensee and the access partner, subject to the requirements in paragraph (b).

(b) The compensation of an access partner by a program licensee is subject to the following requirements:

1. Compensation may not be paid to an access partner in connection with a loan application unless the program loan is consummated.

2. The access partner's location for services and other information required in subsection (7) must be reported to the office.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of an access partner must notify the office, in a form and manner prescribed by commission rule, within 15 days after entering into a contract with an access partner regarding all of the following:

(a) The name, business address, and licensing details of the access partner and all locations at which the access partner will perform services under this section.

(b) The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority

to execute, the access partner agreement.

(c) The name and contact information of one or more employees of the access partner who are responsible for that access partner's referring activities on behalf of the program licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following apply:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner.

2. The commencement of an administrative or a judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the access partner or an affiliated party.

4. The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the access partner.

6. Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation, including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent

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

jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term “affiliated party” means a director, officer, responsible person, employee, or foreign affiliate of an access partner; or a person who has a controlling interest in an access partner.

(e) Any other information requested by the office, subject to the limitations specified in s. 516.45(3).

(8) NOTICE OF CHANGES.—An access partner must provide the program licensee with a written notice sent by registered mail within 30 days after any change is made to the information specified in paragraphs (7)(a)-(c) and within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d).

(9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program licensee is responsible for any act of its access partner if such act is a violation of this chapter.

(10) RULEMAKING.—The commission shall adopt rules to implement this section.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations, investigations, and grounds for disciplinary action.—

(1) Notwithstanding any other law, commencing on January 1, 2022, the office shall examine each program licensee that is accepted into the program in accordance with this chapter at least once every 24 months.

(2) Notwithstanding subsection (1), the office may waive one or more branch office examinations if the office finds that such examinations are not necessary for the protection of the public due to the centralized operations of the program licensee or other factors acceptable to the office.

(3) The scope of any investigation or examination of a program licensee or access partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

(4) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. The program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its access partners.

(5) The office may take any of the following actions against an access partner who violates s. 516.44:

(a) Bar the access partner from performing services under this chapter.

(b) Bar the access partner from performing services at one or more of its specific locations.

(6) The commission shall adopt rules to implement this section.

Section 7. Section 516.46, Florida Statutes, is created to read:

516.46 Annual reports by program licensees and the office.—

(1) By March 15, 2021, and each year thereafter, a program licensee shall file a report with the office on a form and in a manner prescribed by commission rule. The report must include

each of the items specified in subsection (2) for the preceding year using aggregated or anonymized data without reference to any borrower's nonpublic personal information or any program licensee's or access partner's proprietary or trade secret information.

(2) By January 1, 2022, and each year thereafter, the office shall post a report on its website summarizing the use of the program based on the information contained in the reports filed in the preceding year by program licensees under subsection (1). The office's report must publish the information in the aggregate so as not to identify data by any specific program licensee. The report must specify the period to which the report corresponds and must include, but is not limited to, the following for that period:

(a) The number of applicants approved for a program license by the office.

(b) The number of program loan applications received by program licensees, the number of program loans made under the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(c) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(d) Of those borrowers who obtained more than one program loan and had a credit score by the time of their subsequent loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at

least one major credit bureau, and the average size of the increase. In each case, the report must include the name of the credit score, such as FICO or VantageScore, which the program licensee is required to disclose.

(e) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(f) The number of borrowers who obtained program loans for the following purposes, based on the borrowers' responses at the time of their loan applications indicating the primary purpose for which the program loans were obtained:

1. To pay medical expenses.
2. To pay for vehicle repair or a vehicle purchase.
3. To pay bills.
4. To consolidate debt.
5. To build or repair credit history.
6. To finance a small business.
7. To pay other expenses.

(g) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(h) For refinance program loans:

1. The number and percentage of borrowers who applied for a refinance program loan.

2. Of those borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a

refinance program loan.

(i) The performance of program loans as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days and the distribution of principal loan amounts corresponding to those delinquencies.

2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more and the distribution of principal loan amounts corresponding to those delinquencies.

(3) The commission shall adopt rules to implement this section.

Section 8. Sections 516.405-516.46, Florida Statutes, are repealed on January 1, 2027, unless reenacted or superseded by another law enacted by the Legislature before that date.

Section 9. This act shall take effect January 1, 2020.

The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Banking and Insurance Committee

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Bill # 874**, relating to Consumer Finance Loans, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Darryl Rouson

Senator Darryl Rouson
Florida Senate, District 19

File signed original with committee office S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19
Meeting Date

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

874
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Finance Loans

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street

Tallahassee FL 32301
City State Zip

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Conference NAACP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/19
Meeting Date

874
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Consumer Loans

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850 556 3121

Email alicevickers@flacp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FL Alliance for Consumer Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1034

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: March 25, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1034 provides that when a creditor issues an assignment to an assignee to collect on a debt and the assignee gives the debtor the required 30 days' notice of the assignment before taking any action to collect on the debt, the term "action" does not include a communication or disclosure required by law or any communication or payment initiated by the debtor.

II. Present Situation:

Consumer Debt Collection Agencies

Chapter 559, part VI ("Part VI"), F.S., regulates the collection of consumer debts and requires consumer collection agencies to be registered with the Office of Financial Regulation (Office). Part VI enumerates the powers and duties of the Office; sets forth licensure requirements; specifies prohibited practices; prescribes grounds for disciplinary action and administrative remedies; and authorizes civil and enforcement actions. The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act[1]. The provisions of part VI are in addition to the requirements and regulations of the Federal Act. In the event of any

[1] Many of the provisions of the Fair Debt Collection Practices Act are similar to the Florida Consumer Collection Agency Act. There are some key consumer and regulatory provisions not included under Florida's act: such provisions pertain to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

inconsistency between any provision of part VI and any provision of the Federal Act, the provision which is most protective of the consumer or debtor will prevail.

Assignment of Consumer Debts:

The Florida Consumer Collections Practices Act in s. 559.715, F.S., allows a creditor to assign a consumer debt to another for collection; however, the assignee must give the debtor written notice of the assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. Pursuant to s. 559.715, F.S., the assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default. Actions triggering the 30-day notification requirement would include both informal and formal actions. Hence, actions ranging from filing a civil action in court to collect the debt to simply communicating with the debtor to collect the debt would trigger this requirement.

The Federal Fair Debt Collections Practices Act requires a debt collector, within 5 days after the initial communication with a consumer in connection with the collection of any debt, to notify the debtor of the details of the debt including, amount, name of creditor, and rights to dispute the debt.[2] Furthermore, in each communication to a debtor, a debt collector is required to include a statement that the “debt collector is attempting to collect a debt…”. Under federal law, the consumer has the right to dispute the validity of the debt within 30 days after receipt of the notice; otherwise the debt is assumed valid by the debt collector.

The Florida Consumer Collections Practices Act creates a conflict for the debt collector because it requires the debt collector to provide notice of an assignment of debt at least 30 days before taking any action to collect the debt. However, the Federal Fair Debt Collections Practices Act requires a debt collector within 5 days of the initial communication with the consumer to give a debtor notice which includes information about the debt and their rights to dispute the debt. The Office believes the notice required in the Federal Fair Debt Collections Practices Act is a violation of the Florida Consumer Collections Practices Act because it constitutes an“ action to collect the debt” and is sent within the 30-day window of unallowable action.[3]

III. Effect of Proposed Changes:

Currently, when a creditor issues an assignment to an assignee to collect on a debt the assignee must give 30 days’ notice before taking action to collect on the debt. The bill clarifies that the term “action” does not include a communication or disclosure required by law or any communication or payment insinuated by the debtor.

The effective date of the bill is July 1, 2019.

[2] 15 U.S.C. Section 1692g
[3] Office of Financial Regulation, *Bill Analysis of SB 1034*, March 14, 2019 (on file with the Banking and Insurance Committee).

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 559.715 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS removes the term "legal" action and clarifies that "action" does not include a communication or disclosure required by law or communication or payment insinuated by the debtor.

B. Amendments:

None.

671276

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/25/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The term “action” does not include a communication that is in compliance with 15 U.S.C. ss. 1692e and 1692g, or any communication or payment initiated by the debtor ~~The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default~~.

Section 2. This act shall take effect July 1, 2019.

================ 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 assignment of consumer debts; amending s. 559.715, F.S.; specifying that certain communications or payments do not constitute an action; deleting a provision authorizing assignees to bring certain actions as a real party in interest; providing an effective date.

805758

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/25/2019	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (671276) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the

805758

debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. <u>The term “action” does not include a communication required by 15 U.S.C. s. 1692e(11) or 15 U.S.C. s. 1692g, or any communication or payment initiated by the debtor.</u> ~~The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default~~.

Section 2. This act shall take effect July 1, 2019.

================= 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 assignment of consumer debts; amending s. 559.715, F.S.; specifying that certain communications or payments do not constitute an action; deleting a provision authorizing assignees to bring certain actions as a real party in interest; providing an effective date.

593470

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—

(1) This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of

593470

such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. For the purpose of this subsection, the term “action” does not include a communication or disclosure required by law and does not include any communication or payment initiated by the debtor.

(2) The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Section 2. This act shall take effect July 1, 2019.

================= 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 assignment of consumer debts; amending s. 559.715, F.S.; specifying that certain communications, disclosures, and payments do not constitute an action; providing an effective date.

By Senator Gruters

23-01788-19 20191034__

A bill to be entitled

An act relating to assignment of consumer debts; amending s. 559.715, F.S.; clarifying that an assignee must give a debtor certain notice within a specified timeframe before the assignee brings legal action to collect the debt; providing an effective date.

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

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Section 2. This act shall take effect July 1, 2019.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

March 11, 2019

The Honorable Doug Broxson, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to request that Senate Bill 1034, Assignment of Consumer Debts, be placed on the agenda of the next Banking and Insurance Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

Joe Gruters

cc: James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant

REPLY TO:
☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-19
Meeting Date

1034
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Assignment of Consumer Debt

Name Jennifer Wilson

Job Title Lobbyist

Address 101 E. Kennedy Blvd. Suite 2800
Street

Phone 813-407-0703

Tampa FL 33602
City State Zip

Email Jwilson@shumaker.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Collectors Association

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/19
Meeting Date

1034
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Assignment of Debt

Name Alicia Vickers

Job Title Attorney

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Street

Tallahassee FL 32303
City State Zip

Phone 850 556 3124

Email alicevickers@flacp.org

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

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

Representing FL Alliance for Consumer Services

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-19
Meeting Date

1034
Bill Number (if applicable)

593470
Amendment Barcode (if applicable)

Topic Assignment of Consumer Debt

Name Jennifer Wilson

Job Title Lobbyist

Address 101 E. Kennedy Blvd., Ste 2800
Street

Phone 813-407-0703

Tampa FL 33602
City State Zip

Email Jwilson@shumaker.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Collectors Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1210

INTRODUCER: Senator Book

SUBJECT: Ratification of Rules of the Department of Financial Services

DATE: March 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.			RC	

I. Summary:

SB 1210 ratifies Rule 64L-3.009, F.A.C., adopted by the Department of Financial Services (DFS).

Chapter 2018-124, Laws of Florida, allows a first responder to recover wage replacement benefits under the Workers' Compensation Law for posttraumatic stress disorder (PTSD) without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to specified events, including events that involve witnessing "grievous bodily harm of a nature that shocks the conscience." Chapter 2018-124, Laws of Florida, did not define "grievous bodily harm of a nature that shocks the conscience" and directed the DFS to adopt a rule defining the phrase.

The DFS filed the rule for adoption on December 5, 2018. The Statement of Estimated Regulatory Costs (SERC) developed by the DFS determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect. This bill ratifies the rule.

II. Present Situation:

Rulemaking and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.[1] Rulemaking authority is delegated by the Legislature to an agency in law, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.[2] An agency may not

[1] Section 120.52(16), F.S.

[2] Section 120.52(17), F.S.

engage in rulemaking unless it has a legislative grant of authority to do so.[3] The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.[4]

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register (F.A.R.).[5] The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.[6]

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[7]

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[8]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[9] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[10,11]

---

[3] *See* ss. 120.52(8) and 120.536(1), F.S.

[4] *See Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc*., 773 So.2d 594 (Fla 1st DCA 2000).

[5] Section 120.54(3)(a)2., F.S.

[6] Section 120.54(3)(a)1., F.S.

[7] Sections 120.54(3)(b) and 120.541(1)(b), F.S.

[8] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.

[9] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

[10] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.

[11] Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[12]

Chapter 2018-124, Laws of Florida

Chapter 2018-124, Laws of Florida, became law on October 1, 2018. It allows a first responder[13] to recover wage replacement benefits under the Workers' Compensation Law for PTSD[14] without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to one of the following events:

- Seeing for oneself a deceased minor;
- Directly witnessing the death of a minor;
- Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
- Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

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[12] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

[13] Section 112.1815(1), F.S., defines "first responder" as "a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section."

[14] PTSD psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, rape or other violent personal assault. *See* https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited March 22, 2019).

The law does not define, "grievous bodily harm of a nature that shocks the conscience." Instead, it required the DFS to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

Rule 69L-3.009, Florida Administrative Code

On December 5, 2018, the DFS filed the rule for adoption. The rule states:

> Pursuant to s. 112.1815(5), F.S., for purposes of determining the compensability of employment-related post-traumatic stress disorder for first responders, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:
> (1) Decapitation (full or partial),
> (2) Degloving,
> (3) Enucleation,
> (4) Evisceration,
> (5) Exposure of one or more of the following internal organs:
> (a) Brain,
> (b) Heart,
> (c) Intestines,
> (d) Kidneys,
> (e) Liver, or
> (f) Lungs.
> (6) Impalement,
> (7) Severance (full or partial), and
> (8) Third degree burn on 9 percent or more of the body.

The DFS prepared a Statement of Estimated Regulatory Costs:

> There are approximately 250,000 work-related injuries reported to the Division of Workers' Compensation annually. This rule will add indemnity benefits for first responders as defined in section 112.1815, F.S., with an eligible PTSD claim. Currently, medical only treatment is available for first responders experiencing a work related mental health issue. First responder claims represent 6.5-7 percent of all lost-time claims. Between 2012 and 2018, the Division identified 35,420 accidents that included the class code of a first responder. The total cost (indemnity plus medical) of these claims as of (May 2018) is $8,615,314,959.72 (average cost per claim is $243,233.06) over the life of the claims. Of these first responder claims where a physical injury occurred, 134 claims had a secondary diagnosis of PTSD in the medical bill data, or 0.4 percent of all first responder claims.
>
> Across all claims occurring in the State of Florida, indemnity benefits represent approximately 27-30 percent of the total cost of a claim. Using the average cost per first responder claim of $243,233.06, the indemnity costs represented in this figure are between $65,672 and $72,969 per claim over the life of the claim up to 5 years of data presented. If claims are reported and compensable for the

0.4 percent of first responder population, a range of $8.8 to 9.7 million dollars would be expected over the next 5 years of claim development.[15]

The DFS SERC did not separate the costs that would be imposed by the statute from the costs that would be imposed specifically by the rule.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-3.009, F.A.C., entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience" for the sole and exclusive purpose of satisfying any condition of effectiveness imposed under s. 120.541(3), F.S.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect, preempt any challenge on lack of authority, or cure any violation of the legal requirements governing rule adoption.

The act is effective upon becoming a law. At that time, the rule becomes effective.

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.

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[15] Department of Financial Services, *Analysis of SB 1210* (February 22, 2019) (on file with the Committee on Banking and Insurance).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Most of the impact on the government sector will be caused by the ch. 2018-124, Laws of Florida, requirement that workers' compensation benefits be paid for more PTSD claims. Without the rule, it would take litigation to determine the meaning of "grievous bodily harm of a nature that shocks the conscience." The rule might have the effect of reducing the number of paid claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None. The bill specifically provides that it is not to be codified in 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 Book

A bill to be entitled

An act relating to ratification of rules of the Department of Financial Services; ratifying a specified rule relating to implementation of expanded workers’ compensation benefits for first responders for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 69L-3.009, Florida Administrative Code, entitled “Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience,” as filed for adoption with the Department of State pursuant to the certification package dated December 5, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is

Florida Senate - 2019 SB 1210

32-01795-19 20191210__

intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming a law.

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

Department of Financial Services (DFS)
2019 Legislative Bill Analysis

BILL INFORMATION

Bill Number:	SB 1210
Bill Title:	An act ratifying a DFS rule related to implementation of expanded workers' compensation benefits for first responders
Bill Sponsor:	Book
Effective Date:	Upon becoming law

ANALYSIS INFORMATION

Agency Contact:	Meredith Stanfield, Legislative Affairs Director, (850) 413-2890
Division Director:	Tanner Holloman
Program Analyst:	Andrew Sabolic
Analysis Date:	February 22, 2019

POLICY ANALYSIS

I. SUMMARY ANALYSIS

This bill would ratify the Department of Financial Services (DFS) rule 69L-3.009, Florida Administrative Code, entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience." This bill is fully supported by the Department.

II. PRESENT SITUATION

SB 376 (Chapter 2018-124, Laws of Florida) was passed in the 2018 Regular Legislative Session to revise the standards for determining compensability of employment-related post-traumatic stress disorder (PTSD) under workers' compensation for first responders, which includes volunteers or employees engaged as law enforcement officers, firefighters, emergency medical technicians, and paramedics. The bill allows first responders that meet certain conditions to access indemnity and medical benefits for PTSD without an accompanying physical injury. PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.

Paragraph 112.1815(5)(f), F.S., which took effect October 1, 2018, provides: "*The Department of Financial Services shall adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this subsection.*"

The Department of Financial Services undertook the rulemaking process to promulgate Rule 69L-3.009, Florida Administrative Code, entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience," as filed for adoption with the Department of State pursuant to the certification package dated December 5, 2018.

III. EFFECT OF PROPOSED CHANGES

This bill would ratify DFS rule 69L-3.009, Florida Administrative Code, entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience." The proposed rule states: "Pursuant to section 112.1815(5), F.S., for purposes of determining the compensability of employment-related post-traumatic stress disorder for first responders, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:

(1) Decapitation (full or partial),
(2) Degloving,
(3) Enucleation,
(4) Evisceration.
(5) Exposure of one or more internal organs,
 (a) Brain,
 (b) Heart,
 (c) Intestines,
 (d) Kidneys,
 (e) Liver, or
 (f) Lungs
(6) Impalement,
(7) Severance (full or partial), and
(8) Third degree burn on 9% or more of the body."

Failure to ratify this bill may result in litigation for determining what injuries qualify as grievous bodily harm of a nature that shocks the conscience.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? **Y☐ N☒**

If yes, explain:	
Is the change consistent with the agency's core mission?	**Y☐ N☐**
Rule(s) impacted (provide references to F.A.C.):	

V. DOES THE BILL REQUIRE REPORTS OR STUDIES? **Y☐ N☒**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.? **Y☐ N☒**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	

Bill Section Number(s):	

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☒ N☐

Revenues:	
Expenditures:	Please see the “Additional Comments” for an explanation.

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	
Expenditures:	Please see the “Additional Comments” for an explanation.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	
Expenditures:	Please see the “Additional Comments” for an explanation.
Other:	

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.		

FEDERAL IMPACT

I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? **Y☐ N☒**

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

The following analysis is taken from the Statement of Estimated Regulatory Costs for Rule 69L-3.009:

There are approximately 250,000 work-related injuries reported to the Division of Workers' Compensation annually. This rule will add indemnity benefits for first responders as defined in section 112.1815, F.S., with an eligible PTSD claim. Currently, medical only treatment is available for first responders experiencing a work related mental health issue.
First responder claims represent 6.5-7% of all lost-time claims. Between 2012 and 2018, the Division identified 35,420 accidents that included the class code of a first responder. The total cost (indemnity plus medical) of these claims as of (May 2018) is $8,615,314,959.72 (average cost per claim is $243,233.06) over the life of the claims. Of these first responder claims where a physical injury occurred, 134 claims had a secondary diagnosis of PTSD in the medical bill data, or 0.4% of all first responder claims.

Across all claims occurring in the State of Florida, indemnity benefits represent approximately 27-30% of the total cost of a claim. Using the average cost per first responder claim of $243,233.06, the indemnity costs represented in this figure are between $65,672 and $72,969 per claim over the life of the claim up to 5 years of data presented. If claims are reported and compensable for the 0.4% of first responder population, a range of $8.8 to 9.7 million dollars would be expected over the next 5 years of claim development.

Division data reflects 92 insurers and 154 self-insured employers or self-insured funds that will use this rule as a factor in the determination of compensability for first responder PTSD claims.
Statutorily defined first responders are the only persons eligible for these additional indemnity benefits related to a compensable PTSD claim. (Businesses/non-governmental entities account for less than 10% of all first responder claims). According to the Senate bill analysis for CS/CS/SB 376 (February 28, 2018) the approximate total number of first responders statewide is 177,724.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? No D. Rules: No concerns. Creates rule 69L-3.009, Florida Administrative Code.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR LAUREN BOOK
32nd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Health Policy
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 15, 2019

Chair Doug Broxson
Committee on Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Broxson:

I respectfully request that **SB 1210: Ratification of Rules of the Department of Financial Services**, be placed on the agenda for the next Committee on Banking and Insurance meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

Cc: James Knudson, *Staff Director*
Sheri Green, *Committee Administrative Assistant*

REPLY TO:
❐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
❐ 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1210
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Ratification of Rules

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St
Street

Tallahassee FL 32301
City State Zip

Phone 850-224-7333

Email RoccoSalvatori@icloud.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-25-19
Meeting Date

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

SB 1210
Bill Number (if applicable)

Topic SB 1210

Amendment Barcode (if applicable)

Name Meredith Brock Stanfield

Job Title Director of Legislative & Cabinet Affairs

Address PL 11, Capitol
Street

Tallahassee FL 32399
City State Zip

Phone (850) 413-2890

Email meredith.stanfield@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1476

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Citizens Property Insurance Corporation

DATE: March 25, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1476 provides that Citizens Property Insurance Corporation (Citizens) may not impose a rate increase in any single year in excess of 5 percent, except for sinkhole coverage, for any single policy that covers property located in a county:

- Where the Office of Insurance Regulation determines there is not a reasonable degree of competition; and
- That has 25 percent or more of county land designated as an area of critical state concern.

The reduced rate cap begins January 1, 2020, and expires January 1, 2022.

This is an exception from current law, which applies to all counties and prohibits Citizens from imposing a rate increase in any single year in excess of 10 percent for any single policy, except for sinkhole coverage.

Currently, Citizens policyholders who reside in Monroe County would meet the criteria for the reduced rate cap. The bill would reduce premiums paid to Citizens by an estimated $2.95 million over the 2 years the 5 percent rate cap is in effect.[1]

The effective date of the bill is July 1, 2019.

[1] Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] Citizens is not a private insurance company.[3] 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[4] that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[5] Assets may not be commingled or used to fund losses in another account.[6]

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.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.[7]

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[2] Admitted market means insurance companies licensed to transact insurance in Florida.
[3] s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.
[4] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.
[5] The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[6] s. 627.351(6)(b)2b., F.S.
[7] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

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. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Board of Governors

Citizens operates under the direction of a nine member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints three members, one of whom serves as a consumer representative.[9] Board members serve 3 year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[10] Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because half of the board members are required by law to have insurance expertise in order to sit on the board.[11]

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.[12] 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.

[8] s. 10, ch. 2013-60 L.O.F.
[9] s. 627.351(6)(c)4.a., F.S.
[10] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.
[11] s. 627.351(6)(c)4.a., F.S.
[12] s. 627.351(6)(n)6., 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 a deficit occurs in a Citizens account, 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.[13] The assessments Citizens may impose and their sequence is as follows:

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 on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers 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. 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 is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

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, which are approved by the OIR, give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not

[13] 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.

exceed the Citizens premium by 15 percent or more. [14] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market 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.[15]

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.[16] Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of $700,000 or more.

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.[17]

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium associations, homeowner associations, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Areas of Critical State Concern

The Areas of Critical State Concern Program was created by the Florida Environmental Land and Water Management Act of 1972.[18] The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. Section 380.05, F.S., allows the Florida Administration Commission[19] to designate areas that contain resources of statewide significance as an Area of Critical State Concern.

Florida Keys Area of Critical State Concern

The Florida Keys Area of Critical State Concern, designated in 1974, includes the Village of Islamorada, City of Marathon, City of Layton, City of Key Colony Beach and unincorporated Monroe County. In 1984, the City of Key West was also designated an Area of Critical State Concern. Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive

[14] s. 627.351(6)(c)5., F.S.
[15] s. 627.351(6)(c)5., F.S.
[16] s. 627.351(6)(a)3., F.S.
[17] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).
[18] http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern (last visited March 23, 2019).
[19] s. 380.031(1), F.S., "Administration Commission" or "commission" means the Governor and the Cabinet.

plans and land development regulations. Annually, the Florida Department of Economic Opportunity (DEO) is required by s. 380.0552(4)(b), F.S., to submit a written report to the Florida Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules.

Big Cypress Area of Critical State Concern

The Big Cypress Area of Critical State Concern includes portions of Collier, Mainland Monroe, and Miami-Dade Counties was designated by the Florida Legislature Big Cypress Conservation Act of 1973[20] and s. 380.055, F.S. The area is approximately 860,000 acres of which 729,000 acres are in the Big Cypress National Preserve. The purpose for designation was to "conserve and protect the natural, environmental and economic resources and the scenic beauty of the Big Cypress Area, including the proposed Federal Big Cypress National Fresh Water Reserve, the Everglades National Park, and ecologically related wetlands, estuarine fisheries, and the fresh water aquifer, and ecologically related areas." (Rule 28-25.002, Florida Administrative Code)

III. Effect of Proposed Changes:

The bill would reduce the current Citizens rate cap of no more than a 10 percent increase, per policy, per year, to no more than a 5 percent increase, per policy, per year, in a county where the Office of Insurance Regulation determines there is not a reasonable degree of competition and the county has 25 percent or more of land designated as an area of critical state concern. Sinkhole coverage is excluded from the rate caps. The reduced rate cap for these areas begin January 1, 2020, and expires January 1, 2022.

Currently, the OIR has determined Miami-Dade and Monroe County to be noncompetitive for purposes of determining eligibility for Citizens.[21] Monroe County has more than 25 percent of county land designated as an Area of Critical State Concern, Big Cypress and the Florida Keys. Thus, Monroe County is currently the only county that would qualify for the reduced rate cap of 5 percent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[20] http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-big-cypress-swamp (last visited March 23, 2019).

[21] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

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:

Citizens policyholders in Monroe County will have potential rate increases capped at no more than 5 percent per year rather than the current cap of no more than 10 percent per year. Representatives from Citizens estimate the bill will reduce premiums paid to Citizens by an estimated $2.95 million over the 2 years the 5 percent rate cap is in effect.[22]

Should Citizens run a deficit for failing to collect enough premium to pay for losses, surcharges and assessments could be needed. If needed, they would be levied to Citizens policyholders and all lines of private insurance excluding medical malpractice and workers compensation.

C. Government Sector Impact:

The current percent of increased rate needed for Citizens to be actuarially sound in Monroe County is 47.2 percent.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 of the Florida Statutes.

[22] Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).
[23] See fn. 23.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS applies the 5 percent rate cap to counties with 25 percent or more of land designated as an area of critical state concern. The CS reduces from 4 years to 2 years the time in which the 5 percent rate cap would be in effect.

B. Amendments:

None.

877038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 71 - 74
and insert:
there is not a reasonable degree of competition and where 25 percent or more of the county land is designated as an area of critical state concern under s. 380.05, excluding coverage changes and surcharges. This sub-subparagraph expires January 1, 2022.

By Senator Flores

A bill to be entitled

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties; providing for future expiration; providing an effective date.

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

Section 1. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(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 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.a. Beginning ~~on or after~~ 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 that ~~which~~, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

b. Beginning January 1, 2020, 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 that, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation and does not exceed 5 percent for any single policy issued by the corporation to an insured located in a county where the office has determined there is not a reasonable degree of competition and that is designated as an area of critical state concern, excluding coverage changes and surcharges. This sub-subparagraph expires January 1, 2024.

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.

Section 2. This act shall take effect July 1, 2019.

FILED

DEC 22 2014

OFFICE OF
INSURANCE REGULATION
Docketed by: [signature]

OFFICE OF INSURANCE REGULATION

Kevin M. McCarty
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 165625-14

CITIZENS REASONABLE DEGREE
OF COMPETITION
_______________________________________/

TO: Barry Gilway
President/CEO and Executive Director
Citizens Property Insurance Corporation
2312 Killearn Center Boulevard, Building A
Tallahassee, FL 32309

ORDER

THIS CAUSE came on for consideration upon the amendment of Section 627.351(6)(a)3., Florida Statutes, by Chapter 2013-60, Laws of Florida. The OFFICE OF INSURANCE REGULATION (hereinafter referred to as "OFFICE"), following a complete review of the entire record and being otherwise fully advised in the premises, hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter of this proceeding.

2. During the 2013 Regular Session, the Florida Legislature (hereinafter referred to as "Legislature") passed several important measures designed to improve the participation of authorized insurers in the Florida residential property market and to reduce the risk of assessment on Florida consumers who buy automobile, commercial, or residential insurance. For example, CITIZENS PROPERTY INSURANCE CORPORATION (hereinafter referred to as

"CITIZENS") was given the authority to create a clearinghouse to show CITIZENS policyholders and applicants for coverage the options that may be available to them in the private market. The Legislature also limited the authority of CITIZENS to write policies if coverage is available that does not pose a risk for assessments on Floridians.

3. Section 7 of Chapter 2013-60, Laws of Florida, amended Section 627.351(6)(a)3., Florida Statutes, to restrict the eligibility of personal residential properties for coverage by CITIZENS as follows:

> b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by [CITIZENS]. Such dwellings insured by [CITIZENS] on December 31, 2014, may continue to be covered by [CITIZENS] only until the end of the policy term.
>
> c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by [CITIZENS]. Such dwellings insured by [CITIZENS] on December 31, 2015, may continue to be covered by [CITIZENS] until the end of the policy term.
>
> d. Effective January 1, 2017, a structure 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 [CITIZENS]. Such dwellings insured by [CITIZENS] on December 31, 2016, may continue to be covered by [CITIZENS] until the end of the policy term.

4. Further, Section 627.351(6)(a)3., Florida Statutes, as amended by Chapter 2013-60, Laws of Florida, provides the following in relevant part:

> The requirements of sub-subparagraphs b.-d. do not apply in counties where the [OFFICE] determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by [CITIZENS].

5. To determine the counties where there is not a reasonable degree of competition, the OFFICE performed a market analysis. The OFFICE analyzed data from insurers writing personal residential coverage and agents representing affected policyholders, including information on file in the Quarterly Supplemental Reporting system (hereinafter referred to as "QUASR"). CITIZENS and private residential property and casualty insurers are required by Section 624.424(10), Florida Statutes, to file data in QUASR, including the number of policies and the premium volume data for each county.

6. The OFFICE has applied the Herfindahl-Hirschman Index (hereinafter referred to as "HHI") to premium volume data for each county. The HHI is a commonly accepted measure of market concentration used by the United States Department of Justice, Federal Trade Commission, and state attorneys general for purposes of antitrust enforcement. The HHI is used to compare the relative concentration between markets. Markets where the HHI is greater than two thousand five hundred (2500) are generally considered to be highly concentrated.[1]

7. Application of the HHI to the QUASR data shows that Miami-Dade County and Monroe County are highly concentrated markets.

8. The OFFICE also calculated the market share of CITIZENS for policies that include wind coverage and have policy limits between nine hundred thousand to one million U.S. Dollars ($900,000 - $1,000,000). The OFFICE found that CITIZENS has a ninety-six and eight tenths percent (96.8%) market share in Monroe County and a sixty-two and five tenths percent (62.5%) market share in Miami-Dade County.

9. A chart showing the data for each county is attached as Exhibit A.

---

[1] Andrew Chin, Herfindahl-Hirschman Index Calculator, University of North Carolina School of Law (Dec. 2010), available at http://www.unclaw.com/chin/teaching/antitrust/herfindahl.htm.

NOW THEREFORE, the OFFICE determines:

1. There is not a reasonable degree of competition in Miami-Dade County or Monroe County.

2. The Office makes no determination with respect to any other county.

3. A policy that is otherwise eligible for coverage in CITIZENS in Miami-Dade County or Monroe County is not rendered ineligible by Section 627.351(6)(a)3.b.-d., Florida Statutes.

DONE and ORDERED this 22nd day of December, 2014.

Kevin M. McCarty, Commissioner
Office of Insurance Regulation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this ORDER was sent by Certified Mail to Barry Gilway, President/CEO and Executive Director, Citizens Property Insurance Corporation, 2312 Killearn Center Boulevard, Building A, Tallahassee, FL 32309, this 22 day of December, 2014.

Sarah J. Berner

Sarah J. Berner, Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Larson Building
Tallahassee, Florida 32399

Exhibit A

INFORMATION FOR COVERAGE AMOUNTS* BETWEEN $900K AND $1M

(Only includes policies that include wind coverage)

County	Total Premium	Citizens Premium	Citizens Policies	Citizens Market Share
Monroe **	1,410,384	1,365,087	251	96.8%
Miami-Dade **	5,554,964	3,469,825	548	62.5%
Hardee **	8,854	4,179	1	47.2%
Franklin	81,205	31,214	9	38.4%
DeSoto **	18,126	6,656	1	36.7%
Charlotte	343,842	121,543	39	35.3%
Sarasota	1,755,347	565,004	203	32.2%
Lee	2,926,972	941,531	251	32.2%
Indian River	578,726	183,698	43	31.7%
Hernando	52,392	15,867	2	30.3%
Broward	5,087,982	1,214,035	252	23.9%
Escambia	272,177	58,999	15	21.7%
Palm Beach	9,566,280	2,049,325	398	21.4%
Walton	619,824	115,371	35	18.6%
Santa Rosa	213,848	38,938	11	18.2%
Collier	3,159,111	535,341	132	16.9%
Levy **	18,391	3,109	1	16.9%
Pinellas	2,327,514	386,451	98	16.6%
Okaloosa	406,680	40,969	9	10.1%
Manatee	929,953	57,123	19	6.1%
Gulf **	52,537	3,144	1	6.0%
Flagler	227,107	12,355	11	5.4%
Nassau	145,851	7,150	5	4.9%
Pasco	203,625	8,780	4	4.3%
Hillsborough	2,612,114	106,329	15	4.1%
Brevard	880,424	35,682	8	4.1%
Volusia	528,370	20,271	9	3.8%
Polk **	791,784	23,154	3	2.9%
St. Lucie	184,331	3,584	1	1.9%
Clay	171,433	3,303	1	1.9%
Martin	785,464	13,920	2	1.8%
St. Johns	1,404,935	20,398	13	1.5%
Bay	215,869	3,050	1	1.4%
Alachua	401,673	5,583	1	1.4%
Duval	1,251,637	12,110	5	1.0%
Orange	2,554,648	23,497	5	0.9%

Note: Only counties where Citizens has premium is shown.

** - Coverage amounts represent Cov A + Cov C for condo policies, Cov A for all other policies*

** - Counties where the Herfindahl–Hirschman Index indicates a "highly concentrated" market

Matiyow, Scott

From:	Christine Turner Ashburn <Christine.Ashburn@citizensfla.com>
Sent:	Friday, March 22, 2019 1:00 PM
To:	Matiyow, Scott
Attachments:	dade_monroe_5%cap_vs_10%cap Final.xlsx

Scott – please see below and attached.

Concerning Dade:
For actuarial sound rates in Dade, we would need to collect $389.6M. Currently we collect $307.7M for a deficit of $81.9M. With a 10% cap, we would collect $336M.0, for a deficit of $53.6M . With a 5% cap, we would collect $322.7M, for a deficit of $66.9M . So switching from a 10% to a 5% cap in Dade would cost Citizens $13.3M.

Concerning Monroe:
For actuarial sound rates we would need to collect $58.6M. Currently we collect $39.8M for a deficit of $18.8M. With a 10% cap, we would collect $42.7M. With a 5% cap, we would collect $41.5M. So switching from a 10% cap to 5% cap would cost Citizens $1.2M.

Let me know if you have any questions.

The overall uncapped indications:

All Personal Lines	Uncapped Indication
Dade	26.7%
Monroe	47.2%

As long as it is understood that a lot can change (namely the size of Citizens among other things) in four years, multiplying the one year number by four is a reasonable estimate. Essentially we are assuming nothing else changes. That would give a number of $52M for Dade. A little more refined calculation leads to an estimate cost of $46.7M for Dade.

I would use the below as estimates. If it is easier to explain, I would also be comfortable just using the current number multiplied by 4. These are both estimates with a bit of uncertainty surrounding them.

5% Cap Cost over 4 Years	
Dade	$46.7M
Monroe	$5.9M
Total	$52.5M

Regards,

Christine Ashburn I Chief
Communications, Legislative and External Affairs
Citizens Property Insurance Corporation
2101 Maryland Circle
Tallahassee, FL 32303

The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 12, 2019

I respectfully request that **Senate Bill #1476**, relating to Citizens Property Insurance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25
Meeting Date

1476
Bill Number (if applicable)

Topic ___

Amendment Barcode (if applicable) ___

Name Joe Walsh

Job Title Treasurer

Address 7 Cypress Terrace
Street

Key West, Fl 33040
City, State, Zip

Phone 305-731-9972

Email TropicalSoup1@Gmail.com

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

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

Representing Fair Insurance Rates in Monroe

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/14/14)

MANATEE MUS

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1476
Bill Number (if applicable)

Topic Do unto Others SAVE OUR HOMES Extent.

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title

Address 817 Ingleside Ave
Street

TALL FL 32303
City State Zip

Phone 850 509 1802

Email rreyes@capitalgrp.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Monroe County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1636

INTRODUCER: Senator Perry

SUBJECT: Workers' Compensation

DATE: March 22, 2019 REVISED:

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

I. Summary:

SB 1636 amends several provisions in ch. 440, F.S., Florida's workers' compensation law. The bill:

- Codifies *Westphal v. City of St. Petersburg,*[1] by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks to address a potential benefit gap, if the injured worker has not reached maximum medical improvement.
- Removes the criminal penalty for claimant attorneys receiving fees that the Judges of Compensation Claims (JCCs) has not approved, thereby allowing a claimant to enter into retainer agreements with an attorney and directly pay the attorney, which codifies *Miles v. City of Edgewater Police Department.*[2]
- Eliminates the unrelated works exception to employer immunity provided by the workers' compensation law.
- Requires the filing of attorney retainer agreements and associated attorney fees with the Office of Judges of Compensation Claims.
- Retains the statutory fee schedule for attorney fee awards paid by an employer or carrier to a claimant's attorney.
- Revises current law to allow an alternative minimum attorney fee cap on medical-only claims of $150 per hour, not to exceed $1,500, in all medical only claims rather than only once per accident.
- Limits appellate fees at $150 per hour if certain conditions are met.
- Extends the attachment of attorney fees following the filing of the petition of benefits from 30 days to 45 business days.
- Requires evidence of a good faith effort by the claimant and the claimant's attorney to resolve disputes prior to filing a petition for benefits.

[1] *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

[2] *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016).

- Requires greater specificity in the information provided in the petitions for benefits filed with the Office of Judges of Compensation Claims (OJCC).

The Division of Risk Management of the Department of Financial Services, the state's self-insurance pool, which includes workers' compensation claims, may experience indeterminate cost savings like other workers' compensation carriers. *See* Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2019.

II. Present Situation:

Workers' Compensation Benefits in Florida

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[3] Employees generally cannot sue a covered employer for workplace injuries.[4] Employers must pay compensation or furnish benefits required by the Workers' Compensation Law when an employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.[5]

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.[6] Non-emergency medical services must be provided by a health care provider that is authorized by the carrier prior to the medical services.[7] When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a $10 co-payment for medical services provided after they have reached "maximum medical improvement."[8] Injured employees are entitled to one change of physician during the course of treatment for any one accident.[9] After the initial examination and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.[10]

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[3] "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

[4] Section 440.11(1), F.S. If an employer fails to secure required workers' compensation coverage, an injured worker may sue the employer in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

[5] Section 440.09(1), F.S.

[6] Section 440.13(2)(a), F.S.

[7] Section 440.13(3)(a), F.S.

[8] The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

[9] Section 440.13(2)(f), F.S.

[10] Section 440.13(2)(e), F.S.

Indemnity Benefits

Indemnity benefits only become payable to employees who are disabled for at least 8 days due to a compensable workplace injury.[11] The first 7 days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.[12] These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),[13] up to the maximum weekly benefit established by law.[14] For 2019, this amount is $939.41, which is the statewide average weekly wage (SAWW).[15] Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.[16]
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.[17]

Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for 5 years.[18]

Workers' Compensation Insurance Coverage

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.[19] Employers that are not self-insured and are unable to secure coverage from a carrier may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).[20] The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

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11 Section 440.12(1), F.S.
12 *Id.*
13 An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.
14 Section 440.15(1)-(4), F.S.
15 "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk (last viewed Mar. 4, 2019).
16 Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in Westphal to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).
17 Section 440.15(3), F.S.
18 Section 440.15(1), F.S.
19 Section 440.38, F.S.
20 Section 627.311(5)(a), F.S.

Florida Workers Compensation Rating System

The Office of Insurance Regulation (OIR) regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.[21] In determining whether to approve or disapprove a workers' compensation rate filing, the OIR considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.[22] The standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.[23] However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.[24] All workers' compensation insurers in Florida have chosen to become members of the NCCI.

Florida's Workers' Compensation Trends

In 2017, 242 commercial insurers actively wrote workers' compensation insurance in Florida. In total, these private sector insurers wrote approximately $3.2 billion in premium.[25] In 2016, Florida workers' compensation rates were ranked 33rd highest in the United States, in other words, 32 states had higher rates.[26] Subsequently, in 2018, Florida rates were ranked 21st highest.[27] During the period reviewed in the prior ranking report (January 1, 2016 rates) and the period in the current 2018 report, Florida has approved:

- A 14.5 percent increase in rates due to the combined effect of the Florida Supreme Court's decision on April 28, 2016, in *Marvin Castellanos v. Next Door Company, et al.* and Senate Bill 1402 (Chapter 2016-203, Laws of Florida) that ratified the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition.
- A 1.80 percent decrease attributable to the effects of the Federal Tax Cuts and Jobs Act, effective June 1, 2018.
- A 9.8 percent rate level decrease, effective January 1, 2018.
- A 13.8 percent rate level decrease, effective January 1, 2019. [28]

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[21] Section 627.101, F.S.
[22] Section 627.151, F.S.
[23] Section 627.211, F.S.
[24] Section 627.091, F.S.
[25] OIR, *2018 Workers' Compensation Annual Report*, pg. 6 (Jan.15, 2019). http://floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf (last viewed Mar. 4, 2019).
[26] Oregon Department of Consumer and Business Services, *2016 Oregon Workers' Compensation Premium Rate Ranking,* (Dec. 2016), available at https://www.oregon.gov/dcbs/reports/Documents/general/prem-rpt/16-2083.pdf (last viewed Mar. 17, 2019).
[27] Oregon Department of Consumer and Business Services, *2018 Oregon Workers' Compensation Premium Rate Ranking Summary (*Oct. 2018) available at https://www.oregon.gov/dcbs/reports/Documents/general/prem-sum/18-2082.pdf (last viewed Mar. 5, 2019).
[28] *See* OIR fn. 3 at pg. 14-16.

Even after considering the impact of *Castellanos* and *Westphal* decisions, the NCCI noted that other factors at work in the marketplace combined to contribute to the indicated decrease, which included reduced assessments, increases in investment income, and declines in claim frequency.[29]

Cost Drivers

According to the National Council on Compensation Insurance, there are several cost drivers in the Florida workers' compensation system that the Legislature could address to induce cost savings.[30] The OIR noted that NCCI compared the medical cost distributions for Florida versus 37 states combined to show that based on recent experience Florida has a higher portion of cost paid for drugs, hospital inpatient, and ambulatory surgical centers.[31]

Litigation Costs

Section 440.34, F.S., requires the reporting of all fees paid to attorneys for services rendered to the OJCC. The OJCC reported[32] that during 2017-2018, a total of $453,179,191 was incurred on combined claimant attorneys' fees and defense attorneys' fees in the Florida system. The following OJCC table provides a snapshot of fees for the fiscal years 2002-2017.

Fiscal Year*	Aggregate Fees	Percentage Claimant Fees	Percentage Defense Fees
2002-03	$427,359,212	49.29%	50.71%
2003-04	441,907,794	48.73%	51.27%
2004-05	470,178,488	44.91%	55.09%
2005-06	498,541,260	41.80%	58.20%
2006-07	468,584,023	40.80%	59.20%
2007-08	448,862,202	42.04%	57.96%
2008-09	450,941,100	40.28%	59.72%
2009-10	446,653,869	39.63%	60.37%
2010-11	416,404,259	37.72%	62.28%
2011-12	395,294,706	38.67%	61.33%
2012-13	392,784,121	38.67%	61.33%
2013-14	379,222,338	37.41%	62.59%
2014-15	370,772,783	36.73%	63.27%
2015-16	378,573,902	36.05%	63.95%
2016-17	439,609,031	42.24%	57.76%
2017-18	453,179,191	43.84%	56.16%
*2017-18 Office of Judges of Compensation Claims Annual Report			

[29] Office of Insurance Regulation, Order on Rate Filing, (Nov. 2, 2018), available at https://www.floir.com/siteDocuments/NCCI232557-18-OORF.pdf (last viewed Mar. 13, 2019).
[30] See OIR fn. 3 at pg. 16.
[31] *See Id.*
[32] OJCC, *2017-2018 Annual Report*, (available at https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html# (last viewed Mar. 12, 2019).

Recent Florida Supreme Cases

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,[33] involving attorney fees; *Westphal v. City of St. Petersburg*,[34] relating to temporary wage replacement benefits (i.e., indemnity); and *Miles v. City of Edgewater Police Department*,[35] which addresses the right of an injured worker to pay for their own attorney.

Castellanos v. Next Door Company

In April 2016, the Florida Supreme Court (Court) rendered its decision in *Castellanos v. Next Door Company.* The Court concluded that:

> The right of an injured worker to recover a reasonable prevail party attorney's fee has been a key feature of the state's workers' compensation law since 1941. Through the enactment of a mandatory fee schedule, however, the Legislature has created an irrebuttable presumption that every fee calculated in accordance with the fee schedule will be reasonable to compensate the attorney for his or her services. The $1.53 hourly rate in this case clearly demonstrates that not to be true. We conclude that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions. As a result of this ruling, judges may deviate from the statutory fee schedule if it results in an unreasonable fee.

Westphal v. City of St. Petersburg

Subsequently, in June 2016, the Court, in the case of *Westphal v. City of St. Petersburg,* found the 104-week statutory limitation on temporary total disability benefits unconstitutional because it causes a statutory gap in benefits in violation of an injured worker's constitutional right of access to courts. The Court reinstated the 260-week limitation in effect prior to the 1994 law change.

Miles v. City of Edgewater Police Department

The First District Court of Appeals (1st DCA) held that statutes governing payment of attorney's fees in workers' compensation proceedings "are unconstitutional violations of a claimant's rights to free speech, free association and petition" and "also represent unconstitutional violations of a claimant's right to form contracts."[36] In *Miles*, the 1st DCA invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.[37] The attorney was only paid by the employer/carrier,[38]

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[33] *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. 2016).
[34] *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).
[35] *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016). No. SC04-2349
[36] *Miles*, 190 So.3d at 184.
[37] Sections 440.105(2)(c) and 440.34(1), F.S.
[38] Workers' compensation insurers are referred to as carriers. Section 440.02(4), F.S., provides that the term "carrier" means any person or fund authorized under s. 440.38, F.S., to insure under this chapter and includes a self-insurer and a commercial self-insurance fund authorized under s. 624.462, F.S.

and only if they prevailed. The Court found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney.

Aravena v. Miami-Dade County

The Court held that county employees who work for different departments and at different locations, answer to different supervisors, and have primary assignments involving different duties and functions are engaged in unrelated works triggering the exception to workers' compensation immunity in s. 440.11(1), F.S.[39] A county employee engaged as a crossing guard was killed as a result of the traffic lights not operating properly. The Court concluded that a school crossing guard and the traffic signal repair personnel charged with maintaining the traffic signals at the intersection where the school crossing guard was working were engaged in unrelated works and that the wrongful death claim of the school crossing guard's husband is not barred by worker's compensation immunity.[40]

2003 Workers' Compensation Reforms

In 2002, Florida had the second highest premiums in the country.[41] In response to a downturn in the Florida economy and uncertainties in the marketplace, some insurers were not issuing new policies or renewing policies, or significantly tightening their underwriting requirements. Many small employers were forced to secure significantly more expensive coverage in the Florida Workers' Compensation Joint Underwriting Association ("insurer of last resort") due to availability issues.

Prior to the 2003 reforms, the JCCs used a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees would equal 20 percent of the first $5,000 of the amount of benefits secured; 15 percent of the next $5,000 of the amount of benefits secured, 10 percent of the remaining amount of the benefits secured and to be provided during the first 10 years, and 5 percent of the benefits secured after 10 years. However, the JCCs had the discretion to increase or decrease the attorney's fee without any dollar limitation, based on the following factors:

- Time and labor involved;
- Fee customarily charged in the locality for similar services;
- Amount involved in controversy and the benefits resulting;
- Time limitation imposed by claimant or circumstances;
- Experience, reputation, and the ability of the attorney; and
- Contingency or certainty of a fee.

In 2003, the Florida Legislature enacted significant reforms intended to address the availability and affordability of coverage for employers. These reforms were designed to reduce the overall costs to the system by expediting the dispute resolution process, reducing attorney fees, providing greater enforcement tools to combat fraud, revising standards for compensability and benefits, and changing medical services and reimbursements. The 2003 reforms continued the

[39] *Aravena v. Miami Dade County*, 928 So.2d 1163 (2006).
[40] *Id.*
[41] See Oregon Department of Consumer and Business Services fn 2.

use of the contingency fee schedule in awarding attorney's fee. However, any additional hourly fees were eliminated, and the JCCs were prohibited from approving any agreement related to benefits, which provided for an attorney's fee in excess of the amount permitted under the fee schedule.[42] As an alternative to the contingency fee schedule, the JCC were authorized to approve an attorney's fee not to exceed $1,500 once per accident if the JCC determined that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

In late 2003, in response to the passage of the reforms, the OIR approved a rate filing submitted by the NCCI that resulted in a 14 percent rate decrease for employers.[43] After the implementation of the rate decrease, effective January 1, 2019, Florida's rates are 65 percent below what the rates were prior to the 2003 reforms.[44]

Administration of the Workers Compensation System in Florida

The Division of Workers' Compensation

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S., except for the provisions under the jurisdiction of the Office of the Judges of Compensation Claims. These functions include the enforcement of coverage requirements,[45] administration of workers' compensation health care delivery system,[46] data collection,[47] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.[48]

Office of the Judges of Compensation Claims

The OJCC is responsible for resolving workers' compensation benefit disputes.[49] Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and owing.[50] Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.[51] Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.[52] If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a petition for benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.[53]

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[42] Sections 440.34 and 440.105, F.S.
[43] OIR, Final Order on Rate Filing (Aug. 12, 2003) available at http://www.floir.com/siteDocuments/NCCI.pdf (last viewed Mar. 3, 2019).
[44] *See* OIR fn. 3, p. 15.
[45] Section 440.107(3), F.S.
[46] Section 440.13, F.S.
[47] Sections 440.185 and 440.593, F.S.
[48] Section 440.191, F.S.
[49] Section 440.192, F.S.
[50] Section 440.192(1), F.S.
[51] Section 440.192(8), F.S.
[52] Section 440.25, F.S.
[53] Section 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. Apr. 28, 2016).

III. Effect of Proposed Changes:

Petitions for Benefits

Section 1 amends s. 440.02, F.S., to revise the definition of the term "specificity," thereby requiring additional information to be provided in the petition for benefits filed with the Office of Judges of Compensation Claims (OJCC). This includes specific information for each requested benefit, the specific amount of each requested benefit, and the calculation used for computing the requested benefits. If a petition is filed for medical benefits, the bill requires that the petition must include details demonstrating that such benefits have specifically been denied by the adjuster responsible for determining whether benefits are payable to the claimant. If a petition requests alternate or other medical care, current law requires a copy of the report from the physician making the recommendation for alternate or medical care be attached to the petition for benefits. The bill requires that the physician's report include specific allegations and statements of fact supporting the specific denial by the adjuster handling payment of benefits to the injured employee.

Section 7 amends s. 440.192, F.S., relating to the OJCC, to require the Judge of Compensation Claims (JCC) to review each petition for benefits and dismiss any petition or portion of a petition that does meet on its face the requirements of s. 440.192, F.S., and the definition of "specificity" under s. 440.02, F.S.

Under current law in s. 440.192(2), F.S., a petition for benefits must specifically itemize or identify facts related to the compensation claim. The bill amends this requirement by providing that a petition for benefits specifically identify or itemize the following:

- The Florida county, or if the accident occurred outside Florida, the state where the injury occurred; current law requires the location of the occurrence.
- In a claim for permanent benefits, the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.
- The specific amount of compensation claimed and the methodology used to calculate the average weekly wage. The bill establishes a rebuttable presumption that the average weekly wage and corresponding compensation calculated by the employer or carrier is accurate.
- The signed attestation regarding attorney fees created by Section 6 of the bill.
- Evidence demonstrating a good faith attempt to resolve the dispute.

The bill provides that if a petition for benefits is not dismissed for lack of specificity, a JCC may exercise independent discretion to determine whether the claimant or the claimant's attorney made a good faith effort to resolve the dispute. If the JCC determines the claimant or the claimant's attorney did not make a good faith effort to resolve the dispute before filing the petition for benefits, the JCC must dismiss the petition and may impose sanctions which may include assessment of attorney fees payable by the claimant's attorney.

The bill specifies that the dismissal of any petition or portion of a petition under subsection (5) is without prejudice. Upon a motion that a petition or portion of a petition be dismissed for lack of specificity, the JCC is required to enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed, or if good cause for a hearing is shown, within 20 days after hearing on the motion.

Fellow-Employee Immunity

Section 4 amends s. 440.11(1), F.S., to repeal current law that provides that fellow-employee immunity does not apply to employees of the same employer when each is operating in furtherance of the employer's business but are assigned primarily to unrelated works within private or public employment.

Currently, s. 440.11, F.S., limits an employer's liabilities to the benefits provided under the Workers' Compensation Law. This limitation of employer liabilities makes workers' compensation benefits the exclusive remedy for most employee work-related deaths and injuries. The same immunities from liability also apply to each employee of the employer when the employee is acting in furtherance of the employer's business and the injured employee is entitled to receive workers' compensation benefits. The current law provides exceptions when such immunities do not apply, and it is the exception to fellow-employee immunity for employees assigned to unrelated works that the bill repeals. Thus, under the bill, workers' compensation benefits will be the exclusive remedy for work-related death or injuries caused by fellow employees assigned to unrelated works.

Temporary Benefits

Section 5 amends s. 440.15, F.S., to codify the *Westphal* decision by increasing temporary total disability benefits and temporary partial disability benefits to 260 weeks instead of 104 weeks.

The bill also requires that an employee must receive permanent impairment benefits if the employee has not reached maximum medical improvement before receiving the maximum number of weeks of temporary disability benefits. The permanent impairment benefits will be based on an estimated impairment rating. The bill does not specify who will calculate the estimated impairment rating. Under current law, permanent impairment benefits are available after a doctor certifies that the employee has reached maximum medical improvement and applied an impairment rating based upon uniform permanent impairment rating schedule an employee must be certified by a doctor as having reached maximum medical improvement.

Section 2 amends s. 440.93(3), F.S., regarding benefits for mental and nervous injuries, to provide conforming changes necessitated by the revisions the bill makes to increase the number of weeks of temporary benefits available under s. 440.15, F.S.

Section 11 amends s. 440.491(6)(b), F.S., regarding training and education of injured workers, to reference the now required 260 weeks of temporary benefits.

Attorney Fees

Section 9 amends s. 440.25(4), F.S., to provide that attorney fees do not attach until 45 business days after a petition for benefits is filed with the JCC. Under current law, attorney fees do not attach until 30 calendar days after the date the carrier or employer receives the petition.

Section 10 amends s. 440.34, F.S., regarding the award of attorney fees for a claimant paid by the employer or carrier. The bill retains the statutory fee schedule for attorney fee awards, which states that the attorney fee paid by an employer or carrier to a claimant's attorney may not exceed:

- Twenty percent of the first $5,000 of benefits secured.
- Fifteen percent of the next $5,000 of benefits secured.
- Ten percent of the remaining amount of benefits secured to be provided during the first 10 years after the date the claim is filed.
- Five percent of the benefits secured after 10 years.

The bill does not allow the award to the claimant of a fee that deviates from the statutory attorney fee schedule, as currently may occur in accordance with the decision of the Florida Supreme Court in *Castellanos v. Next Door Company*.

If a JCC finds that the attorney fee schedule results in an effective hourly rate of less than $150 per hour for a disputed medical-only claim, the bill authorizes the JCC to award to the claimant an alternative attorney fee payable by the employee or carrier not to exceed $1,500, based on a maximum hourly rate of $150 per hour.

The bill provides a claimant's attorney may not be awarded an attorney fee in excess of $150 per hour related to an appellate proceeding.

The bill states that attorney fees may not be awarded based on claimant attorney hours reasonably related to a benefit upon which the claimant did not prevail or if the JCC determines the claimant did not make a good faith effort to resolve the dispute before filing the petition for benefits, regardless of whether the petition is dismissed.

Elimination of Requirements Related to JCC Approval of Attorney Fees

Section 3 amends s. 440.105(3)(c), F.S., to exempt attorneys retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the employee from the criminal prohibition against receiving any fee, consideration, or gratuity in connection with a proceeding under the Workers' Compensation Law that is not approved by a JCC.

Section 8 amends s. 440.20(11)(c), F.S., to eliminate the requirement that settlement agreements be approved by a JCC as to attorney fees paid to the claimant's attorney. The bill requires the parties to submit the amount of the settlement and the attorney fees and costs paid by the claimant to the claimant's attorney. The bill also requires payment of lump sum settlements be made within 14 days of the date the JCC mails the order approving the settlement allocation's recovery of child support arrearages required by s. 440.20(11)(d), F.S.; current law requires payment within 14 days after the JCC mails the order approving attorney fees. The First District Court of Appeals held in *Miles v. City of Edgewater Police Department/Preferred Governmental Claims Solutions*, that the restrictions on a claimant's ability to retain counsel in s. 440.34, F.S., are unconstitutional.

Section 10 amends s. 440.34(1), F.S., to provide that retainer agreements between a claimant and claimant's attorney are not subject to JCC approval. Such agreements must, however, be filed with the JCC. Attorneys retained by injured employees must report to the JCC the amounts of attorney fees they receive. The bill does not provide any enforcement mechanism to ensure compliance with these reporting requirements. The bill deletes current law prohibiting a JCC from approving a compensation order, joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or other agreement related to workers' compensation benefits which provides for an attorney fee in excess of the statutory schedule.

Attestations Related to Claimant's Attorney Fees

Section 6 creates s. 440.1915, F.S., to require an injured employee or other party making a claim to execute a signed attestation regarding the worker's obligation to pay his or her own attorney fees. The bill provides that the injured worker may not engage an attorney or other representative or proceeding with a petition for benefits while represented by an attorney unless the injured employee or other party making a claim for benefits, prior to engaging an attorney or other representative, attests by signature that he or she reviewed, understands, and acknowledges the following disclosure:

> "The workers' compensation law requires you to pay your own attorney fees. Your employer and/or its insurance carrier are not required to pay your attorney fees except in certain circumstances. Even then, you may be responsible for paying attorney fees in addition to any amount your employer or its carrier may be required to pay or agree to pay, depending on the details of your agreement with your attorney. Carefully read and make sure you understand any agreement or retainer for representation before you sign it."

Section 9 amends current law in s. 440.25(4)(h), F.S., which requires the parties to exchange and file with the JCC, at least 15 days before an expedited resolution hearing under s. 440.25(4)(h), F.S., a pretrial outline of all issues, defenses, and witnesses. The bill requires the claimant's attorney to include with the pretrial outline a personal attestation detailing his or her hours to date. The personal attestation must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit.

Effective Date

Section 12 provides an effective date of July 1, 2019.

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:

The Florida Supreme Court in *Castellanos v. Next Door Company* ruled that the mandatory attorney fee schedule in s. 440.34, F.S., "is unconstitutional as a violation of due process under both the Florida and United States Constitutions."[54] As a remedy, the Court revived the statute's predecessor, which allowed for the award of an alternative attorney fee if application of the statutory fee schedule did not result in a reasonable attorney fee award.[55]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will provide greater guidance and specificity in the administration of various provisions of ch. 440, F.S., which may reduce administrative and litigation costs, thereby reducing the costs of workers' compensation costs of employers.

According to the National Council on Compensation Insurance (NCCI) implementation of the bill could result in a decrease of rates in the range of 3 percent or more.[56]

C. Government Sector Impact:

Department of Financial Services

The Division of Risk Management of the Department of Financial Services is a provider of workers' compensation benefits to participating state agencies and public universities. Provisions of the bill relating to specificity, rebuttable presumption regarding the calculation of average weekly wage by the employee/carrier, and evidence of a good faith effort to resolve disputes prior to filing a petition for benefits, have the potential to improve efficiency in claims processing. The fiscal impact of the bill is indeterminate at

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[54] *Castellanos v. Next Door Co.*, 192 So.3d 431 at 449 (Fla. 2016).
[55] *Castellanos*, 192 So.3d 431 at 448.
[56] NCCI, *Preliminary Cost Impact Analysis of SB 1636, (Mar. 20, 2019)* (on file with Senate Banking and Insurance Committee).

this time. The bill may reduce workers' compensation costs paid by the Division of Risk Management.[57]

Office of the Judges of Compensation Claims

The OJCC indicates that they will need to modify the current reporting system to incorporate filing of attorney fees associated with retainer agreements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.093, 440.105, 440.11, 440.15, 440.1915, 440.192, 440.20, 440.25, 440.34, and 440.491.

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.

[57] Department of Financial Services, Analysis of SB 1636 (Mar. 17, 2019) (on file with Senate Committee on Banking and Insurance).

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Banking and Insurance (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (40) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(40) <u>“Specificity,” “specific,” or “specifically”</u>

~~“Specificity”~~ means, for purposes of determining the adequacy of a petition for benefits under s. 440.192, information on the petition ~~for benefits~~ sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period for each requested benefit, the specific amount of each requested benefit, the calculation used for computing the specific amount of each requested benefit, and ~~of benefits being requested and includes~~ a detailed explanation of any such benefit ~~benefits~~ received that should be increased, decreased, changed, or otherwise modified. If the petition is for medical benefits, the information must ~~shall~~ include specific details as to why such benefits are being requested, including details demonstrating that such benefits have specifically been denied by the adjuster responsible for determining whether benefits are payable to the claimant; why such benefits are medically necessary;~~,~~ and why current treatment, if any, is not sufficient. Any petition requesting alternate or other medical care, including, but not limited to, petitions requesting psychiatric or psychological treatment, must specifically identify the physician, as defined in s. 440.13(1), who is recommending such treatment. A copy of a report from such physician making the recommendation for alternate or other medical care must ~~shall~~ also be attached to the petition, and the petition must include specific allegations and statements of fact supporting that the adjuster handling payment of benefits to the injured employee specifically denied the requested treatment. A judge of compensation claims may ~~shall~~ not order such treatment if a physician is not recommending such treatment.

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Section 2. Subsection (3) of section 440.093, Florida Statutes, is amended to read:

440.093 Mental and nervous injuries.—

(3) Subject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the injured employee’s physical injury or injuries, which shall be included in the maximum number of ~~period of 104~~ weeks as provided in s. 440.15(2), ~~and~~ (4), and (13). Mental or nervous injuries are compensable only in accordance with the terms of this section.

Section 3. Paragraph (c) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Except for an attorney retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the injured employee, it is unlawful for any ~~attorney or other~~ person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a claimant ~~person~~ in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy

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Chief Judge of Compensation Claims.

Section 4. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except as follows:

(a) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee.

(b) When an employer commits an intentional tort that causes the injury or death of the employee. For purposes of this paragraph, an employer's actions <u>are</u> ~~shall be~~ deemed to constitute an intentional tort and not an accident only when the employee proves, by clear and convincing evidence, that:

1. The employer deliberately intended to injure the employee; or

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2. The employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.

The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer’s business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities do not apply ~~shall not be applicable~~ to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death~~, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer’s business but they are assigned primarily to unrelated works within private or public employment~~. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or

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not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days' imprisonment as set forth in s. 775.082. The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the board of county commissioners.

Section 5. Paragraph (a) of subsection (2), paragraph (d) of subsection (3), paragraphs (a) and (e) of subsection (4), and subsection (6) of section 440.15, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsections ~~subsection~~ (7) and (13), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages must ~~shall~~ be paid to the employee during the continuance thereof, ~~not to exceed 104 weeks~~ except as provided in this subsection, s. 440.12 ~~s. 440.12(1)~~, and s. 440.14 ~~s. 440.14(3)~~. Once the employee reaches the maximum number of weeks allowed, or the employee reaches overall ~~the date of~~ maximum medical improvement, whichever occurs earlier, temporary disability benefits must ~~shall~~ cease and the injured worker's permanent impairment must ~~shall~~ be determined.

(3) PERMANENT IMPAIRMENT BENEFITS.—

(d) After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the

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certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in paragraph (b). If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation must be submitted to the treating doctor, the employee, and the carrier within 10 days after the evaluation. The treating doctor must indicate to the carrier agreement or disagreement with the other doctor's certification and evaluation.

1. The certifying doctor shall issue a written report to the employee and the carrier certifying that maximum medical improvement has been reached, stating the impairment rating to the body as a whole, and providing any other information required by the department by rule. The carrier shall establish an overall maximum medical improvement date and permanent impairment rating, based upon all such reports.

2. Within 14 days after the carrier's knowledge of each maximum medical improvement date and impairment rating to the body as a whole upon which the carrier is paying benefits, the carrier shall report such maximum medical improvement date and, when determined, the overall maximum medical improvement date and associated impairment rating to the department in a format as set forth in department rule. If the employee has not been certified as having reached <u>overall</u> maximum medical improvement before the expiration of <u>254</u> ~~98~~ weeks after the date temporary disability benefits begin to accrue, the carrier shall notify the treating doctor of the requirements of this section.

<u>3. If an employee receiving benefits under subsection (2), subsection (4), or both subsections (2) and (4) has not reached</u>

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overall maximum medical improvement before receiving the maximum number of weeks of temporary disability benefits described in subsection (13), the employee must receive benefits under this subsection for an injury resulting from the accident in accordance with the estimated impairment rating for the body as a whole; or, if multiple injuries are sustained, in accordance with the estimated combined impairment ratings for the body as a whole in the 1996 Florida Uniform Permanent Impairment Rating Schedule. Impairment benefits received under this subparagraph must be credited against indemnity benefits subsequently due to the employee.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsections (6), ~~subsection~~ (7), and (13), in case of temporary partial disability, compensation must ~~shall~~ be equal to 80 percent of the difference between 80 percent of the employee’s average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee’s average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer’s work week. The amount determined to be the salary, wages, and other remuneration the employee is

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able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

(e) Subject to subsections (6), (7), and (13), such benefits must ~~shall~~ be paid during the continuance of such disability~~, not to exceed a period of 104 weeks,~~ as provided by this subsection ~~and subsection (2)~~. ~~Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined.~~ If the employee is terminated from postinjury employment based on the employee's misconduct, temporary partial disability benefits are not payable as provided for in this section. The department shall by rule specify forms and procedures governing the method and time for payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

(6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee refuses employment suitable to the capacity thereof, offered to or procured therefor, such employee is ~~shall~~ not ~~be~~ entitled to any compensation at any time during the continuance of such refusal unless at any time in the opinion of the judge of compensation claims such refusal is justifiable. Time periods for the payment of benefits in accordance with this section must ~~shall~~ be counted in determining the limitation of benefits as

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provided for in subsection (13) ~~paragraphs (2)(a), (3)(c), and (4)(b)~~.

(13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of benefits received by an employee for temporary total disability payable pursuant to subsection (2), temporary partial disability payable pursuant to subsection (4), and temporary total disability payable pursuant to s. 440.491 may not exceed 260 weeks.

Section 6. Section 440.1915, Florida Statutes, is created to read:

440.1915 Notice regarding payment of attorney fees.—Before engaging an attorney or other representative for services related to a petition for benefits under s. 440.192 or s. 440.25, an injured employee or any other party making a claim for benefits under this chapter through an attorney shall attest with his or her personal signature that he or she has reviewed, understands, and acknowledges the following statement, which must be in at least 14-point bold type: "THE WORKERS' COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT." If the injured employee or other party does not sign or refuses to sign the document attesting that he or she has reviewed, understands, and acknowledges the statement,

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the injured employee or other party making a claim under this chapter may not proceed with a petition for benefits under s. 440.192 or s. 440.25, except pro se, until such signature is obtained.

Section 7. Subsections (2), (4), (5), and (7) of section 440.192, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

440.192 Procedure for resolving benefit disputes.—

(1) Any employee may, for any benefit that is ripe, due, and owing, file with the Office of the Judges of Compensation Claims a petition for benefits which meets the requirements of this section and the definition of specificity in s. 440.02. An employee represented by an attorney shall file by electronic means approved by the Deputy Chief Judge. An employee not represented by an attorney may file by certified mail or by electronic means approved by the Deputy Chief Judge. The department shall inform employees of the location of the Office of the Judges of Compensation Claims and the office's website address for purposes of filing a petition for benefits. The employee shall also serve copies of the petition for benefits by certified mail, or by electronic means approved by the Deputy Chief Judge, upon the employer and the employer's carrier. The Deputy Chief Judge shall refer the petitions to the judges of compensation claims.

(2) Upon receipt of a petition, the Office of the Judges of Compensation Claims, or upon motion, the assigned judge of compensation claims, shall review the ~~each~~ petition and shall dismiss the ~~each~~ petition or any portion of the ~~such a~~ petition which ~~that~~ does not comply with the requirements of this

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section, does not meet the definition of specificity under s. 440.02(40), and does not ~~on its face~~ specifically identify or itemize the following:

(a) The name, address, and telephone number~~, and social security number~~ of the employee.

(b) The name, address, and telephone number of the employer.

(c) A detailed description of the injury and cause of the injury, including ~~the location of the occurrence and~~ the date or dates of the accident and the county in this state or, if the accident occurred outside of this state, the state where the accident occurred.

(d) A detailed description of the employee’s job, work responsibilities, and work the employee was performing when the injury occurred.

(e) The specific time period for which compensation and the specific classification of compensation were not timely provided.

(f) The specific date of maximum medical improvement, character of disability, and specific statement of all benefits or compensation that the employee is seeking. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date on which such permanent benefits are claimed to begin.

(g) All specific travel costs to which the employee believes she or he is entitled, including dates of travel and purpose of travel, means of transportation, and mileage and including the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier.

(h) Specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment.

(i) The type or nature of treatment care or attendance sought and the justification for such treatment. If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) The specific amount of compensation claimed and the methodology used the calculate the average weekly wage, if the average weekly wage calculated by the employer or carrier is disputed. There is a rebuttable presumption that the average weekly wage and corresponding compensation calculated by the employer or carrier is accurate.

(k) Specific explanation of any other disputed issue that a judge of compensation claims will be called to rule upon.

(l) The signed attestation required pursuant to s. 440.1915.

(m) Certification and evidence of a good faith attempt to resolve the dispute pursuant to subsection (4).

The dismissal of any petition or portion of such a petition under this subsection ~~section~~ is without prejudice and does not require a hearing.

(4)(a) Before filing a petition, the claimant, or if the claimant is represented by counsel, the claimant's attorney, shall make a good faith effort to resolve the dispute. The petition must include:

1. A certification by the claimant or, if the claimant is represented by counsel, the claimant’s attorney, stating that the claimant, or attorney if the claimant is represented by counsel, has made a good faith effort to resolve the dispute and that the claimant or attorney was unable to resolve the dispute with the carrier, or the employer if self-insured; and

2. Evidence demonstrating such good faith attempt to resolve the dispute as described in the certification.

(b) If the petition is not dismissed under subsection (2), the judge of compensation claims has jurisdiction to determine, in his or her independent discretion, whether a good faith effort to resolve the dispute was made by the claimant or the claimant’s attorney. If the judge of compensation claims determines that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition for benefits, the judge of compensation claims must dismiss the petition and may impose sanctions to ensure compliance with this subsection, which may include, but are not limited to, assessment of attorney fees payable by the claimant’s attorney.

(5)(a) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. Dismissal of any petition or portion of a petition under this subsection is without prejudice.

(b) Upon motion that a petition or a portion of a petition be dismissed for lack of specificity, a judge of compensation claims shall enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is

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filed, or, if good cause for a hearing is shown, within 20 days after a hearing on the motion. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

(7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of compensation claims may not award attorney ~~attorney's~~ fees payable by the employer or carrier for services expended or costs incurred before: ~~prior to~~

(a) The filing of a petition that meets the definition of specificity under s. 440.02(40) and that includes all items required under subsection (2); and

(b) The claimant or the claimant's attorney, if the claimant is represented by counsel, has made a good faith effort to resolve the dispute ~~does not meet the requirements of this section~~.

Section 8. Paragraph (c) of subsection (11) of section 440.20, Florida Statutes, is amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(11)

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement need not be approved ~~requires approval~~ by the judge of compensation claims, and ~~only as to the attorney’s fees paid to the claimant’s attorney by the claimant.~~ the parties need not submit any information or documentation in support of the settlement, except for ~~as needed to justify~~ the amount of the settlement and the attorney ~~attorney’s~~ fees and costs paid by the claimant to the claimant’s attorney. Neither the employer nor the carrier is responsible for any attorney ~~attorney’s~~ fees relating to the settlement and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after the date the judge of compensation claims mails the order approving the settlement allocation’s recovery of child support arrearages under paragraph (d) ~~attorney’s fees~~. Any order entered by a judge of compensation claims ~~approving the attorney’s fees as set out in the settlement~~ under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with ~~the requirements set forth in~~ paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident.

Section 9. Paragraphs (d), (h), and (j) of subsection (4) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

(4)

(d) The final hearing shall be held within 210 days after receipt of the petition for benefits in the county where the injury occurred, if the injury occurred in this state, unless

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otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury occurred. However, the claimant may waive the timeframes within this section for good cause shown. If the injury occurred outside the state and is one for which compensation is payable under this chapter, then the final hearing may be held in the county of the employer's residence or place of business, or in any other county of the state that will, in the discretion of the Deputy Chief Judge, be the most convenient for a hearing. At least 15 days before hearing, the claimant's attorney shall file a personal attestation detailing his or her hours to date related to the issues set for hearing. The personal attestation by the claimant's attorney must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit. The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues. The judge of compensation claims may enter an abbreviated final order in cases in which compensability is not disputed. Either party may request separate findings of fact and conclusions of law. At the final hearing, the claimant and employer may each present evidence with respect to the claims presented by the petition for benefits and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the provisions of s. 440.13 shall apply. The report or testimony of the expert

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medical advisor shall be admitted into evidence in a proceeding and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of s. 440.13. No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing is waived.

(h) To further expedite dispute resolution and to enhance the self-executing features of the system, those petitions filed in accordance with s. 440.192 that involve a claim for benefits of $5,000 or less ~~shall~~, in the absence of compelling evidence to the contrary, are ~~be~~ presumed to be appropriate for expedited resolution under this paragraph; and any other claim filed in accordance with s. 440.192, upon the written agreement of both parties and application by either party, may similarly be resolved under this paragraph. A claim in a petition of $5,000 or less for medical benefits only or a petition for reimbursement for mileage for medical purposes must ~~shall~~, in the absence of compelling evidence to the contrary, be resolved through the expedited dispute resolution process provided in this paragraph. For purposes of expedited resolution pursuant to this paragraph, the Deputy Chief Judge shall make provision by rule or order for expedited and limited discovery and expedited docketing in such cases. At least 15 days before ~~prior to~~ hearing, the parties shall exchange and file with the judge of compensation claims a pretrial outline of all issues, defenses,

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and witnesses, including a personal attestation by the claimant's attorney detailing his or her hours to date, on a form adopted by the Deputy Chief Judge, ~~;~~ provided that ~~, in no event shall~~ such hearing may not be held without 15 days' written notice to all parties. The personal attestation by the claimant's attorney must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit. No pretrial hearing shall be held and no mediation scheduled unless requested by a party. The judge of compensation claims shall limit all argument and presentation of evidence at the hearing to a maximum of 30 minutes, and such hearings shall not exceed 30 minutes in length. Neither party shall be required to be represented by counsel. The employer or carrier may be represented by an adjuster or other qualified representative. The employer or carrier and any witness may appear at such hearing by telephone. The rules of evidence shall be liberally construed in favor of allowing introduction of evidence.

(j) A judge of compensation claims may not award interest on unpaid medical bills and the amount of such bills may not be used to calculate the amount of interest awarded. Regardless of the date benefits are ~~were~~ initially requested, attorney ~~attorney's~~ fees do not attach under this subsection until 45 business ~~30~~ days after the date on which a ~~the carrier or self-insured employer receives the~~ petition is filed with the Office of the Judges of Compensation Claims and unless the following conditions are met:

1. Before the petition is filed, the claimant or the

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claimant's attorney, if the claimant is represented by counsel, makes a good faith effort to resolve the dispute as provided in s. 440.192(4); and

2. The petition meets the definition of specificity under s. 440.02(40) and includes all items required under s. 440.192(2).

Section 10. Section 440.34, Florida Statutes, is amended to read:

440.34 Attorney ~~Attorney's~~ fees; costs.—

(1)(a) A judge of compensation claims may award attorney fees payable to the claimant pursuant to this section to be paid by the employer or carrier. An employer or carrier is not responsible for payment of a fee, gratuity, costs, or other consideration ~~may not be paid~~ for a claimant in connection with any proceedings arising under this chapter~~,~~ unless approved by the judge of compensation claims or court having jurisdiction over such proceedings. Attorney fees payable by the employer or carrier and ~~Any attorney's fee~~ approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal ~~to~~ 20 percent of the first $5,000 of the amount of the benefits secured, 15 percent of the next $5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the benefits secured after 10 years.

(b) A ~~The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this~~

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~~chapter which provides for an attorney's fee in excess of the amount permitted by this section. The judge of compensation claims is not required to approve any~~ retainer agreement between the claimant and his or her attorney is not subject to approval by a judge of compensation claims, but must be filed with the Office of the Judges of Compensation Claims. An attorney retained by an injured employee shall, before receiving a fee or other consideration from the injured employee, report the amounts of such attorney fees to the judge of compensation claims having jurisdiction over the claim for benefits based on the county in which the accident occurred; or, if the accident occurred outside of this state, to the Deputy Chief Judge. Notwithstanding s. 440.22, attorney fees are a lien upon compensation payable to the claimant ~~The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7)~~.

(2)(a) In awarding a claimant's attorney fees payable by the employer or carrier ~~attorney's fee~~, a ~~the~~ judge of compensation claims shall consider only those benefits secured by the attorney. ~~An~~ Attorney ~~is not entitled to attorney's~~ fees are not payable by the employer or carrier for:

1. Representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not addressed, during the pendency of other issues for the same injury;

2. Claimant attorney hours reasonably related to a benefit upon which the claimant did not prevail; or

3. Claimant attorney hours reasonably related to a petition for benefits, if the judge of compensation claims determines

that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition, regardless of whether the petition is dismissed by the judge of compensation claims, the claimant, or the claimant’s attorney.

(b) The amount, statutory basis, and type of benefits obtained through legal representation must ~~shall~~ be listed on all attorney ~~attorney’s~~ fees awarded by a ~~the~~ judge of compensation claims which are payable by the employer or carrier. For purposes of this section, the term “benefits secured” does not include future medical benefits to be provided on any date more than 5 years after the date the petition ~~claim~~ is filed. If ~~In the event~~ an offer to settle an issue pending before a judge of compensation claims, including attorney ~~attorney’s~~ fees ~~as provided for in this section~~, is communicated in writing to the claimant or the claimant’s attorney at least 30 days before ~~prior to~~ the trial date on such issue, for purposes of calculating the amount of attorney ~~attorney’s~~ fees to be taxed against the employer or carrier, the term “benefits secured” includes ~~shall be deemed to include~~ only that amount awarded ~~to the claimant~~ above the amount specified in the offer to settle. If multiple issues are pending before a ~~the~~ judge of compensation claims, such ~~said~~ offer of settlement must ~~shall~~ address each issue pending and ~~shall~~ state explicitly whether or not the offer on each issue is severable. The written offer must ~~shall~~ also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim.

(3) If a ~~any~~ party prevails ~~should prevail~~ in ~~any~~ proceedings before a judge of compensation claims or court,

there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney ~~attorney's~~ fees. A claimant is responsible for the payment of her or his own attorney ~~attorney's~~ fees, except that a claimant is entitled to recover attorney fees ~~an attorney's fee~~ in an amount equal to the amount provided for in subsection (1) or subsection (5) ~~(7)~~ from a carrier or employer:

(a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for temporary or permanent disability, permanent impairment, ~~wage-loss,~~ or death benefits~~,~~ arising out of the same accident;

(b) In a ~~any~~ case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and the injured person has employed an attorney in the successful prosecution of the petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases in which ~~where~~ the claimant successfully prevails in proceedings filed under s. 440.24 or s. 440.28.

Regardless of the date benefits are ~~were~~ initially requested, attorney ~~attorney's~~ fees do ~~shall~~ not attach under this subsection until 45 business ~~30~~ days after the date on which a ~~the carrier or employer, if self-insured, receives the~~ petition that meets the definition of specificity under s. 440.02(40) and includes all items required under s. 440.192(2) is filed with the Office of the Judges of Compensation Claims. Such attorney fees do not attach unless before the petition was filed, the claimant or the claimant’s attorney, if the claimant is represented by counsel, made a good faith effort to resolve the dispute as provided in s. 440.192(4).

~~(4) In such cases in which the claimant is responsible for the payment of her or his own attorney’s fees, such fees are a lien upon compensation payable to the claimant, notwithstanding s. 440.22.~~

(4)~~(5)~~ If ~~any~~ proceedings are had for review of a ~~any~~ claim, award, or compensation order before any court, the court may, at its discretion, award the injured employee or dependent attorney fees payable ~~an attorney’s fee to be paid~~ by the employer or carrier if the injured employee or dependent prevails in the proceeding. The award of attorney fees may not exceed an hourly rate of $150 per hour if the proceeding occurred because the employer or carrier disputed the claim, award, or compensation order~~, in its discretion, which shall be paid as the court may direct~~.

~~(6) A judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee’s compensation into an escrow account until benefits have been secured.~~

(5)~~(7)~~ If attorney fees are ~~an attorney’s fee is~~ owed under paragraph (3)(a), the judge of compensation claims may award ~~approve an~~ alternative attorney fees payable by the employer or carrier, ~~attorney’s fee~~ not to exceed $1,500 and ~~only once per accident,~~ based on a maximum hourly rate of $150 per hour, if

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the judge of compensation claims expressly finds that the attorney ~~attorney's~~ fee schedule amount provided for in subsection (1), based on benefits secured, results in an effective hourly rate of less than $150 per hour ~~fails to fairly compensate the attorney~~ for disputed medical-only claims as provided in paragraph (3)(a) ~~and the circumstances of the particular case warrant such action~~. Attorney fees payable by the employer or carrier under this subsection are in lieu of, rather than in addition to, any other attorney fees available under this section.

Section 11. Paragraph (b) of subsection (6) of section 440.491, Florida Statutes, is amended to read:

440.491 Reemployment of injured workers; rehabilitation.—

(6) TRAINING AND EDUCATION.—

(b) When an employee who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate and requires training and education to obtain suitable gainful employment, the employer or carrier shall pay the employee additional training and education temporary total compensation benefits while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims. The benefits provided under this paragraph are ~~shall~~ not ~~be~~ in addition to the maximum number of ~~104~~ weeks as specified in s. 440.15(2) or s. 440.15(13). However, a carrier or employer is not precluded from voluntarily paying additional temporary total disability compensation beyond that period. If an employee requires temporary residence at or

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near a facility or an institution providing training and education which is located more than 50 miles away from the employee's customary residence, the reasonable cost of board, lodging, or travel must be borne by the department from the Workers' Compensation Administration Trust Fund established by s. 440.50. An employee who refuses to accept training and education that is recommended by the vocational evaluator and considered necessary by the department will forfeit any additional training and education benefits and any additional compensation ~~payment for lost wages~~ under this chapter. The carrier shall notify the injured employee of the availability of training and education benefits as specified in this chapter. The Department of Financial Services shall include information regarding the eligibility for training and education benefits in informational materials specified in ss. 440.207 and 440.40.

Section 12. This act shall take effect July 1, 2019.

================= 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 workers' compensation; amending s. 440.02, F.S.; redefining the term "specificity"; amending s. 440.093, F.S.; conforming a provision to changes made by the act; amending s. 440.105, F.S.; revising a prohibition against persons receiving certain fees, consideration, or gratuities under the Workers' Compensation Law; amending s. 440.11, F.S.;

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deleting an exception from fellow-employee immunities from liability; amending s. 440.15, F.S.; increasing the maximum number of weeks of benefits payable for temporary total disability, temporary partial disability, and permanent impairment benefits; revising the timeframe under which a carrier must provide certain notice to an employee’s treating doctor; specifying permanent impairment benefits payable to certain employees who have not reached overall maximum medical improvement within a certain timeframe; requiring that such impairment benefits be credited against subsequently due indemnity benefits; deleting a requirement that temporary disability benefits cease and that the injured worker’s permanent impairment be determined after a certain timeframe; creating s. 440.1915, F.S.; requiring injured employees and other claimants to sign and attest to a specified statement relating to the payment of attorney fees before engaging an attorney or other representative for certain purposes; prohibiting such injured employees or claimants from proceeding with a petition for benefits, except pro se, until the signature is obtained; amending s. 440.192, F.S.; revising conditions under which a petition for benefits or portion of the petition must be dismissed by the Office of the Judges of Compensation Claims or the assigned judge of compensation claims; revising the information required in the petition; providing construction; requiring claimants and their attorneys

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to make a good faith effort to resolve the dispute before filing a petition; requiring that petitions include evidence demonstrating such good faith effort; authorizing judges of compensation claims to determine if such effort was made; requiring the judge of compensation claims to dismiss the petition, and authorizing the imposition of sanctions, if he or she finds such effort was not made; providing that certain dismissals are without prejudice; specifying timeframes within which a judge of compensation claims must enter an order on certain motions to dismiss; revising conditions under which judges of compensation claims are prohibited from awarding attorney fees; amending s. 440.20, F.S.; providing that certain settlement agreements need not be approved by the judge of compensation claims; revising the information required to be submitted by the parties to such a settlement; revising the timeframe under which a lump-sum settlement amount must be paid; amending s. 440.25, F.S.; requiring a claimant's attorney, under certain circumstances and within certain timeframes, to file a specified personal attestation detailing his or her hours to date; revising the timeframe and conditions under which attorney fees attach to certain proceedings; amending s. 440.34, F.S.; authorizing judges of compensation claims to award attorney fees to claimants to be paid by the employer or carrier; specifying applicability of attorney fee provisions to attorney fees payable by employers or carriers;

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providing that employers and carriers are not responsible for costs unless approved by the judge of compensation claims or a court having jurisdiction; deleting a prohibition against a judge of compensation claims' approval of agreements providing for attorney fees in excess of certain amounts; requiring that retainer agreements be filed with the office; specifying requirements for attorneys of injured employees in reporting attorney fees; revising attorney fees that are a lien upon payable compensation; deleting a certain limitation on retainer agreements; specifying claimant attorney hours for which attorney fees are not payable by employers or carriers; revising circumstances under which claimants are entitled to recover attorney fees from carriers or employers; revising the timeframe and conditions under which attorney fees attach; specifying a limit on the hourly rates of certain attorney fees awarded to injured employees or dependents; specifying a condition before such attorney fees may be awarded; deleting a prohibition against a judge of compensation claims entering an order approving certain retainer agreements; revising circumstances under which a judge of compensation claims may award alternative attorney fees payable by the carrier or employer; providing construction; amending s. 440.491, F.S.; providing that an employee who refuses certain training and education forfeits any additional compensation, rather than payment for

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lost wages; conforming a provision to changes made by the act; providing an effective date.

By Senator Perry

8-01654-19 20191636__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.02, F.S.; redefining the term "specificity"; amending s. 440.093, F.S.; conforming a provision to changes made by the act; amending s. 440.105, F.S.; revising a prohibition against persons receiving certain fees, consideration, or gratuities under the Workers' Compensation Law; amending s. 440.11, F.S.; deleting an exception from fellow-employee immunities from liability; amending s. 440.15, F.S.; increasing the maximum number of weeks of benefits payable for temporary total disability, temporary partial disability, and temporary total disability; revising the timeframe under which a carrier must provide certain notice to an employee's treating doctor; specifying permanent impairment benefits payable to certain employees who have not reached overall maximum medical improvement within a certain timeframe; requiring that such impairment benefits be credited against subsequently due indemnity benefits; deleting a requirement that temporary disability benefits cease and that the injured worker's permanent impairment be determined after a certain timeframe; creating s. 440.1915, F.S.; requiring injured employees and other claimants to sign and attest to a specified statement relating to the payment of attorney fees before engaging an attorney or other representative for certain purposes; prohibiting such injured employees or claimants from proceeding with a petition for

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benefits, except pro se, until the signature is obtained; amending s. 440.192, F.S.; revising conditions under which a petition for benefits or portion of the petition must be dismissed by the Office of the Judges of Compensation Claims or the assigned judge of compensation claims; revising the information required in the petition; providing construction; requiring claimants and their attorneys to make a good faith effort to resolve the dispute before filing a petition; requiring that petitions include evidence demonstrating such good faith effort; authorizing judges of compensation claims to determine if such effort was made; requiring the judge of compensation claims to dismiss the petition, and authorizing the imposition of sanctions, if he or she finds such effort was not made; providing that certain dismissals are without prejudice; specifying timeframes within which a judge of compensation claims must enter an order on certain motions to dismiss; revising conditions under which judges of compensation claims are prohibited from awarding attorney fees; amending s. 440.20, F.S.; providing that certain settlement agreements need not be approved by the judge of compensation claims; revising the information required to be submitted by the parties to such a settlement; revising the timeframe under which a lump-sum settlement amount must be paid; amending s. 440.25, F.S.; requiring that the pretrial outline under a certain expedited dispute resolution process contain a specified personal attestation by the claimant’s attorney relating to hours to date; revising the timeframe and conditions under which attorney fees attach to certain proceedings; amending s. 440.34, F.S.; authorizing judges of compensation claims to award attorney fees to claimants to be paid by the employer or carrier; specifying applicability of attorney fee provisions to attorney fees payable by employers or carriers; providing that employers and carriers are not responsible for costs unless approved by the judge of compensation claims or a court having jurisdiction; deleting a prohibition against a judge of compensation claims’ approval of agreements providing for attorney fees in excess of certain amounts; requiring that retainer agreements be filed with the office; specifying requirements for attorneys of injured employees in reporting attorney fees; revising attorney fees that are a lien upon payable compensation; deleting a certain limitation on retainer agreements; specifying claimant attorney hours for which attorney fees are not payable by employers or carriers; revising circumstances under which claimants are entitled to recover attorney fees from carriers or employers; revising the timeframe and conditions under which attorney fees attach; specifying a limit on the hourly rates of attorney fees awarded to injured employees or dependents; specifying a condition before such attorney fees may be awarded; deleting a prohibition against a judge of

compensation claims entering an order approving certain retainer agreements; revising circumstances under which a judge of compensation claims may award alternative attorney fees payable by the carrier or employer; providing construction; amending s. 440.491, F.S.; providing that an employee who refuses certain training and education forfeits any additional compensation, rather than payment for lost wages; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (40) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(40) “Specificity,” “specific,” or “specifically” ~~“Specificity”~~ means, for purposes of determining the adequacy of a petition for benefits under s. 440.192, information on the petition ~~for benefits~~ sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period for each requested benefit, the specific amount of each requested benefit, the calculation used for computing the specific amount of each requested benefit, and ~~of benefits being requested and includes~~ a detailed explanation of any such benefit ~~benefits~~ received that should be increased, decreased, changed, or otherwise modified. If the petition is for medical

benefits, the information must ~~shall~~ include specific details as to why such benefits are being requested, including details demonstrating that such benefits have specifically been denied by the adjuster responsible for determining whether benefits are payable to the claimant; why such benefits are medically necessary;~~,~~ and why current treatment, if any, is not sufficient. Any petition requesting alternate or other medical care, including, but not limited to, petitions requesting psychiatric or psychological treatment, must specifically identify the physician, as defined in s. 440.13(1), who is recommending such treatment. A copy of a report from such physician making the recommendation for alternate or other medical care must ~~shall~~ also be attached to the petition and must include specific allegations and statements of fact supporting the specific denial by the adjuster handling payment of benefits to the injured employee. A judge of compensation claims may ~~shall~~ not order such treatment if a physician is not recommending such treatment.

Section 2. Subsection (3) of section 440.093, Florida Statutes, is amended to read:

440.093 Mental and nervous injuries.—

(3) Subject to the payment of permanent benefits under s. 440.15, in no event shall temporary benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of maximum medical improvement for the injured employee's physical injury or injuries, which shall be included in the maximum number of ~~period of 104~~ weeks as provided in s. 440.15(2), ~~and~~ (4), and (13). Mental or nervous injuries are compensable only in accordance with the terms of this section.

Section 3. Paragraph (c) of subsection (3) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(3) Whoever violates any provision of this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Except for an attorney retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the injured employee, it is unlawful for any ~~attorney or other~~ person, in his or her individual capacity or in his or her capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other consideration or any gratuity from a person on account of services rendered for a person in connection with any proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation claims or by the Deputy Chief Judge of Compensation Claims.

Section 4. Subsection (1) of section 440.11, Florida Statutes, is amended to read:

440.11 Exclusiveness of liability.—

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death,

except as follows:

(a) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow employee, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee.

(b) When an employer commits an intentional tort that causes the injury or death of the employee. For purposes of this paragraph, an employer's actions are ~~shall be~~ deemed to constitute an intentional tort and not an accident only when the employee proves, by clear and convincing evidence, that:

1. The employer deliberately intended to injure the employee; or

2. The employer engaged in conduct that the employer knew, based on prior similar accidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and the employee was not aware of the risk because the danger was not apparent and the employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.

The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such

employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities do not apply ~~shall not be applicable~~ to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death~~, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment~~. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days' imprisonment as set forth in s. 775.082. The immunity from liability provided in this subsection extends to county governments with respect to employees of county constitutional officers whose offices are funded by the board of county commissioners.

Section 5. Paragraph (a) of subsection (2), paragraph (d) of subsection (3), paragraphs (a) and (e) of subsection (4), and subsection (6) of section 440.15, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsections ~~subsection~~ (7) and (13), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages must ~~shall~~ be paid to the employee during the continuance thereof, ~~not to exceed 104 weeks~~ except as provided in this subsection, s. 440.12 ~~s. 440.12(1)~~, and s. 440.14 ~~s. 440.14(3)~~. Once the employee reaches the maximum number of weeks allowed, or the employee reaches overall ~~the date of~~ maximum medical improvement, whichever occurs earlier, temporary disability benefits must ~~shall~~ cease and the injured worker’s permanent impairment must ~~shall~~ be determined.

(3) PERMANENT IMPAIRMENT BENEFITS.—

(d) After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in paragraph (b). If the certification and evaluation are performed by a doctor other than the employee’s treating doctor, the certification and evaluation must be submitted to the treating doctor, the employee, and the carrier within 10 days after the evaluation. The treating doctor must indicate to the carrier agreement or disagreement with the other doctor’s certification and evaluation.

1. The certifying doctor shall issue a written report to the employee and the carrier certifying that maximum medical

improvement has been reached, stating the impairment rating to the body as a whole, and providing any other information required by the department by rule. The carrier shall establish an overall maximum medical improvement date and permanent impairment rating, based upon all such reports.

2. Within 14 days after the carrier’s knowledge of each maximum medical improvement date and impairment rating to the body as a whole upon which the carrier is paying benefits, the carrier shall report such maximum medical improvement date and, when determined, the overall maximum medical improvement date and associated impairment rating to the department in a format as set forth in department rule. If the employee has not been certified as having reached overall maximum medical improvement before the expiration of 254 ~~98~~ weeks after the date temporary disability benefits begin to accrue, the carrier shall notify the treating doctor of the requirements of this section.

3. If an employee receiving benefits under subsection (2), subsection (4), or both subsections (2) and (4) has not reached overall maximum medical improvement before receiving the maximum number of weeks of temporary disability benefits described in subsection (13), the employee must receive benefits under this subsection for an injury resulting from the accident in accordance with the estimated impairment rating for the body as a whole; or, if multiple injuries are sustained, in accordance with the estimated combined impairment ratings for the body as a whole in the 1996 Florida Uniform Permanent Impairment Rating Schedule. Impairment benefits received under this subparagraph must be credited against indemnity benefits subsequently due to the employee.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsections (6), ~~subsection~~ (7), and (13), in case of temporary partial disability, compensation must ~~shall~~ be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits are ~~shall be~~ payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured employee's ability to return to work.

(e) Subject to subsections (6), (7), and (13), such benefits must ~~shall~~ be paid during the continuance of such disability~~, not to exceed a period of 104 weeks,~~ as provided by this subsection ~~and subsection (2)~~. ~~Once the injured employee~~

~~reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined.~~ If the employee is terminated from postinjury employment based on the employee's misconduct, temporary partial disability benefits are not payable as provided for in this section. The department shall by rule specify forms and procedures governing the method and time for payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

(6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee refuses employment suitable to the capacity thereof, offered to or procured therefor, such employee is ~~shall~~ not ~~be~~ entitled to any compensation at any time during the continuance of such refusal unless at any time in the opinion of the judge of compensation claims such refusal is justifiable. Time periods for the payment of benefits in accordance with this section must ~~shall~~ be counted in determining the limitation of benefits as provided for in subsection (13) ~~paragraphs (2)(a), (3)(c), and (4)(b)~~.

(13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of benefits received by an employee for temporary total disability payable pursuant to subsection (2), temporary partial disability payable pursuant to subsection (4), and temporary total disability payable pursuant to s. 440.491 may not exceed 260 weeks.

Section 6. Section 440.1915, Florida Statutes, is created to read:

440.1915 Notice regarding payment of attorney fees.—Before engaging an attorney or other representative for services related to a petition for benefits under s. 440.192 or s. 440.25, an injured employee or any other party making a claim for benefits under this chapter through an attorney shall attest with his or her personal signature that he or she has reviewed, understands, and acknowledges the following statement, which must be in at least 14-point bold type: "THE WORKERS' COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN THEN, YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE REQUIRED TO PAY OR AGREE TO PAY, DEPENDING ON THE DETAILS OF YOUR AGREEMENT WITH YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT." If the injured employee or other party does not sign or refuses to sign the document attesting that he or she has reviewed, understands, and acknowledges the statement, the injured employee or other party making a claim under this chapter may not proceed with a petition for benefits under s. 440.192 or s. 440.25, except pro se, until such signature is obtained.

Section 7. Subsections (2), (4), (5), and (7) of section 440.192, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

440.192 Procedure for resolving benefit disputes.—

(1) Any employee may, for any benefit that is ripe, due, and owing, file with the Office of the Judges of Compensation Claims a petition for benefits which meets the requirements of

this section and the definition of specificity in s. 440.02. An employee represented by an attorney shall file by electronic means approved by the Deputy Chief Judge. An employee not represented by an attorney may file by certified mail or by electronic means approved by the Deputy Chief Judge. The department shall inform employees of the location of the Office of the Judges of Compensation Claims and the office's website address for purposes of filing a petition for benefits. The employee shall also serve copies of the petition for benefits by certified mail, or by electronic means approved by the Deputy Chief Judge, upon the employer and the employer's carrier. The Deputy Chief Judge shall refer the petitions to the judges of compensation claims.

(2) Upon receipt of a petition, the Office of the Judges of Compensation Claims, or upon motion, the assigned judge of compensation claims, shall review the ~~each~~ petition and shall dismiss the ~~each~~ petition or any portion of the ~~such a~~ petition which ~~that~~ does not comply with the requirements of this section, does not meet the definition of specificity under s. 440.02(40), and does not ~~on its face~~ specifically identify or itemize the following:

(a) The name, address, and telephone number~~, and social security number~~ of the employee.

(b) The name, address, and telephone number of the employer.

(c) A detailed description of the injury and cause of the injury, including ~~the location of the occurrence and~~ the date or dates of the accident and the county in this state or, if the accident occurred outside of this state, the state where the accident occurred.

(d) A detailed description of the employee's job, work responsibilities, and work the employee was performing when the injury occurred.

(e) The specific time period for which compensation and the specific classification of compensation were not timely provided.

(f) The specific date of maximum medical improvement, character of disability, and specific statement of all benefits or compensation that the employee is seeking. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date on which such permanent benefits are claimed to begin.

(g) All specific travel costs to which the employee believes she or he is entitled, including dates of travel and purpose of travel, means of transportation, and mileage and including the date the request for mileage was filed with the carrier and a copy of the request filed with the carrier.

(h) Specific listing of all medical charges alleged unpaid, including the name and address of the medical provider, the amounts due, and the specific dates of treatment.

(i) The type or nature of treatment care or attendance sought and the justification for such treatment. If the employee is under the care of a physician for an injury identified under paragraph (c), a copy of the physician's request, authorization, or recommendation for treatment, care, or attendance must accompany the petition.

(j) The specific amount of compensation claimed and the methodology used the calculate the average weekly wage, if the

average weekly wage calculated by the employer or carrier is disputed. There is a rebuttable presumption that the average weekly wage and corresponding compensation calculated by the employer or carrier is accurate.

(k) Specific explanation of any other disputed issue that a judge of compensation claims will be called to rule upon.

(l) The signed attestation required pursuant to s. 440.1915.

(m) Certification and evidence of a good faith attempt to resolve the dispute pursuant to subsection (4).

The dismissal of any petition or portion of such a petition under this subsection ~~section~~ is without prejudice and does not require a hearing.

(4)(a) Before filing a petition, the claimant, or if the claimant is represented by counsel, the claimant's attorney, shall make a good faith effort to resolve the dispute. The petition must include:

1. A certification by the claimant or, if the claimant is represented by counsel, the claimant's attorney, stating that the claimant, or attorney if the claimant is represented by counsel, has made a good faith effort to resolve the dispute and that the claimant or attorney was unable to resolve the dispute with the carrier, or the employer if self-insured; and

2. Evidence demonstrating such good faith attempt to resolve the dispute as described in the certification.

(b) If the petition is not dismissed under subsection (2), the judge of compensation claims has jurisdiction to determine, in his or her independent discretion, whether a good faith effort to resolve the dispute was made by the claimant or the claimant’s attorney. If the judge of compensation claims determines that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition for benefits, the judge of compensation claims must dismiss the petition and may impose sanctions to ensure compliance with this subsection, which may include, but are not limited to, assessment of attorney fees payable by the claimant’s attorney.

(5)(a) All motions to dismiss must state with particularity the basis for the motion. The judge of compensation claims shall enter an order upon such motions without hearing, unless good cause for hearing is shown. Dismissal of any petition or portion of a petition under this subsection is without prejudice.

(b) Upon motion that a petition or a portion of a petition be dismissed for lack of specificity, a judge of compensation claims shall enter an order on the motion, unless stipulated in writing by the parties, within 10 days after the motion is filed, or, if good cause for a hearing is shown, within 20 days after a hearing on the motion. When any petition or portion of a petition is dismissed for lack of specificity under this subsection, the claimant must be allowed 20 days after the date of the order of dismissal in which to file an amended petition. Any grounds for dismissal for lack of specificity under this section which are not asserted within 30 days after receipt of the petition for benefits are thereby waived.

(7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of compensation claims may not award attorney ~~attorney’s~~ fees payable by the employer or carrier for services expended or

costs incurred before: ~~prior to~~

(a) The filing of a petition that meets the definition of specificity under s. 440.02(40) and that includes all items required under subsection (2); or

(b) The claimant or the claimant’s attorney, if the claimant is represented by counsel, has made a good faith effort to resolve the dispute ~~does not meet the requirements of this section~~.

Section 8. Paragraph (c) of subsection (11) of section 440.20, Florida Statutes, is amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(11)

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers’ compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement need not be approved ~~requires approval~~ by the judge of compensation claims, and ~~only as to the attorney’s fees paid to the claimant’s attorney by the claimant.~~ the parties need not submit any information or documentation in support of the settlement, except for ~~as needed to justify~~ the amount of the settlement and the attorney ~~attorney’s~~ fees and costs paid by the claimant to the claimant’s attorney. Neither the employer nor the carrier is responsible for any attorney ~~attorney’s~~ fees relating to the settlement and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after the date the judge of compensation claims mails the order approving the settlement allocation’s recovery of child support arrearages under paragraph (d) ~~attorney’s fees~~. Any order entered by a judge of compensation claims ~~approving the attorney’s fees as set out in the settlement~~ under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with ~~the requirements set forth in~~ paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident.

Section 9. Paragraphs (h) and (j) of subsection (4) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

(4)

(h) To further expedite dispute resolution and to enhance the self-executing features of the system, those petitions filed in accordance with s. 440.192 that involve a claim for benefits of $5,000 or less ~~shall~~, in the absence of compelling evidence to the contrary, are ~~be~~ presumed to be appropriate for expedited resolution under this paragraph; and any other claim filed in accordance with s. 440.192, upon the written agreement of both parties and application by either party, may similarly be resolved under this paragraph. A claim in a petition of $5,000 or less for medical benefits only or a petition for reimbursement for mileage for medical purposes must ~~shall~~, in the absence of compelling evidence to the contrary, be resolved through the expedited dispute resolution process provided in this paragraph. For purposes of expedited resolution pursuant to

this paragraph, the Deputy Chief Judge shall make provision by rule or order for expedited and limited discovery and expedited docketing in such cases. At least 15 days before ~~prior to~~ hearing, the parties shall exchange and file with the judge of compensation claims a pretrial outline of all issues, defenses, and witnesses, including a personal attestation by the claimant’s attorney detailing his or her hours to date, on a form adopted by the Deputy Chief Judge,~~;~~ provided that~~, in no event shall~~ such hearing may not be held without 15 days’ written notice to all parties. The personal attestation by the claimant’s attorney must specifically allocate the hours by each benefit claimed and account for hours relating to multiple benefits in a manner that apportions such hours by percentage, in whole numbers, to each benefit. No pretrial hearing shall be held and no mediation scheduled unless requested by a party. The judge of compensation claims shall limit all argument and presentation of evidence at the hearing to a maximum of 30 minutes, and such hearings shall not exceed 30 minutes in length. Neither party shall be required to be represented by counsel. The employer or carrier may be represented by an adjuster or other qualified representative. The employer or carrier and any witness may appear at such hearing by telephone. The rules of evidence shall be liberally construed in favor of allowing introduction of evidence.

(j) A judge of compensation claims may not award interest on unpaid medical bills and the amount of such bills may not be used to calculate the amount of interest awarded. Regardless of the date benefits are ~~were~~ initially requested, attorney ~~attorney’s~~ fees do not attach under this subsection until 45 business ~~30~~ days after the date on which a ~~the carrier or self-insured employer receives the~~ petition is filed with the Office of the Judges of Compensation Claims and unless the following conditions are met:

1. Before the petition is filed, the claimant or the claimant's attorney, if the claimant is represented by counsel, makes a good faith effort to resolve the dispute as provided in s. 440.192(4); and

2. The petition meets the definition of specificity under s. 440.02(40) and includes all items required under s. 440.192(2).

Section 10. Section 440.34, Florida Statutes, is amended to read:

440.34 Attorney ~~Attorney's~~ fees; costs.—

(1)(a) A judge of compensation claims may award attorney fees payable to the claimant pursuant to this section to be paid by the employer or carrier. An employer or carrier is not responsible for payment of a fee, gratuity, costs, or other consideration ~~may not be paid~~ for a claimant in connection with any proceedings arising under this chapter~~,~~ unless approved by the judge of compensation claims or court having jurisdiction over such proceedings. Attorney fees payable by the employer or carrier and ~~Any attorney's fee~~ approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal ~~to~~ 20 percent of the first $5,000 of the amount of the benefits secured, 15 percent of the next $5,000 of the amount of the benefits secured, 10 percent of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5 percent of the

benefits secured after 10 years.

(b) A ~~The judge of compensation claims shall not approve a compensation order, a joint stipulation for lump-sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this chapter which provides for an attorney's fee in excess of the amount permitted by this section. The judge of compensation claims is not required to approve any~~ retainer agreement between the claimant and his or her attorney is not subject to approval by a judge of compensation claims, but must be filed with the Office of the Judges of Compensation Claims. An attorney retained by an injured employee and receiving a fee or other consideration from the injured employee under contract with the injured employee shall report the amounts of such attorney fees to the judge of compensation claims having jurisdiction over the claim for benefits based on the county in which the accident occurred; or, if the accident occurred outside of this state, to the Deputy Chief Judge. Notwithstanding s. 440.22, attorney fees are a lien upon compensation payable to the claimant ~~The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7)~~.

(2)(a) In awarding a claimant's attorney fees payable by the employer or carrier ~~attorney's fee~~, a ~~the~~ judge of compensation claims shall consider only those benefits secured by the attorney. ~~An~~ Attorney ~~is not entitled to attorney's~~ fees are not payable by the employer or carrier for:

1. Representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not

addressed, during the pendency of other issues for the same injury;

2. Claimant attorney hours reasonably related to a benefit upon which the claimant did not prevail; or

3. Claimant attorney hours reasonably related to a petition for benefits, if the judge of compensation claims determines that the claimant or the claimant’s attorney did not make a good faith effort to resolve the dispute before filing the petition, regardless of whether the petition is dismissed by the judge of compensation claims, the claimant, or the claimant’s attorney.

(b) The amount, statutory basis, and type of benefits obtained through legal representation must ~~shall~~ be listed on all attorney ~~attorney’s~~ fees awarded by a ~~the~~ judge of compensation claims which are payable by the employer or carrier. For purposes of this section, the term “benefits secured” does not include future medical benefits to be provided on any date more than 5 years after the date the petition ~~claim~~ is filed. If ~~In the event~~ an offer to settle an issue pending before a judge of compensation claims, including attorney ~~attorney’s~~ fees ~~as provided for in this section~~, is communicated in writing to the claimant or the claimant’s attorney at least 30 days before ~~prior to~~ the trial date on such issue, for purposes of calculating the amount of attorney ~~attorney’s~~ fees to be taxed against the employer or carrier, the term “benefits secured” includes ~~shall be deemed to include~~ only that amount awarded ~~to the claimant~~ above the amount specified in the offer to settle. If multiple issues are pending before a ~~the~~ judge of compensation claims, such ~~said~~ offer of settlement must ~~shall~~ address each issue pending and ~~shall~~ state explicitly whether or

not the offer on each issue is severable. The written offer must ~~shall~~ also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim.

(3) If a ~~any~~ party prevails ~~should prevail~~ in ~~any~~ proceedings before a judge of compensation claims or court, there shall be taxed against the nonprevailing party the reasonable costs of such proceedings, not to include attorney ~~attorney’s~~ fees. A claimant is responsible for the payment of her or his own attorney ~~attorney’s~~ fees, except that a claimant is entitled to recover attorney fees ~~an attorney’s fee~~ in an amount equal to the amount provided for in subsection (1) or subsection (5) ~~(7)~~ from a carrier or employer:

(a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for temporary or permanent disability~~, permanent impairment, wage-loss,~~ or death benefits~~,~~ arising out of the same accident;

(b) In a ~~any~~ case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and the injured person has employed an attorney in the successful prosecution of the petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases in which ~~where~~ the claimant successfully prevails in proceedings filed under s. 440.24 or s. 440.28.

Regardless of the date benefits are ~~were~~ initially requested, attorney ~~attorney’s~~ fees do ~~shall~~ not attach under this subsection until 45 business ~~30~~ days after the date on which a ~~the carrier or employer, if self-insured, receives the~~ petition that meets the definition of specificity under s. 440.02(40) and includes all items required under s. 440.192(2) is filed with the Office of the Judges of Compensation Claims. Such attorney fees do not attach unless before the petition was filed, the claimant or the claimant’s attorney, if the claimant is represented by counsel, made a good faith effort to resolve the dispute as provided in s. 440.192(4).

~~(4) In such cases in which the claimant is responsible for the payment of her or his own attorney’s fees, such fees are a lien upon compensation payable to the claimant, notwithstanding s. 440.22.~~

(4)~~(5)~~ If ~~any~~ proceedings are had for review of a ~~any~~ claim, award, or compensation order before any court, the court may, at its discretion, award the injured employee or dependent attorney fees payable ~~an attorney’s fee to be paid~~ by the employer or carrier, not to exceed an hourly rate of $150 per hour, but only if the employer or carrier disputes the claim, award, or compensation order and the injured employee or dependent prevails in the dispute ~~in its discretion, which shall be paid as the court may direct~~.

~~(6) A judge of compensation claims may not enter an order approving the contents of a retainer agreement that permits placing any portion of the employee’s compensation into an escrow account until benefits have been secured.~~

(5)~~(7)~~ If attorney fees are ~~an attorney’s fee is~~ owed under paragraph (3)(a), the judge of compensation claims may award ~~approve an~~ alternative attorney fees payable by the employer or carrier, ~~attorney’s fee~~ not to exceed $1,500 and ~~only once per accident,~~ based on a maximum hourly rate of $150 per hour, if the judge of compensation claims expressly finds that the attorney ~~attorney’s~~ fee schedule amount provided for in subsection (1), based on benefits secured, results in an effective hourly rate of less than $150 per hour ~~fails to fairly compensate the attorney~~ for disputed medical-only claims as provided in paragraph (3)(a) ~~and the circumstances of the particular case warrant such action~~. Attorney fees payable by the employer or carrier under this subsection are in lieu of, rather than in addition to, any other attorney fees available under this section.

Section 11. Paragraph (b) of subsection (6) of section 440.491, Florida Statutes, is amended to read:

440.491 Reemployment of injured workers; rehabilitation.—

(6) TRAINING AND EDUCATION.—

(b) When an employee who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate and requires training and education to obtain suitable gainful employment, the employer or carrier shall pay the employee additional training and education temporary total compensation benefits while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims. The benefits provided under this paragraph are ~~shall~~ not ~~be~~ in addition to the maximum number of ~~104~~ weeks as specified in s. 440.15(2) or s. 440.15(13). However, a carrier or employer is not precluded from voluntarily paying additional temporary total disability compensation beyond that period. If an employee requires temporary residence at or near a facility or an institution providing training and education which is located more than 50 miles away from the employee’s customary residence, the reasonable cost of board, lodging, or travel must be borne by the department from the Workers’ Compensation Administration Trust Fund established by s. 440.50. An employee who refuses to accept training and education that is recommended by the vocational evaluator and considered necessary by the department will forfeit any additional training and education benefits and any additional compensation ~~payment for lost wages~~ under this chapter. The carrier shall notify the injured employee of the availability of training and education benefits as specified in this chapter. The Department of Financial Services shall include information regarding the eligibility for training and education benefits in informational materials specified in ss. 440.207 and 440.40.

Section 12. This act shall take effect July 1, 2019.

Department of Financial Services (DFS)
2019 Legislative Bill Analysis

BILL INFORMATION

Bill Number:	SB 1636
Bill Title:	Workers' Compensation
Bill Sponsor:	Senator Perry
Effective Date:	7/1/2019

ANALYSIS INFORMATION

Agency Contact:	Meredith Stanfield, Legislative Affairs Director, (850) 413-2890
Division Director:	Tanner Holloman, Molly Merry
Program Analyst:	Brittany O'Neil, Andrew Sabolic, Kelly Fitton
Analysis Date:	March 17, 2019

POLICY ANALYSIS

I. SUMMARY ANALYSIS

SB 1636 would amend certain workers' compensation statutes related to the filing, review, and dismissal of Petitions for Benefits (PFB), the attorney fees paid by the employer/carrier or injured worker, increases the maximum duration for receiving temporary total and temporary disability benefits to 260 weeks, combined, in response to recent case law, and provides for impairment benefits should the employee not yet have reached overall maximum medical improvement.

This bill makes substantive and procedural changes to the workers' compensation law, including revising a prohibition against persons receiving certain fees, consideration or gratuities and requiring carriers to take specific actions related to requests for authorizations. Major provisions include requirements for pleading with greater specificity, the conditions under which petitions may be dismissed by the Judges of Compensation Claims (JCC), as well as providing that certain settlement agreements do not require JCC approval. It increases the timeframe for which temporary total benefits may be available, implements new methods for determining attorney fees and authorizes the JCC to award attorney fees.

II. PRESENT SITUATION

As a provider of workers' compensation coverage for state agencies and public universities, the Division of Risk Management (DRM) will be affected by many of the provisions in this bill.

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are Castellanos v. Next Door Company, involving attorney fees; Westphal v. City of St. Petersburg, and Jones v. Food Lion, Inc., relating to temporary wage replacement benefits; and, Miles v. City of Edgewater Police Department, which addresses the right of an injured worker to pay for their own attorney.

These rulings were influential in the Office of Insurance Regulation's (OIR) approval of a 14.5% rate increase effective December 1, 2016. That increase was upheld on appeal. In November 2017, OIR issued an order reducing workers' compensation rates. That 9.5 % reduction took effect January 1, 2018, and another rate decrease of 13.8% took effect January 1, 2019.

Current law already requires certain information be listed on a PFB for it to be legally sufficient. The proposed amendments require more specific data elements to be listed on a PFB for it to be legally sufficient. Employer/carrier paid claimant attorney fees are based upon the statutory fee schedule; or, hourly fees may be awarded to the claimant's attorney based upon the Supreme Court's opinion in the Castellanos case, if the fee schedule amount is inadequate as determined by a Judge of Compensation Claims (JCC). An attorney can also receive fees directly from the claimant based upon the First District Court of Appeals opinion in the Miles case. The duration of temporary benefits has been modified in response to the Supreme Court's opinion in the Westphal case, which struck the 104-week cap and provides for a 260-week cap duration for temporary partial and temporary total disability benefits, respectively.

III. EFFECT OF PROPOSED CHANGES

Impacts to the Division of Risk Management:
As a provider of workers' compensation coverage for state agencies and public universities, the Division of Risk Management (DRM) will be affected by many of the provisions in this bill.

Some sections of the bill require that any benefits requested through the compensation litigation system be pled with specificity, including a specific date of Maximum Medical Improvement (MMI), the specific date on which such permanent benefits are claimed to begin, the specific amount of compensation claimed and the methodology for calculation of the Average Weekly Wage (AWW) if it is in dispute. There is a rebuttable presumption that the average weekly wage and the corresponding compensation calculation calculated by the employer/carrier is accurate. Additionally, it requires that a good faith effort be made to resolve a dispute prior to filing a petition. If it is determined that such good faith effort was not made, the Judge of Compensation Claims must dismiss the petition and may impose sanctions. These proposals have the potential to improve efficiency in the claims processing. By requiring good faith efforts to resolve disputes and clearly identifying the benefits requested in the Petition for Benefits, DRM can more effectively and efficiently determine if the benefit should be provided and resolve any claim disputes.

Another section was revised to delineate certain circumstances under which settlement agreements need not be approved by the JCC.

The bill generally codifies recent caselaw (Westphal and Jones) lengthening the period for temporary benefits to 260 weeks. A provision in the legislation that extends temporary total for an additional 26 weeks if the injured worker has not reached overall MMI will not have a major impact on DRM since few workers will not reach overall MMI in five years. Overall, we do not anticipate that this will cause a significant increase, as most Injured workers reach MMI within 5 years. However, it is difficult to assess the long-term effect.

One provision requires that an injured worker who exhausts temporary partial benefits and is not at overall MMI shall receive impairment benefits based on the estimated combined impairment rating for the body as a whole in the Florida Uniform Permanent Impairment Rating Schedule. It is not anticipated that this provision will have a major impact since overall MMI is usually obtained within five years of the date of injury. Due to the large period of temporary benefits it is unlikely that this provision will have a significant impact but is a deterrent to DRM and agency efforts to return injured employees to work. Overall, we do not anticipate that this will cause a significant increase, as most Injured workers reach MMI within 5 years. However, it is difficult to assess the long-term effect.

The legislation provides a change in the calculation of attorney fees, including an hourly cap of $150 in some instances. The cap on attorney fees could result in a decrease in petitioner attorney fee costs to DRM. Additionally, the bill lengthens the period for responding to a petition for benefits from 30 - 45 days before attorney fees attach. We do not anticipate that this will cause a significant fiscal impact.

A section was created requiring an injured worker to sign an attestation clause regarding the payment of attorney fees, attesting that he or she has reviewed, understands and acknowledges the statement.

Section-by-Section Analysis from the DFS Division of Workers' Compensation:

Section 1.
The bill provides additional criteria to meet the definition of "specificity" for purposes for filing a Petition for Benefits (PFB).

Section 2.
The proposed language would conform to the Supreme Court's opinion in the Westphal case increasing the maximum number of weeks benefits of temporary disabilities and other proposed changes in the bill.

Section 3.
This section would codify the First District Court of Appeals opinion in the Miles case allowing for injured workers to contract for attorney fees without approval from the JCC.

Section 4.
The proposed would eliminate an exception to the exclusiveness of liability related to fellow-employee actions.

Section 5. – Minimal impact to the DFS Division of Workers' Compensation (DWC).
Certain claims reporting edits contained in administrative rule would need to be modified. This section would increase the maximum duration of temporary partial and temporary total disability benefits from 104 weeks to 260 weeks, combined. It would also provide for payment of impairment benefits if the claimant has not met overall maximum medical improvement (MMI) after 260 weeks. A significant increase is not anticipated, as most Injured workers reach MMI within 5 years. However, it is difficult to assess the long-term effect. The proposed changes are in response to the Supreme Court's opinion in the Westphal case.

Section 6.
The proposed language would require a claimant personally attest to a notice informing the claimant of the payment of attorney fees. The proposed language does not indicate if the notice must accompany the PFB when it is sent to the carrier.

Section 7.
This section would require new data to be included on a PFB. Failure to provide the required data would result in dismissal of the PFB. One of the new data requirements would be "evidence of good faith to resolve the dispute". A possibility exists that claimants' attorneys and carriers' defense counsel will request the activities and efforts made by the Division's Bureau of Employee Assistance and Ombudsman Office as evidence or lack thereof of good faith to resolve the dispute. The section allows a JCC to sanction a claimant's attorney for failing to pursue a good faith effort to resolve the dispute.

Section 8.
The proposed language would eliminate the need for a JCC to approve a settlement. It also requires the reporting of attorney fees and costs paid by the claimant directly to their attorney.

Section 9.
The proposed language would require a personal attestation by the claimant's attorney specifying the number of hours allocated for each benefit attained. The proposed amendment would also increase the number of days for which attorney fees attach from 30 days to 45 days from the date a PFB is filed with the JCC.

Section 10.
This section would expand the number of conditions that must be met before an employer or carrier is responsible for the payment of attorney fees; require the amounts of claimant paid attorney fees to be reported to the JCC; extend the timeframe from 30 to 45 days from the date a PFB is filed with the JCC for the attachment of attorney fees; and allow the JCC, at its discretion, to award attorney fees not to exceed $150 per hour.

Section 11.
The proposed amendments would conform to the increase in the maximum duration of temporary benefits from 104 weeks to 260 weeks, in response to the Westphal case.

Section 12.
The section provides an effective date of July 1, 2019.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	
Is the change consistent with the agency's core mission?	**Y☐ N☐**
Rule(s) impacted (provide references to F.A.C.):	

V. DOES THE BILL REQUIRE REPORTS OR STUDIES? Y☐ N☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☒ N☐

Revenues:	N/A
Expenditures:	There is a potential fiscal impact to local government agencies that may be self-insured, based upon the changes in the calculation of attorney fees, duration of temporary benefits, and impairment benefits received, but we are unable to determine the actual fiscal impact. The bill may reduce workers' compensation costs paid by local governments.

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	N/A
Expenditures:	The DFS Division of Risk Management provides workers' compensation coverage to participating state agencies and universities. There is a potential fiscal impact to state government agencies based upon the changes in the calculation of attorney fees, duration of temporary benefits, and impairment benefits received, but we are unable to determine the actual fiscal impact at this time. The bill may reduce workers' compensation costs paid by the Division of Risk Management.
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	N/A
Expenditures:	There is a potential fiscal impact to the private sector, based upon the changes in the calculation of attorney fees, duration of temporary benefits, and impairment benefits received, but we are unable to determine the actual fiscal impact. The bill may reduce workers' compensation costs paid by employers.
Other:	

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? **Y☐ N☒**

If yes, describe the anticipated impact to the agency including any fiscal impact.	

FEDERAL IMPACT

I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? **Y☐ N☒**

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No. B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No. C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? The proposed legislation is not likely to generate litigation involving the Department. D. Rules: The proposed legislation does not require a new rule, the amendment of an existing rule, or the elimination of an existing rule for the Department.

The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: March 14, 2019

I respectfully request that **Senate Bill #1636**, relating to Workers Compensation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

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 1690

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Warranty Associations

DATE: March 25, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1690 makes changes to home and service warranty associations. The bill:

- Requires a separate and auditable reserve account equal to a minimum of 25 percent of the gross written premiums received for home and service warranty contracts that are issued in Florida. Current law requires such reserve amounts be set aside for all policies written by the company, whether in Florida or other states.
- Requires home warranty and service warranty associations operating in Florida and writing in other states must comply with all financial requirement laws of the other states.
- Prohibits the exclusion of coverage due to the presence of rust if such rust or corrosion was not a contributing cause of the mechanical breakdown or failure of the covered appliance, unit, or system.
- Home warranty companies that cover the replacement of components of an HVAC system but do not cover compatibility or efficiency requirements recommended by the manufacturer must:
  - State in conspicuous boldface type that the contract does not provide replacement coverage for components necessary to maintain the compatibility and efficiency requirements recommended by the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage; and

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for components necessary to maintain the compatibility and efficiency requirements.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Warranty Associations

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).[1] A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.[2] A home warranty is a contract that either indemnifies the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement of a structural component of, or an appliance in, a home.[3]

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[4] Home and service warranty associations must be licensed by OIR[5] and must maintain certain minimum financial standards in order to do warranty business in Florida.[6]

The following chart reflects the number of licensed home and service warranty associations in Florida as of March 15, 2019:[7]

Type of Association/Company	Number of Licensees
Home Warranty Association	30
Service Warranty Association	91
Total	**121**

Licensing and Financial Requirements for Warranty Associations

Home Warranty Association

Florida law prohibits any person from providing, offering to provide, or holding oneself out as providing or offering to provide home warranties in Florida or from Florida without holding a license issued by OIR.[8] Thus, even if a home warranty association wished to locate in Florida but only sell home warranties to consumers outside of Florida, it would still need a home warranty

[1] *See* ch. 634, F.S.
[2] S. 634.402, F.S.
[3] S. 634.302, F.S.
[4] *See* ch. 634, F.S.
[5] Ss. 634.303 and 634.403, F.S.
[6] Ss. 634.3077 and 634.406, F.S.
[7] Data retrieved from OIR Active Company Search application, https://floir.com/CompanySearch/index.aspx (last visited March 15, 2019).
[8] S. 634.303, F.S.

association license issued by OIR.[9] Home warranties are often purchased over the internet and may be purchased by a seller and transferred to the buyer at the closing on the sale of a home.

Florida law requires that all home warranty associations maintain a funded, unearned premium[10] account, consisting of unencumbered assets,[11] equal to a minimum of 25 percent of the gross written premiums[12] received by it from all warranty contracts it has in force, regardless of whether those contracts are written to consumers in Florida or in another state.[13]

Service Warranty Associations

Florida law prohibits any person from providing, offering to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the office.[14] Florida law requires that all service warranty associations maintain a funded, unearned premium account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts it has in force regardless of whether those contracts are written to consumers in Florida or in another state.[15]

Coverage and Form Requirements for Home Warranty Associations

OIR's authority to regulate home warranty associations allows it to specify the contents of the forms that the associations provide to home warranty consumers and certain procedures that associations must follow when issuing warranties.[16] Currently, home warranties issued in Florida vary with regard to coverage exclusions due to rust or corrosion to otherwise covered appliances, units, or systems. Some warranties exclude coverage due to the presence of rust or corrosion regardless of whether the rust or corrosion causes a mechanical breakdown of the appliance, unit, or system.[17] Other home warranties provide coverage even if a system has malfunctioned due to rust or corrosion.[18] The lack of consistency in the wording of the home warranty contracts may lead consumers to be confused about the coverage that is actually provided for their appliances, units, or systems. Additionally, home warranties with broad coverage exclusions for the presence of any rust or corrosion, eliminate coverage where the rust or corrosion is cosmetic only and in no way affects the functionality of the appliance, unit, or system.

[9] *See id.*
[10] An unearned premium is a premium that a customer pays in advance, but that the warranty association has not yet earned.If a contract is canceled, the customer is generally entitled to a full refund of the unearned amount. Business Dictionary, http://www.businessdictionary.com/definition/unearned-premium.html (last visited March 15, 2019).
[11] An unencumbered asset is one that is free from debt and can be easily sold or mortgaged. Business Dictionary, http://www.businessdictionary.com/definition/unencumbered.html (last visited March 15, 2019).
[12] Gross written premium is the amount of premium written by a warranty association before deductions for commissions and other expenses. *See* IRMI, https://www.irmi.com/term/insurance-definitions/gross-written-premium (last visited March 15, 2019).
[13] S. 634.3077(1), F.S.
[14] S. 634.403(1), F.S.
[15] S. 634.406, F.S.
[16] S. 634.312, F.S.
[17] *See, e.g.*, Select Home Warranty, *Terms and Conditions/Service Contract Agreement*, https://selecthomewarranty.com/termsconditions (last visited March 15, 2019).
[18] *See, e.g.*, First American Home Warranty, *Sample Contract & Coverage* Overview, https://homewarranty.firstam.com/media/contracts/8J.B.pdf (last visited March 15, 2019).

The Florida Building Code

The Florida Building Code specifies rules and standards for constructed structures, including the HVAC systems in those structures.[19] Under the Florida Building Code, certain energy efficiency requirements must be met when an HVAC system is installed, repaired, or replaced.[20] Meeting the energy efficiency requirements when an HVAC system is repaired may require the replacement of various components to maintain a "matched system."[21] In keeping with these requirements, manufacturers of air conditioning units have certain compatibility and efficiency requirements that must be met.

Home warranties that provide coverage for repair or replacement of HVAC systems do not always provide coverage that extends to the matching of HVAC system components so that compatibility and efficiency requirements will be met. Under existing home warranty contracts, consumers may not be made aware of this coverage limitation when they purchase home warranties. Furthermore, upon completion of repairs covered by home warranties, consumers may be left with mismatched systems that do not meet building code requirements and may have to pay for additional repairs in order to maintain manufacturers' compatibility and efficiency requirements and to meet building code requirements.

III. Effect of Proposed Changes:

The bill revises the requirement that all home warranty and service warranty associations maintain a funded, unearned premium reserve account equal to a minimum of 25 percent of the gross written premiums received from all warranty contracts in force. Instead, the bill requires that they maintain an account containing a minimum of 25 percent only of the gross written premiums received from all warranty contracts in force in Florida. All assets held to satisfy this requirement must be maintained in a separate auditable account. The bill requires home warranty and service warranty associations that write in Florida and in other states must comply with all financial requirement laws of the other states in which they write contracts.

The bill provides that home warranties sold in Florida may not exclude coverage because of rust or corrosion to an otherwise covered appliance, unit, or system, unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of that appliance, unit, or system.

The bill establishes that, if a home warranty covers the replacement of components of an HVAC system due to wear and tear, but does not cover functional components of the systems necessary to maintain the compatibility or efficiency requirements of the manufacturer, the contract must:

- State in conspicuous boldface type that the contract does not provide replacement coverage for functional components of an HVAC system necessary to maintain the compatibility or efficiency requirements of the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage; and

[19] *See, e.g.,* International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, https://codes.iccsafe.org/content/FBC2017 (last visited March 15, 2019).
[20] International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, S. R 501.7, https://codes.iccsafe.org/content/FEC2017/chapter-5-re-existing-buildings (last visited March 15, 2019).
[21] *Id.*

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for the functional components of an HVAC system necessary to maintain the compatibility and efficiency requirements of the manufacturer.

The effective date of the bill is July 1, 2019.

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 634.3077, 634.346, and 634.406.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance on March 25, 2019:
The CS requires home and service warranty associations operating in Florida and writing in other states must comply with the financial requirements of the other states.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 634.3077, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of

unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force in this state. Such assets must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written, provided the association has net assets of not less than $500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force in this state, which must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(5) An association operating in this state that issues home warranty or home service contracts in other states must comply with all financial requirement laws of such other states.

Section 2. Effective January 1, 2020, section 634.346, Florida Statutes, is created to read:

634.346 Home warranty coverage requirements.—

(1) A home warranty sold in this state may not exclude coverage because of the presence of rust or corrosion unless the rust or corrosion was a contributing cause of the mechanical

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breakdown or failure of a covered appliance, unit, or system.

(2) A home warranty contract providing coverage for wear and tear failures of components of an HVAC system, which contains an exclusion of replacement coverage for any other functional components of the HVAC system on the basis of operational compatibility or operational efficiency requirements as set by the manufacturer, must:

(a) Set forth a disclosure in conspicuous boldfaced type that the home warranty contract does not cover replacement of functional components of HVAC systems for reasons of compatibility or efficiency requirements of the manufacturer unless additional coverage for such circumstance is purchased, and provide the website or telephone number for the consumer to contact to add such additional coverage to the home warranty contract; and

(b) Provide consumers the option to purchase additional coverage, for an additional charge, for the replacement of otherwise functional components of an HVAC system necessary to maintain the compatibility and operating efficiency requirements of the manufacturer.

Section 3. Subsections (1), (2), and (5) of section 634.406, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

634.406 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received on all warranty contracts in force which are~~, wherever~~ written in this state. Such reserve

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account must be a separate auditable account for contracts in force in this state. Such assets must ~~shall~~ be held as prescribed under ss. 625.301-625.340. For contracts in excess of 2 years which are offered by associations having net assets of less than $500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years must ~~shall~~ be placed in the funded, unearned premium reserve account.

(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit for contracts in force in this state equal to 10 percent of the gross written premium received on all warranty contracts in force in this state. Such reserve deposit must ~~shall~~ be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office has received and approved the association's current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part must ~~shall~~ be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) must ~~shall~~ be included in calculating the reserve requirements of this section.

(5) No warranty seller may allow its gross written premiums in force for contracts written in this state to exceed a 7-to-1 ratio to net assets.

(8) An association operating in this state that issues service warranty or service contracts in other states must

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comply with all financial requirement laws of such other states.

Section 4. Except as otherwise provided in this act, this act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to warranty associations; amending s. 634.3077, F.S.; revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; requiring certain home warranty associations to comply with other states' laws; creating s. 634.346, F.S.; prohibiting home warranties from excluding coverage because of the presence of rust or corrosion, except under certain circumstances; specifying requirements for certain home warranties providing coverage for HVAC system components; amending s. 634.406, F.S.; revising the basis for calculating the required assets in a service warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; revising the basis for calculating a certain reserve deposit with the Department of Financial Services; revising the requirements regarding the

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ratio of gross written premiums to net assets for service warranties; requiring certain service warranty associations to comply with other states’ laws; providing effective dates.

By Senator Broxson

A bill to be entitled

An act relating to warranty associations; amending s. 634.3077, F.S.; revising the basis for calculating the required assets in a home warranty association’s premium reserve account; requiring that such reserve account be a separate auditable account; creating s. 634.346, F.S.; prohibiting home warranties from excluding coverage solely because of the presence of rust or corrosion, except under certain circumstances; specifying requirements for certain home warranties providing coverage for HVAC system components; amending s. 634.406, F.S.; revising the basis for calculating the required assets in a service warranty association’s premium reserve account; requiring that such reserve account be a separate auditable account; revising the basis for calculating a certain reserve deposit with the Department of Financial Services; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 634.3077, Florida Statutes, are amended to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force in this state. Such assets must ~~shall~~ be held

in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written, provided the association has net assets of not less than $500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force in this state, which must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account.

Section 2. Section 634.346, Florida Statutes, is created to read:

634.346 Home warranty coverage requirements.—

(1) A home warranty sold in this state may not exclude coverage solely because of the presence of rust or corrosion unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of a covered appliance, unit, or system.

(2) A home warranty contract providing coverage for wear and tear failures of components of a heating, ventilation, and air conditioning (HVAC) system, and which contains an exclusion of replacement coverage for any other functional components of the HVAC system on the basis of operational compatibility or operational efficiency requirements as set by the manufacturer,

must:

(a) Set forth a disclosure in conspicuous boldface type that the home warranty contract does not cover replacement of functional components of HVAC systems for reasons of compatibility or efficiency requirements of the manufacturer unless additional coverage for such circumstance is purchased, and provide the website or telephone number for the consumer to contact to add such additional coverage to the home warranty contract; and

(b) Provide consumers the option to purchase additional coverage, for an additional charge, for the replacement of otherwise functional components of an HVAC system necessary to maintain the compatibility and operating efficiency requirements of the manufacturer.

Section 3. Subsections (1) and (2) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received on all warranty contracts in force which are~~, wherever~~ written in this state. Such reserve account must be a separate auditable account. Such assets must ~~shall~~ be held as prescribed under ss. 625.301-625.340. For contracts in excess of 2 years which are offered by associations having net assets of less than $500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years must ~~shall~~ be placed in the funded, unearned premium reserve account.

(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit equal to 10 percent of the gross written premium received on all warranty contracts in force in this state. Such reserve deposit must ~~shall~~ be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office has received and approved the association’s current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part must ~~shall~~ be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) must ~~shall~~ be included in calculating the reserve requirements of this section.

Section 4. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 25
Meeting Date

1690
Bill Number (if applicable)

229342
Amendment Barcode (if applicable)

Topic: For Amendment and bill.

Name: Tim Meenan

Job Title:

Address: 300 S. Duval St.
Street

Tallahassee FL.
City State Zip

Phone: 850 425-4000

Email:

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

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

Representing: Florida Service Agreement Association/Service Contract Industry Council

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1690

Meeting Date — Bill Number (if applicable)

229342 DE

Amendment Barcode (if applicable)

Topic: WARRANTY ASSOCIATIONS

Name: DAVID ROBERTS

Job Title:

Address: 210 S. MONROE ST. (Street)

TALLAHASSEE (City) FL (State) 32301 (Zip)

Phone: 850-443-4820

Email: david@nomab.com

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

Waive Speaking: [x] In Support [ ] Against

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

Representing: NATIONAL HOME SERVICE CONTRACT ASSOC.

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

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

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

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

S-001 (10/14/14)

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 1704

INTRODUCER: Banking and Insurance Committee and Senator Wright

SUBJECT: Department of Financial Services

DATE: March 26, 2019 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1704 is the agency bill for the Department of Financial Services.

The bill allows the Division of Treasury to maintain warrants paid rather than turning them over to the Division of Auditing and Accounting and extending the retention period from 5 to 10 years.

The bill amends Florida Funeral, Cemetery, and Consumer Services Act to:

- Allow a funeral director in charge to supervise up to two facilities, provided they are within a specified distance from one another;
- Authorize out of state trust companies to service a funeral or cemetery's care and maintenance trust fund;
- Provide criteria for internship programs for a joint funeral director and embalmer license applicant; and
- Allow out of state trust companies to receive funds from a preneed contract without obtaining a preneed license.

The bill amends various licensing statutes administered by the Division of Agent and Agency Services. The bill:

- Allows applicants that have committed certain felonies to obtain a license on a probationary basis once the applicant has served at least half of the disqualifying period if the applicant has not committed any crimes during that time;

- Creates a temporary license for personal lines agents similar to the temporary license existing in other lines;
- Provides that licenses for industrial fire or burglary agents will no longer be issued but allows current license holders to maintain their licenses;
- Eliminates examination requirements for industrial fire insurance and burglary insurance agents as well as crop hail and multiple-peril crop insurance agents; and
- Provides the DFS the discretion to deny an application for an insurance agency license on the grounds that another jurisdiction has taken an adverse action against a professional license held by that person.

The bill amends the DFS property insurance mediation program to require the mediator to report a settlement through mediation to all parties within 10 days after the conclusion of the mediation. The report must include the settlement amount.

The bill amends statutes relating to the State Fire Marshal to provide that identification of state-owned and leased buildings will no longer be determined by the U.S. National Grid Coordinate System and to direct the Division of State Fire Marshal to develop employer best practices for firefighter cancer prevention. It also clarifies requirements for installation of fire extinguishers and preengineered systems.

The bill amends the Disposition of Unclaimed Property Act to allow the DFS to automatically disburse certain unclaimed property accounts to verified claimants.

II. Present Situation:

The Department of Financial Services (DFS) is created by s. 20.121, F.S. The agency head for the DFS is the Chief Financial Officer (CFO).[1] The DFS has the following divisions and offices:

- Division of Accounting and Auditing;
- Division of Consumer Services;
- Division of Funeral, Cemetery, and Consumer Services;
- Division of Insurance Agent and Agency Services;
- Division of Investigative and Forensic Services;
- Division of Public Assistance Fraud;
- Division of Rehabilitation and Liquidation;
- Division of Risk Management;
- Division of State Fire Marshal;
- Division of Treasury;
- Division of Unclaimed Property;
- Division of Workers' Compensation;
- Division of Administration; and
- Office of Insurance Consumer Advocate.[2]

[1] Section 20.121(1), F.S.
[2] Section 20.121(2), F.S.

The bill deals with various divisions and programs within the DFS. The divisions and programs changed by the bill are briefly discussed as follows.

Division of the Treasury

The CFO, or Treasurer, is the state treasurer.[3] The Division of the Treasury within the DFS has three bureaus:

- Bureau of Funds Management;
- Bureau of Collateral Management; and
- Bureau of Deferred Compensation.[4]

Section 17.56, F.S., requires the Division of Treasury to turn over to the Division of Accounting and Auditing all warrants drawn by the Chief Financial Officer or the Comptroller and paid by the Division of Treasury. The warrants shall be turned over as soon as the Division of Treasury shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn. The DFS reports that this requirement was created with the divisions were housed in separate agencies.[5]

Division of Funeral, Cemetery, and Consumer Services

Regulation of Licensees

The Board of Funeral, Cemetery, and Consumer Services, within the DFS, licenses and regulates cemeteries, funeral directors, embalmers, burial rights brokers, and others in the death care industry. The Board of Funeral, Cemetery, and Consumer Services licenses:

- Embalmer apprentices
- Embalmer interns
- Funeral director interns
- Funeral directors
- Funeral director and embalmers
- Direct disposers
- Monument establishment sales agents
- Preneed sales agents

Current law generally requires each establishment have a licensed funeral director, embalmer, or direct disposer in charge of that establishment. Section 497.380, F.S., provides that each licensed funeral establishment must have one full-time funeral director in charge. Since October 1, 2010, the full-time funeral director in charge must hold an active, valid embalmer license or combination license as a funeral director and an embalmer under most circumstances. Section 497.476, F.S., allows persons to be licensed as both a funeral director and an embalmer.

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[3] Section 20.121(1), F.S.

[4] Department of Financial Services, Division of Treasury, *Annual Report 2018* (available at https://www.myfloridacfo.com/Division/Treasury/Reports/AnnualReports/docs/2018TreasuryAnnualReport.pdf last visited March 17, 2019).

[5] *See* Department of Financial Services, *SB 1704 Legislative Bill Analysis* (March 12, 2019) (on file with the Senate Committee on Banking and Insurance).

Persons holding a combination license as a funeral director and an embalmer are subject to regulation both as a funeral director and an embalmer.

The full-time funeral director may not be the full-time funeral director in charge of any other funeral establishment or of any other direct disposal establishment. The funeral director in charge is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable federal and state laws and rules.[6] Each establishment must have a funeral director reasonably available to the public during normal business hours.[7]

Section 497.385, F.S., requires each licensed centralized embalming facility to have at least one full-time embalmer in charge. The full-time embalmer in charge may not be the full-time embalmer in charge, full-time funeral director in charge, or full-time direct disposer in charge of any other establishment licensed under ch. 497, F.S.

Section 497.606, F.S., requires each cinerator facility to have one full-time licensed direct disposer or licensed funeral director in charge for that facility. Such person may be in charge of only one facility. The licensed funeral director or licensed direct disposer is responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules.[8]

Preneed Contracts

A "preneed contract" is any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.[9] Persons who sell preneed contracts are licensed by the Board of Funeral, Cemetery, and Consumer Services.[10] Section 497.458, F.S., requires any person who receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise to deposit certain percentages of the amounts received with a trust company operating pursuant to ch. 660, F.S., with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers. Trust companies operating under ch. 660, F.S., are domiciled in Florida.

Care and Maintenance Trust Funds

A cemetery company has a duty to ensure that the grounds, structures, and other improvements of the cemetery are well cared for and maintained in a proper and dignified condition.[11] The cemetery company must establish a "care and maintenance" trust fund with a trust company operating under ch. 660, F.S.

[6] Section 497.380(7), F.S.
[7] Section 497.380(7), F.S.
[8] Section 497.606(8), F.S.
[9] Section 497.005(61), F.S.
[10] Section 497.453, F.S.
[11] Section 497.262, F.S.

Division of Agent and Agency Services

The DFS licenses and regulates insurance agents, insurance agencies, and insurance adjusters. There are over 50 different types of licenses. Typically, obtaining a license involves completing education requirements, submitting to a criminal and professional background check, passing an examination, and paying a license fee. Some licensees must act as apprentices supervised by others when performing duties. This bill makes changes to various agent licensing provisions. Each change is discussed in Section III, Effect of Proposed Changes.

DFS Property Insurance Mediation Program

Section 627.7015, F.S., creates a property insurance mediation program through the DFS. It is available for claims under personal lines and commercial residential policies before commencing the appraisal process, or before commencing litigation.[12] An insurer must notify the policyholder of the right to participate in mediation at the time of the claim.[13] Mediation is nonbinding. However, if a written settlement is reached, the policyholder has 3 business days within which the policyholder may rescind the settlement unless the policyholder has cashed or deposited any check or draft disbursed to the policyholder for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it is binding and acts as a release of all specific claims that were presented in that mediation conference.[14]

Division of State Fire Marshal

The CFO serves as the State Fire Marshal.[15] The Division of State Fire Marshal:
- Conducts fire/life safety inspections and construction plans review on all state-owned buildings;
- Regulates the fireworks and the fire sprinkler industries, inspects and licenses boilers;
- Certifies fire suppression industry workers;
- Approves firefighter training curricula;
- Offers fire service training at the Florida State Fire College; and
- Certifies that fire service members meet industry-based standards.[16]

Division of Unclaimed Property

The DFS administers the Florida Disposition of Unclaimed Property Act. Unclaimed property is any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[17] The DFS Division of Unclaimed Property is responsible for receiving property,

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[12] Section 627.7015(1), F.S.
[13] Section 627.7015(2), F.S.
[14] Section 627.7015(6), F.S.
[15] Section 633.104, F.S.
[16] *See* https://www.myfloridacfo.com/division/sfm/ (last visited March 19, 2019).
[17] Sections 717.104-717.116, F.S.

attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations and persons may claim their property at any time and at no cost.

III. Effect of Proposed Changes:

Financial Records and Reporting of Audits

Section 1 amends s. 17.56, F.S., to require the Division of Treasury to maintain all warrants drawn by the CFO for a period of 10 years from the date the warrant was presented for payment. It removes the requirement that the Division of Treasury turn over the warrants to the Division of Accounting and Auditing.

Division of Funeral, Cemetery, and Consumer Services

Regulation of Licensees

Sections 6, 7, 12, and 13 amends ss. 497.380, 497.385, 497.604, and 497.606, F.S., to allow a funeral director with appropriate licenses to serve as a funeral director in charge for a total of two funeral establishments, centralized embalming facilities, direct disposal establishments, or cinerator facilities as long as the two locations are not more than 75 miles apart measured in a straight line. The bill allows a funeral director to serve as a funeral director in charge if the establishment does not have an embalming room on site.

Section 7 amends s. 497.385, F.S., to allow an embalmer in charge of a centralized embalming facility to also serve as a funeral director in charge or as a direct disposer in charge if the embalmer has appropriate licenses.

The bill makes changes to the combination license for funeral directors and embalmers.

Section 4 requires an applicant for a combination license as a funeral director and an embalmer to hold the educational credentials required for licensure as a funeral director, which are:

- An associate in arts degree, associate in science degree, or an associate in applied science degree in mortuary science approved by the licensing authority; or
- An associate degree or higher from a college or university accredited by a regional accrediting agency recognized by the United States Department of Education and is a graduate of a course of study in mortuary science or funeral service arts approved by the licensing authority from a college or university accredited by the American Board of Funeral Service Education.

Section 5 amends s. 497.377, F.S., relating to internship requirements for combined licensure as a funeral director and embalmer. The bill allows the internship requirement for licensure as funeral director and the internship requirement for licensure as an embalmer to be served concurrently.

The bill provides that an applicant who has not completed the educational credentials required for a combination license as funeral director and embalmer is eligible for licensure as a combination funeral director and embalmer intern if the applicant:

- Is currently enrolled in and attending a college accredited by the American Board of Funeral Service Education in an accredited course of study in mortuary science;
- Has completed at least 75 percent of the course of study in mortuary science, as certified by the college in which the applicant is currently enrolled; and
- Has taken and received a passing grade in a college credit course in mortuary law or funeral service law and has taken and received a passing grade in a college credit course in ethics.

The bill requires an application for internship for a combination funeral director and embalmer license to include the name and address of the funeral director and the embalmer who will supervise the intern and the name of the licensed funeral establishment where the training will be conducted.

The bill provides that a combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director or an embalmer. "Direct supervision" means supervision by a licensed:

- Funeral director who provides initial direction and periodic inspection of the arrangements and who is physically present or on the premises of the funeral establishment at all times when the tasks, functions, and duties relating to funeral directing are performed; or
- Embalmer who provides initial direction and instruction regarding the preservation of a dead human body in its entirety or in part and who is physically present or on the premises of the funeral establishment or embalming facility at all times when the tasks, functions, and duties relating to embalming are performed.[18]

The bill creates an exception to the direct supervision requirement upon the intern's graduation from an accredited college with an appropriate degree and the intern's passage of the laws and rules examination required by the Board of Funeral, Cemetery, and Consumer Services. If the intern meets those conditions and the funeral director in charge of the internship training agency certifies to the Board of Funeral, Cemetery, and Consumer Services that the intern is competent to complete the internship under general supervision, the intern may complete the internship under general supervision. "General supervision" means supervision by a licensed:

- Funeral director who is reasonably available and in a position to provide direction and guidance by being physically present, being on the premises of the funeral establishment, or being in proximity to the funeral establishment and available telephonically or by electronic communication at all times when the tasks, functions, and duties relating to funeral directing are performed; or
- Embalmer who is reasonably available and in a position to provide direction and guidance by being physically present, being on the premises of the funeral establishment or embalming facility, or being in proximity to the funeral establishment or embalming facility and available telephonically or by electronic communication at all times when the tasks, functions, and duties relating to embalming are performed.[19]

The bill provides that a combination funeral director and embalmer intern license expires 1 year after issuance. The bill allows the Board of Funeral, Cemetery, and Consumer Services to adopt

[18] Section 497.002(29), F.S.
[19] Section 497.002(39), F.S.

rules that allow a combination funeral director and embalmer intern to renew her or his funeral director and embalmer intern license for an additional 1-year period if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Preneed Contracts

Sections 2, 3, 7, 8, 10, and 11 allows licensees to use national trust companies for care and maintenance trust funds and preneed trust funds. The bill eliminates the requirement that trust companies must be operating pursuant to ch. 660, F.S.

Section 497.453, F.S., requires preneed licensees to file an annual report on the activities of any trust established pursuant to the Florida Funeral, Cemetery, and Consumer Services Act. **Section 9** requires preneed licensees which sold 15,000 or more preneed contracts in a year to file additional reports. The bill defines "Year 1" as a year in which a preneed licensee sells, or a group of preneed licensees under common control sells in aggregate, 15,000 or more preneed contracts in this state. The bill defines "Year 2" as the year immediately after Year 1. In Year 2, the bill requires the licensee or licensees to prepare a report of Florida preneed operations in Year 1 on a form prescribed by rule. The licensee must cause and pay for such report to be audited by an independent certified public accounting firm concerning the accuracy and fairness of the presentation of the data provided in the report. By December 31 of Year 2, the licensee must provide the report to the Division of Funeral, Cemetery, and Consumer Services along with a written and signed opinion of the certified public accounting firm concerning the accuracy and fairness of the presentation of the data reported in the report. The report must be prepared and submitted using forms and procedures specified by DFS rule. The bill provides that the DFS may adopt rules specifying the format of the report and the information to be reported.

Division of Agent and Agency Services

The bill creates a probationary licensing period for licensees or applicants who have committed certain felonies but have completed at least half of the disqualification period. It creates temporary licenses for personal lines agents, abolishes licenses as industrial fire insurance or burglary insurance agents, and provides that certain notices from insurers to appointed agents may be provided by e-mail. It repeals statutes relating to temporary licenses as a customer representative and credit and character reports. The bill changes adjuster qualification requirements and makes technical changes.

Section 626.207, F.S., requires mandatory disqualification periods for applicants for licensure who have committed criminal offenses. An applicant who has been found guilty of or has pleaded guilty or nolo contendere to any first degree felony, capital felony, felony involving money laundering, felony embezzlement, or a felony directly related to the financial services business is permanently barred from applying for licensure.

Lesser disqualifying periods apply to different felonies. An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a felony involving moral turpitude but not subject to a permanent bar is subject to a 15 year disqualifying period. For felonies that do not trigger a permanent bar or do not involve moral turpitude, the applicant is subject to a 7 year disqualifying period.

Section 17 amends s. 626.207, F.S., to allow an applicant who has been found guilty of or has pleaded guilty or nolo contendere to a felony not subject to a permanent bar and not subject to a 15 year disqualifying period to obtain a license on a probationary basis. The applicant must have served at least half of the disqualifying period and, during that time, the applicant must have not been found guilty or not pleaded guilty or nolo contendere to a crime. If the DFS issues a probationary license, the probation period ends upon the end of the disqualifying period.

Section 626.175, F.S., allows the DFS to issue temporary licenses as certain types of insurance agents. For example, the DFS may issue a temporary license as a general lines agent so a person can wind up the business affairs of another agent.[20] Personal lines agents are limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[21] There is no provision in s. 626.175, F.S., allowing temporary licenses as personal lines agents. **Section 16** allows the DFS to issue a temporary license as personal lines agent:
- To the executor or administrator of the estate of a deceased individual who was licensed and appointed as a personal lines agent at the time of his or her death;
- To a surviving next of kin of the deceased individual if no administrator or executor has been appointed and qualified; or
- To an individual otherwise qualified to be licensed as an agent, who has completed the educational or training requirements, and who is appointed to represent an insurer of the industrial[22] or ordinary-combination class[23] solely for the purpose of collecting premiums and servicing in-force policies.

The bill removes industrial fire and burglary agents from the temporary license statute because the license types are being eliminated by the bill. **Section 25** makes a conforming change to s. 626.729, F.S.

The bill removes the requirement that a temporary life agent has sat for the life agent examination prior to the termination of the temporary appointment. The temporary life agent must be appointed to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies.

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[20] *See* s. 626.175, F.S., and https://www.myfloridacfo.com/Division/Agents/Licensure/General/docs/T02-20.htm (last visited March 19, 2019).

[21] *See* ss. 626.015(17), 626.311, F.S.

[22] Section 626.782, F.S., defines an "industrial class insurer" is an insurer writing industrial life insurance and as to such insurance operates under a system of collecting a debit by its agent. Section 627.502, F.S., defines "industrial life insurance" as 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 which, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

[23] An "ordinary-combination class insurer" is an insurer writing both ordinary class insurance and industrial class insurance. *See* s. 626.783, F.S.

Section 18 amends s. 626.221, F.S., to provide that an applicant for an all-lines adjuster license who has been licensed as an all-lines adjuster and appointed as an independent adjuster or company employee adjuster is exempt from the examination if an application for licensure is filed within 48 months following the date of cancellation or expiration of the prior appointment.

Section 626.2815, F.S., mandates continuing education for insurance agents and insurance adjusters. **Section 19** removes continuing education requirement for license types that have been eliminated in recent years or are being eliminated by this bill.

Section 20 provides that no new or additional licenses to transact industrial fire insurance or burglary insurance[24] will be issued after July 1, 2019. There are approximately 100 of those licenses still active.[25] Current licensees will be allowed to renew their licenses and appointments.

The bill eliminates the examination requirement for crop hail and multiple peril crop insurance.

An appointment is the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer.[26] Section 626.471, F.S., provides that an appointing entity, such as an insurance company, may terminate an appointee's, such as an insurance agent, appointment at any time subject to any contract rights. The appointing entity must give the appointee 60 days' notice prior to termination and provide the notice by mail or by delivery in person. **Section 21** allows the appointing entity to give notice via email.

Section 22 repeals s. 626.521, F.S. Section 626.521, F.S., requires an appointing insurer to secure a full detailed credit and character report before appointing an agent, adjuster, service representative, customer representative, or managing general agent. The bill allows insurers to require credit or character reports as a condition of appointment but leaves the decision with the insurer. **Sections 14 and 15** amend ss. 626.022 and 626.025, F.S., to make conforming changes.

Section 23 amends s. 626.536, F.S., to remove unnecessary language. An "insurance agency" is a licensee so referring to both is redundant.

Section 626.6215, F.S., provides that the DFS may refuse to issue a license or suspend or revoke an insurance agency license under certain circumstances. **Section 24** provides for discretionary refusal, suspension or revocation when a licensee has had a denial, suspension, or revocation of, or any other adverse administrative action against, a license to practice or conduct any regulated profession, business, or vocation by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof. Similar language already exists in s. 626.621, F.S., for insurance agents.

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[24] Section 626.729, F.S., provides "industrial fire insurance" is insurance against loss by fire of either buildings and other structures or contents, which may include extended coverage; windstorm insurance; basic limits owners, landlords, or tenants liability insurance with single limits of $25,000; comprehensive personal liability insurance with a single limit of $25,000; or burglary insurance, under which the premiums are collected quarterly or more often and the face amount of the insurance provided by the policy on one risk is not more than $50,000, including the contents of such buildings and other structures, and the insurer issuing such policy is operating under a system of collecting a debit by its agents.

[25] *See* Department of Financial Services, *SB 1704 Legislative Bill Analysis* (March 15, 2019) (on file with the Senate Committee on Banking and Insurance).

[26] Section 626.015(4), F.S.

Section 26 repeals s. 626.7355, F.S., creating temporary license as a customer representative. Customer representatives obtain licensure by meeting education and background check requirements so the temporary license is obsolete.

Sections 27 and 28 make technical changes to ss. 626.8437 and 626.844, F.S.

Section 626.865, F.S., provides qualifications for licensure as a public adjuster. One of the qualifications is that the applicant has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months as a public adjuster apprentice, as an independent adjuster, or as a company employee adjuster.[27] Section 626.8732, F.S., has a similar requirement for nonresident adjusters except they must have been employed for a year. **Section 29** creates the same 6 month employment requirement for nonresident adjusters as current law has for resident adjusters.

Section 36 amends s. 648.49, F.S., to require a bail bond agent whose license or appointment has been suspended to file an application for reinstatement with the DFS before the license or appointment can be reinstated. This revision makes the bail bond statute consistent with other DFS licensing statutes.

DFS Property Insurance Mediation Program

Section 30 amends s. 627.7015, F.S., to require the mediator to provide a written report of the results of the mediation, including any settlement amount, to the insurer, the policyholder, and the policyholder's representative, if the policyholder is represented. This report must be provided at the conclusion of the mediation.

Division of State Fire Marshal

Inspections

Section 633.218, F.S., requires the State Fire Marshal to inspect, or have inspected, each state-owned building on a recurring basis. A state-owned building or state-leased building or space must be identified through use of the United States National Grid Coordinate System.[28] **Section 32** removes that requirement. The DFS reports that it will identify locations using the FL-SOLARIS[29] and information from the Department of Management Services. It will not use outside vendors.[30]

Currently, licensed fire protection system contractors are mandated to conduct inspections of fire protection systems pursuant to the Florida Fire Prevention Code. Section 633.312, F.S., mandates that the inspecting contractor provide the building owner and the local authority having jurisdiction a copy of the inspection report. There are no limitations on inspection report format or uniform submission requirements. Some local jurisdictions have contracted with third-party

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[27] Section 626.8732, F.S.
[28] Section 633.218(1)(f), F.S. The National Grid may be found here: https://www.arcgis.com/home/item.html?id=dc352c5f18854d82b32bce92c0b6656b (last visited March 21, 2019).
[29] *See* https://floridadep.gov/lands/fl-solaris (last visited March 26, 2019).
[30] Email from the Department of Financial Services staff to committee staff (on file with the Committee on Banking and Insurance).

software vendors and require the submission of inspection reports to their jurisdiction to be done via these systems. **Section 34** amends s. 633.312, F.S., to require submission pursuant to a statewide uniform set of procedures of fire protection system inspection reports completed by fire protection system contractors. The procedures apply to a local authority having jurisdiction or a third-party vendor contracted for the collection of such reports. The bill requires the State Fire Marshal to adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

- A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.
- A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

Section 31 makes a conforming change.

Installation of Fire Extinguishers and Preengineered Systems

Section 633.306, F.S., provides requirements for the installation of fire extinguishers and preengineered systems. A fire extinguisher is a cylinder that:

- Is portable and can be carried or is on wheels.
- Is manually operated.
- May use a variety of extinguishing agents that are expelled under pressure.
- Is rechargeable or nonrechargeable.
- Is installed, serviced, repaired, recharged, inspected, and hydrotested according to applicable procedures of the manufacturer, standards of the National Fire Protection Association, and the Code of Federal Regulations.
- Is listed by a nationally recognized testing laboratory.[31]

A preengineered system is a fire suppression system which:

- Uses any of a variety of extinguishing agents.
- Is designed to protect specific hazards.
- Must be installed according to pretested limitations and configurations specified by the manufacturer and applicable National Fire Protection Association (NFPA) standards. Only those chapters within the National Fire Protection Association standards which pertain to servicing, recharging, repairing, installing, hydrotesting, or inspecting any type of preengineered fire extinguishing system may be used.
- Must be installed using components specified by the manufacturer or components that are listed as equal parts by a nationally recognized testing laboratory such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc.

[31] Section 633.102(8), F.S.

- Must be listed by a nationally recognized testing laboratory.[32]

Section 633.306, F.S., provides the following requirements for installation of fire extinguishers and preengineered systems:

- Fire equipment dealers must be licensed;
- Equipment supplied must be listed by a nationally recognized testing laboratory;
- Equipment must be installed in accordance with the applicable standards of the National Fire Protection Association and the manufacturer's drawings and specifications;
- Each piece of equipment supplied shall be guaranteed for a period of 1 year against defects in material or operation;
- The fire equipment dealer must furnish the consumer with the manufacturer's descriptive literature, including the specifications and maintenance requirements as approved by the nationally recognized testing laboratory, the operating instructions for all equipment installed, the mechanical drawings and specifications for proper installation and use of equipment, and a diagram of the final installation.

Section 33 amends s. 633.306, F.S., to require fire extinguisher and preengineered systems equipment to be installed using only components and parts specified by the manufacturer or listed as equal parts by a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc. The use of similar language in s. 633.306, F.S., and 633.102(25), F.S., should clarify that the use of equal parts as designated by recognized testing laboratories is permitted in the installation of fire extinguishers[33] and preengineered systems.[34]

Cancer Prevention Best Practices

Section 633.520, F.S., requires every firefighter employer to furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the lives, health, and safety of such firefighter employees. **Section 35** requires the Division of State Fire Marshal to adopt rules to establish employer cancer prevention best practices relating to personal protective equipment, decontamination, fire suppression, and fire stations.

Division of Unclaimed Property

Current law in s. 717.124, F.S., allows an apparent owner to electronically submit a claim for unclaimed property to the DFS. If a claim is submitted electronically for $1,000 or less, the DFS may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement.[35] **Section 37** changes the claim amount from $1,000 to $5,000.

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[32] Section 633.102(25), F.S.
[33] Section 633.102(8), F.S., requires that fire extinguishers be installed pursuant to the Code of Federal Regulations. Fire extinguisher installers would be required to comply with requirements in both statutes.
[34] Email from DFS staff to committee staff dated March 26, 2019 (on file with the Committee on Banking and Insurance).
[35] Section 717.124(7), F.S.

The bill contains provisions allowing the DFS to be more active in attempting to return property to owners. The bill provides that the DFS may develop and implement an identification verification and disbursement process for accounts valued at less than $2,000. After the DFS receives the property and adds the property to the database, the account may be disbursed to an apparent owner after the DFS has verified that the apparent owner is living and has verified the apparent owner's correct, current address. The DFS must include with the payment a notification and an explanation of the dollar amount, source, and property type of each account included in the disbursement. The bill also allows the DFS to develop and implement a verification and disbursement process for accounts which the apparent owner is a government entity. The bill provides rulemaking authority to administer this program.

The bill provides that the DFS may develop a process by which a registered claimant's representative may electronically submit to the DFS electronic images of completed claims and claim-related documents, including limited powers of attorney and purchase agreements that have been personally signed and dated by a claimant or by a seller after the original documents provided by the claimant or by the seller to the claimant's representative are physically received and in the claimant's representative's possession for any respective claim.

Each claim filed by a registered claimant's representative must include a statement by the claimant's representative or buyer accurately attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or buyer. All original documents must be kept in original form, by claim number, under the secure control of the claimant's representative or buyer and must be made available for inspection by the DFS.

The bill provides rulemaking authority to administer these programs.

Effective Date

Section 38 provides an effective date of July 1, 2019.

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:

The establishment of employer cancer prevention best practices may result in increased costs of compliance for the governmental entities that employ firefighters. To the extent that such best practices are effective in reducing cancer, the best practices may reduce financial costs related to cancer treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.56, 497.263, 497.266, 497.376, 497.377, 497.380, 497.385, 497.452, 497.453, 497.458, 497.464, 497.604, 497.606, 626.022, 626.025, 626.175, 626.207, 626.221, 626.2815, 626.321, 626.471, 626.536, 626.6215, 626.729, 626.8437, 626.844, 626.8732, 627.7015, 633.216, 633.218, 633.306, 633.312, 633.520, 648.49, and 717.124.

This bill repeals the following sections of the Florida Statutes: 626.521 and 626.7355.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS:
- Allows a funeral director in charge to be in charge of two locations as long as those locations are not more than 75 miles apart;

- Allows a person who is disqualified from licensure due to a felony conviction that is not subject to permanent disqualification from licensure, to obtain a probationary license after serving half of the disqualification period;
- Revises the DFS Property Insurance Mediation Program to require the mediator to provide the policyholder with the results of the mediation at the conclusion of the mediation;
- Removes a provision allowing the DFS to keep $30 million in the Unclaimed Property Trust Fund and maintains current law; and
- Requires fire extinguisher and preengineered systems equipment to be installed using only components and parts specified by the manufacturer or listed as equal parts by a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2019	.	
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The Committee on Banking and Insurance (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 17.56, Florida Statutes, is amended to read:

17.56 Division of Treasury to maintain ~~turn over to the Division of Accounting and Auditing~~ all warrants paid.—The Division of Treasury shall maintain ~~turn over to the Division of Accounting and Auditing~~ all warrants drawn by the Chief

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Financial Officer ~~or the Comptroller~~ and paid by the Division of Treasury for a period of 10 years from the date the warrant was presented for payment. ~~The warrants shall be turned over as soon as the Division of Treasury shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn.~~

Section 2. Paragraph (a) of subsection (3) of section 497.263, Florida Statutes, is amended to read:

497.263 Cemetery companies; license required; licensure requirements and procedures.—

(3) ACTION CONCERNING APPLICATIONS.—If the licensing authority finds that the applicant meets the criteria established in subsection (2), the applicant shall be notified that a license will be issued when all of the following conditions are satisfied:

(a) The establishment of a care and maintenance trust fund containing not less than $50,000 has been certified by a trust company ~~operating pursuant to chapter 660~~, a state or national bank holding trust powers, or a savings and loan association holding trust powers as provided in s. 497.458, pursuant to a trust agreement approved by the licensing authority. The $50,000 required for the care and maintenance trust fund shall be over and above the $50,000 net worth required by subsection (2).

Section 3. Subsection (1) of section 497.266, Florida Statutes, is amended to read:

497.266 Care and maintenance trust fund; remedy of department for noncompliance.—

(1) A ~~No~~ cemetery company may not establish a cemetery, or operate a cemetery if already established, without providing for

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the future care and maintenance of the cemetery, for which a care and maintenance trust fund shall be established, to be known as "the care and maintenance trust fund of ....." The trust fund shall be established with a trust company ~~operating pursuant to chapter 660~~, with a state or national bank holding trust powers, or with a federal or state savings and loan association holding trust powers. Trust funds which are with a state or national bank or savings and loan association licensed in this state on October 1, 1993, shall remain in force; however, when the amount of any such trust fund exceeds the amount that is insured by an agency of the Federal Government, the cemetery company shall transfer that trust fund to a trust company ~~operating pursuant to chapter 660~~, to a state or national bank holding trust powers, or to a federal or state savings and loan association holding trust powers.

Section 4. Section 497.376, Florida Statutes, is amended to read:

497.376 License as funeral director and embalmer permitted.—

(1) This chapter does not prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time. There may be issued and renewed by the licensing authority a combination license as both funeral director and embalmer to persons meeting the separate requirements for both licenses as set forth in this chapter. The licensing authority may adopt rules providing procedures for applying for and renewing such combination license. The licensing authority may by rule establish application, renewal, and other fees for such combination license, which fees may ~~shall~~ not exceed the sum of

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the maximum fees for the separate funeral director and embalmer license categories as provided in this chapter. A person ~~Persons~~ holding a combination license as a funeral director and an embalmer is ~~shall be~~ subject to regulation under this chapter both as a funeral director and an embalmer.

(2) Except as provided under s. 497.377, an applicant for a combination license as both a funeral director and an embalmer must hold the educational credentials required for licensure as a funeral director as provided under s. 497.373(1)(d).

Section 5. Section 497.377, Florida Statutes, is amended to read:

497.377 Combination license as funeral director and embalmer; ~~Concurrent~~ internships.—

(1) To meet internship requirements for combined licensure as a funeral director and an embalmer, the internship requirement for funeral directors and the internship requirement for embalmers ~~and funeral directors~~ may be served concurrently pursuant to rules adopted by the licensing authority.

(2)(a) An applicant who has not completed the educational credentials required for a combination license as funeral director and embalmer is eligible for licensure as a combination funeral director and embalmer intern if the applicant:

1. Is currently enrolled in and attending a college accredited by the American Board of Funeral Service Education (ABFSE) in an ABFSE-accredited course of study in mortuary science;

2. Has completed at least 75 percent of the course of study in mortuary science, as certified by the college in which the applicant is currently enrolled; and

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3. Has taken and received a passing grade in a college credit course in mortuary law or funeral service law and has taken and received a passing grade in a college credit course in ethics.

(b) An application for internship for a combination funeral director and embalmer license must include the name and address of the funeral director licensed under s. 497.373 or s. 497.374(1) and the embalmer licensed under s. 497.368 or s. 497.369 under whose supervision the intern will receive training and the name of the licensed funeral establishment where the training will be conducted.

(c) A combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1) and an embalmer who has an active, valid license under s. 497.368 or s. 497.369. However, a combination funeral director and embalmer intern may perform those tasks, functions, and duties under the general supervision of a licensed funeral director and embalmer upon the intern's graduation from a college accredited by the ABFSE with a degree as specified in s. 497.373(1)(d) and passage of the laws and rules examination required under s. 497.373(2)(b) if, after 6 months of direct supervision, the funeral director in charge of the internship training agency certifies to the licensing agency that the intern is competent to complete the internship under general supervision.

(d)1. A combination funeral director and embalmer intern license expires 1 year after issuance and, except as provided in subparagraph 2., may not be renewed.

2. The licensing authority may adopt rules that allow a combination funeral director and embalmer intern to renew her or his funeral director and embalmer intern license for an additional 1-year period if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness, personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Section 6. Subsection (7) of section 497.380, Florida Statutes, is amended to read:

497.380 Funeral establishment; licensure; display of license.—

(7) Each licensed funeral establishment shall have a ~~one full-time~~ funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for the establishment. The ~~full-time~~ funeral director in charge is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. A funeral director in charge, with appropriate active licenses, may serve as a funeral director in charge for not more than a total of 2 funeral establishments, centralized embalming facilities, direct disposal establishments, or cinerator facilities, as long as the 2 locations are not more than 75 miles apart as measured in a straight line ~~The full-time funeral~~

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~~director in charge must have an active license and may not be the full-time funeral director in charge of any other funeral establishment or of any other direct disposal establishment~~. ~~Effective October 1, 2010,~~ The ~~full-time~~ funeral director in charge must hold an active, valid <u>funeral director license and an active, valid</u> embalmer license or combination license as a funeral director and an embalmer. However, a funeral director may <u>serve as a funeral director in charge without an embalmer license or combination license if the establishment does not have an embalming room on site, or may</u> continue as the ~~full-time~~ funeral director in charge without an embalmer or combination license if, as of September 30, 2010:

(a) The funeral establishment and the funeral director both have active, valid licenses.

(b) The funeral director is currently the full-time funeral director in charge of the funeral establishment.

(c) The name of the funeral director was included, as required in subsection (4), in the funeral establishment's most recent application for issuance or renewal of its license or was included in the establishment's report of change provided under paragraph (12)(c).

Section 7. Paragraph (b) of subsection (2) of section 497.385, Florida Statutes, is amended to read:

497.385 Removal services; refrigeration facilities; centralized embalming facilities.—In order to ensure that the removal, refrigeration, and embalming of all dead human bodies is conducted in a manner that properly protects the public's health and safety, the licensing authority shall adopt rules to provide for the licensure of removal services, refrigeration

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facilities, and centralized embalming facilities operated independently of funeral establishments, direct disposal establishments, and cinerator facilities.

(2) CENTRALIZED EMBALMING FACILITIES.—In order to ensure that all funeral establishments have access to embalming facilities that comply with all applicable health and safety requirements, the licensing authority shall adopt rules to provide for the licensure and operation of centralized embalming facilities and shall require, at a minimum, the following:

(b) Each licensed centralized embalming facility shall have at least one ~~full-time~~ embalmer in charge. The ~~full-time~~ embalmer in charge must have an active, valid embalmer license or a combination license as a funeral director and an embalmer ~~and may not be the full-time embalmer in charge, full-time funeral director in charge, or full-time direct disposer in charge of any other establishment licensed under this chapter~~. An embalmer in charge, with appropriate active licenses, may also serve as a funeral director in charge under s. 497.380(7) or as a direct disposer in charge under s. 497.604(8). A funeral director in charge, with appropriate active licenses, may serve as a funeral director in charge for not more than a total of 2 funeral establishments, centralized embalming facilities, direct disposal establishments, or cinerator facilities, as long as the 2 locations are not more than 75 miles apart as measured in a straight line.

Section 8. Subsection (2) of section 497.452, Florida Statutes, is amended to read:

497.452 Preneed license required.—

(2)(a) No person may receive any funds for payment on a

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preneed contract who does not hold a valid preneed license.

(b) ~~The provisions of~~ Paragraph (a) does ~~do~~ not apply to a trust company ~~operating pursuant to chapter 660~~, to a national or state bank holding trust powers, or to a federal or state savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

Section 9. Subsection (8) of section 497.453, Florida Statutes, is amended to read:

497.453 Application for preneed license, procedures and criteria; renewal; reports.—

(8) ANNUAL TRUST REPORTS.—

(a) On or before April 1 of each year, the preneed licensee shall file in the form prescribed by rule a full and true statement as to the activities of any trust established by it pursuant to this part for the preceding calendar year.

(b) A preneed licensee that sold, or a group of preneed licensees under common control which sold in aggregate, 15,000 or more preneed contracts in this state in the preceding year shall additionally comply with this paragraph.

1. As used in this paragraph, the term:

a. “Year 1” means a year in which a preneed licensee sells, or a group of preneed licensees under common control sells in aggregate, 15,000 or more preneed contracts in this state.

b. “Year 2” means the year immediately after Year 1.

2. As to each Year 1, the licensee or licensees shall, during Year 2:

a. Prepare, with respect to each such licensee, a report of Florida preneed operations in Year 1 on a form prescribed by

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department rule;

b. Cause and pay for such report to be audited by an independent certified public accounting firm concerning the accuracy and fairness of the presentation of the data provided in the report; and

c. By December 31 of Year 2, provide the report to the division along with a written and signed opinion of the certified public accounting firm concerning the accuracy and fairness of the presentation of the data provided in the report.

2. The report must be prepared and submitted using forms and procedures specified by department rule. The department may adopt rules specifying the format of the report and the information to be reported.

Section 10. Paragraph (c) of subsection (1) of section 497.458, Florida Statutes, is amended to read:

497.458 Disposition of proceeds received on contracts.—

(1)

(c) Such deposits shall be made within 30 days after the end of the calendar month in which payment is received, under the terms of a revocable trust instrument entered into with a trust company ~~operating pursuant to chapter 660~~, with a national or state bank holding trust powers, or with a federal or state savings and loan association holding trust powers.

Section 11. Subsection (2) of section 497.464, Florida Statutes, is amended to read:

497.464 Alternative preneed contracts.—

(2) The contract must require that a trust be established by the preneed licensee on behalf of, and for the use, benefit, and protection of, the purchaser and that the trustee must be a

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trust company ~~operating pursuant to chapter 660~~, a national or state bank holding trust powers, or a federal or state savings and loan association holding trust powers.

Section 12. Subsection (8) of section 497.604, Florida Statutes, is amended to read:

497.604 Direct disposal establishments, license required; licensing procedures and criteria; license renewal; regulation; display of license.—

(8) SUPERVISION OF FACILITIES.—

(a) ~~Effective October 1, 2010,~~ Each direct disposal establishment shall have a ~~one full-time licensed~~ funeral director ~~acting as the direct disposer~~ in charge, subject to s. 497.380(7). However, a licensed direct disposer may continue acting as the direct disposer in charge, if, as of September 30, 2010:

1. The direct disposal establishment and the licensed direct disposer both have active, valid licenses.

2. The licensed direct disposer is currently acting as the direct disposer in charge of the direct disposal establishment.

3. The name of the licensed direct disposer was included, as required in paragraph (2)(c), in the direct disposal establishment’s most recent application for issuance or renewal of its license or was included in the establishment’s notice of change provided under subsection (7).

(b) The ~~licensed~~ funeral director in charge or ~~licensed~~ direct disposer in charge of a direct disposal establishment must be reasonably available to the public during normal business hours for the establishment ~~and may be in charge of only one direct disposal establishment~~. The ~~licensed~~ funeral

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director in charge or ~~licensed~~ direct disposer in charge of the establishment is responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules. A funeral director in charge, with appropriate active licenses, may serve as a funeral director in charge for not more than a total of 2 funeral establishments, centralized embalming facilities, direct disposal establishments, or cinerator facilities, as long as the 2 locations are not more than 75 miles apart as measured in a straight line.

Section 13. Subsection (8) of section 497.606, Florida Statutes, is amended to read:

497.606 Cinerator facility, licensure required; licensing procedures and criteria; license renewal; regulation.—

(8) SUPERVISION OF FACILITIES.—Each cinerator facility shall have a ~~one full-time licensed~~ direct disposer in charge or a ~~licensed~~ funeral director in charge for that facility. ~~Such person may be in charge of only one facility.~~ Such ~~licensed~~ funeral director in charge or ~~licensed~~ direct disposer in charge shall be responsible for making sure the facility, its operations, and all persons employed in the facility comply with all applicable state and federal laws and rules. A funeral director in charge, with appropriate active licenses, may serve as a funeral director in charge for not more than a total of 2 funeral establishments, centralized embalming facilities, direct disposal establishments, or cinerator facilities, as long as the 2 locations are not more than 75 miles apart as measured in a straight line.

Section 14. Paragraph (a) of subsection (1) of section

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626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.511 ~~ss. 626.342-626.521~~, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

Section 15. Subsection (4) of section 626.025, Florida Statutes, is amended to read:

626.025 Consumer protections.—To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(4) The submission of credit and character reports~~,~~ as required by s. 626.171 ~~or s. 626.521~~.

Section 16. Subsection (1) of section 626.175, Florida Statutes, is amended to read:

626.175 Temporary licensing.—

(1) The department may issue a nonrenewable temporary license for a period not to exceed 6 months authorizing the appointment of a general lines insurance agent, ~~or a~~ life agent, or personal lines agent ~~an industrial fire or burglary agent~~, subject to the conditions described in this section. The fees paid for a temporary license and appointment must ~~shall~~ be as

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specified in s. 624.501. Fees paid may ~~shall~~ not be refunded after a temporary license has been issued.

(a) An applicant for a temporary license must be:

1. A natural person at least 18 years of age.

2. A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.

(b)1. In the case of a general lines agent, the department may issue a temporary license to an employee, a family member, a business associate, or a personal representative of a licensed general lines agent for the purpose of continuing or winding up the business affairs of the agent or agency in the event the licensed agent has died or become unable to perform his or her duties because of military service or illness or other physical or mental disability, subject to the following conditions:

a. No other individual connected with the agent’s business may be licensed as a general lines agent.

b. The proposed temporary licensee shall be qualified for a regular general lines agent license under this code except as to residence, examination, education, or experience.

c. Application for the temporary license shall have been made by the applicant upon statements and affidavit filed with the department on forms prescribed and furnished by the department.

d. Under a temporary license and appointment, the licensee shall not represent any insurer not last represented by the agent being replaced and shall not be licensed or appointed as to any additional kind, line, or class of insurance other than those covered by the last existing agency appointments of the replaced agent. If an insurer withdraws from the agency during the temporary license period, the temporary licensee may be appointed by another similar insurer but only for the period remaining under the temporary license.

2. A regular general lines agent license may be issued to a temporary licensee upon meeting the qualifications for a general lines agent license under s. 626.731.

(c) In the case of a life agent, the department may issue a temporary license:

1. To the executor or administrator of the estate of a deceased individual licensed and appointed as a life agent at the time of death;

2. To a surviving next of kin of the deceased individual, if no administrator or executor has been appointed and qualified; however, any license and appointment under this subparagraph shall be canceled upon issuance of a license to an executor or administrator under subparagraph 1.; or

3. To an individual otherwise qualified to be licensed as an agent who has completed the educational or training requirements prescribed in s. 626.7851 and who is appointed ~~has successfully sat for the required examination prior to termination of such 6-month period. The department may issue this temporary license only in the case of a life agent~~ to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance.

(d) In the case of a personal lines ~~limited license authorizing appointment as an industrial fire or burglary~~ agent,

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the department may issue a temporary license:

1. To the executor or administrator of the estate of a deceased individual who was licensed and appointed as a personal lines agent at the time of his or her death;

2. To a surviving next of kin of the deceased individual if no administrator or executor has been appointed and qualified. However, a license and appointment under this subparagraph must be canceled upon issuance of a license to an executor or administrator under subparagraph 1.; or

3. To an individual otherwise qualified to be licensed as an agent, who has completed the educational or training requirements prescribed in s. 626.732, and who is appointed to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance ~~to an individual otherwise qualified to be licensed as an agent who has completed the educational or training requirements prescribed in s. 626.732 and has successfully sat for the required examination prior to termination of the 6-month period~~.

Section 17. Paragraph (b) of subsection (3) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(3) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(b) A 7-year disqualifying period for all felonies to which neither the permanent bar in subsection (2) nor the 15-year disqualifying period in paragraph (a) applies. Notwithstanding subsection (4), an applicant who served at least half of the disqualifying period may reapply for a license if, during that time, the applicant has not been found guilty of or has not pleaded guilty or nolo contendere to a crime. The department may issue the applicant a license on a probationary basis for the remainder of the disqualifying period. The applicant's probationary period ends at the end of the disqualifying period.

Section 18. Subsection (1) and paragraph (e) of subsection (2) of section 626.221, Florida Statutes, are amended to read:

626.221 Examination requirement; exemptions.—

(1) The department may ~~shall~~ not issue any license as agent or adjuster to any individual who has not qualified for, taken, and passed to the satisfaction of the department a written examination of the scope prescribed in s. 626.241.

(2) However, an examination is not necessary for any of the following:

(e) An applicant who has been licensed as an all-lines adjuster and appointed as an independent adjuster or company employee adjuster and who files ~~if~~ an application for an all-lines adjuster license ~~licensure is filed~~ with the department within 48 months after ~~following~~ the date of cancellation or expiration of the prior appointment.

Section 19. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 5-hour update course every 2 years which is specific to the license held by the licensee. The course must be

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developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(d) An individual who holds a license as a customer representative~~, limited customer representative, motor vehicle physical damage and mechanical breakdown insurance agent, or an industrial fire insurance or burglary insurance agent~~ and who is not a licensed life or health agent~~,~~ must also complete a minimum of 5 hours of continuing education courses every 2 years.

Section 20. Paragraphs (b) and (f) of subsection (1) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

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(b) *Industrial fire insurance or burglary insurance.*—License covering only industrial fire insurance or burglary insurance. ~~The applicant for such a license must pass a written examination covering such insurance.~~ A licensee under this paragraph may not hold a license as an agent for any other or additional kind or class of insurance coverage except for life insurance and health insurance. Effective July 1, 2019, all licensees holding such limited license and appointment may renew the license and appointment, but no new or additional licenses may be issued pursuant to this paragraph and a licensee whose limited license under this paragraph has been terminated, suspended, or revoked may not have such license reinstated.

(f) *Crop hail and multiple-peril crop insurance.*—License for insurance covering crops subject to unfavorable weather conditions, fire or lightning ~~lightening~~, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils which is provided by the private insurance market~~,~~ or which is subsidized by the Federal Group Insurance Corporation including multi-peril crop insurance. Notwithstanding any other ~~provision of~~ law, the limited license may be issued to a bona fide salaried employee of an association chartered under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.~~, who satisfactorily completes the examination prescribed by the department pursuant to s. 626.241(5).~~ The agent must be appointed by, and his or her limited license requested by, a licensed general lines agent. All business transacted by the agent must be on behalf of, in the name of, and countersigned by the agent by whom he or she is appointed. Sections 626.561 and 626.748, relating to records, apply to all business written

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pursuant to this section. The licensee may be appointed by and licensed for only one general lines agent or agency.

Section 21. Subsection (1) of section 626.471, Florida Statutes, is amended to read:

626.471 Termination of appointment.—

(1) Subject to an appointee’s contract rights, an appointing entity may terminate its appointment of any appointee at any time. Except when termination is upon a ground that ~~which~~ would subject the appointee to suspension or revocation of his or her license and appointment under s. 626.611 or s. 626.621, and except as provided by contract between the appointing entity and the appointee, the appointing entity shall give at least 60 days’ advance written notice of its intention to terminate such appointment to the appointee~~, either~~ by delivery thereof to the appointee in person, ~~or~~ by mailing it~~,~~ postage prepaid, or by e-mail. If delivery is by mail or e-mail, the notice must be addressed to the appointee at his or her last mailing or e-mail address of record with the appointing entity. Notice is ~~so mailed shall be~~ deemed to have been given when deposited in a United States Postal Service mail depository or when the e-mail is sent, as applicable.

Section 22. Section 626.521, Florida Statutes, is repealed.

Section 23. Section 626.536, Florida Statutes, is amended to read:

626.536 Reporting of administrative actions.—Within 30 days after the final disposition of an administrative action taken against a licensee ~~or insurance agency~~ by a governmental agency or other regulatory agency in this or any other state or jurisdiction relating to the business of insurance, the sale of

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securities, or activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty, the licensee ~~or insurance agency~~ must submit a copy of the order, consent to order, or other relevant legal documents to the department. The department may adopt rules to administer this section.

Section 24. Subsection (7) is added to section 626.6215, Florida Statutes, to read:

626.6215 Grounds for discretionary refusal, suspension, or revocation of insurance agency license.—The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any insurance agency if it finds, as to any insurance agency or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such insurance agency, that any one or more of the following applicable grounds exist:

(7) A denial, suspension, or revocation of, or any other adverse administrative action against, a license to practice or conduct any regulated profession, business, or vocation by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof.

Section 25. Section 626.729, Florida Statutes, is amended to read:

626.729 "Industrial fire insurance" defined.—As used in ~~For the purposes of~~ this code, the term "industrial fire insurance" means: ~~is~~

(1) Insurance against loss by fire of either buildings and other structures or contents, which may include extended coverage;

(2) Windstorm insurance;

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(3) Basic limits owners, landlords, or tenants liability insurance with single limits of $25,000;

(4) Comprehensive personal liability insurance with a single limit of $25,000; or

(5) Burglary insurance, under which the premiums are collected quarterly or more often and the face amount of the insurance provided by the policy on one risk is not more than $50,000, including the contents of such buildings and other structures~~, and the insurer issuing such policy is operating under a system of collecting a debit by its agents. A temporary license for an industrial fire or burglary agent issued pursuant to s. 626.175 shall be solely for the purpose of collecting premiums and servicing in-force policies, and such licensee shall not directly or indirectly solicit, negotiate, or effect contracts of insurance~~.

Section 26. Section 626.7355, Florida Statutes, is repealed.

Section 27. Subsection (9) of section 626.8437, Florida Statutes, is amended to read:

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

(9) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful

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violation of any provision of the Florida Insurance Code ~~this act~~.

Section 28. Subsection (2) of section 626.844, Florida Statutes, is amended to read:

626.844 Grounds for discretionary refusal, suspension, or revocation of license or appointment.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency if it finds that as to the applicant or licensee or appointee, or any principal thereof, any one or more of the following grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.8437:

(2) Violation of any provision of the Florida Insurance Code ~~this act~~ in the course of dealing under the license or appointment.

Section 29. Paragraph (e) of subsection (1) and paragraphs (b) and (c) of subsection (2) of section 626.8732, Florida Statutes, are amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(1) The department shall, upon application therefor, issue a license to an applicant for a nonresident public adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(e) Has been licensed and employed as a public adjuster in the applicant's state of residence on a continual basis for the

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past 6 months ~~year~~, or, if the applicant's state of residence does not issue licenses to individuals who act as public adjusters, the applicant has been licensed and employed as a resident insurance company adjuster, a public adjuster, or an independent adjuster in his or her state of residence or any other state on a continual basis for the past 6 months ~~year~~.

(2) The applicant shall furnish the following with his or her application:

(b) If currently licensed as a resident public adjuster in the applicant's state of residence, a certificate or letter of authorization from the licensing authority of the applicant's state of residence, stating that the applicant holds a current or comparable license to act as a public adjuster and has held the license continuously for the past 6 months ~~year~~. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

(c) If the applicant's state of residence does not require licensure as a public adjuster and the applicant has been licensed as a resident insurance adjuster in his or her state of residence or any other state, a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as such an insurance adjuster and has held the license continuously for the past 6 months ~~year~~. The certificate or letter of authorization

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must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether or not the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

Section 30. Subsection (6) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(6)(a) Mediation is nonbinding; however, if a written settlement is reached, the policyholder has 3 business days within which the policyholder may rescind the settlement unless the policyholder has cashed or deposited any check or draft disbursed to the policyholder for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it is binding and acts as a release of all specific claims that were presented in that mediation conference.

(b) At the conclusion of the mediation, the mediator shall provide a written report of the results of mediation, including any settlement amount, to the insurer, the policyholder, and the policyholder’s representative if the policyholder is represented at the mediation.

Section 31. Subsection (1) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification;

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disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. Except as provided in s. 633.312(2), ~~and~~ (3), and (4), the firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

Section 32. Paragraph (f) of subsection (1) of section 633.218, Florida Statutes, is amended to read:

633.218 Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.—

(1)

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~~(f) A state-owned building or state-leased building or space shall be identified through use of the United States National Grid Coordinate System.~~

Section 33. Paragraph (c) of subsection (1) of section 633.306, Florida Statutes, is amended to read:

633.306 Requirements for installation, inspection, and maintenance of fire suppression equipment.—

(1) The requirements for installation of fire extinguishers and preengineered systems are as follows:

(c) Equipment must ~~shall~~ be installed in accordance with the applicable standards of the National Fire Protection Association and the manufacturer's drawings and specifications, using only components and parts specified by the manufacturer or listed as equal parts by a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc.

Section 34. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and subsection (3) of that section is amended, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

(3)(a) The inspecting contractor shall provide to the building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable uniform summary inspection report established under this chapter. The local authority having jurisdiction may accept uniform summary inspection reports by United States mail, by hand delivery, by electronic submission, or through a third-party vendor that collects the

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reports on behalf of the local authority having jurisdiction.

(b) The State Fire Marshal shall adopt rules to implement a uniform summary inspection report and submission procedures to be used by all third-party vendors and local authorities having jurisdiction. For purposes of this section, a uniform summary inspection report must record the address where the fire protection system or hydrant is located, the company and person conducting the inspection and their license number, the date of the inspection, and the fire protection system or hydrant inspection status, including a brief summary of each deficiency, critical deficiency, noncritical deficiency, or impairment found. A contractor's detailed inspection report is not required to follow the uniform summary inspection report format. The State Fire Marshal shall establish by rule a submission procedure for each means provided under paragraph (a) by which a local authority having jurisdiction may accept uniform summary inspection reports. Each of the submission procedures must allow a contractor to attach additional documents with the submission of a uniform summary inspection report, including a physical copy of the contractor's detailed inspection report. A submission procedure may not require a contractor to submit information contained within the detailed inspection report unless the information is required to be included in the uniform summary inspection report.

(4) The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire

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Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

Section 35. Section 633.520, Florida Statutes, is amended to read:

633.520 Safety; firefighter employer responsibilities; division rules.—

(1) Every firefighter employer shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary to protect the lives, health, and safety of such firefighter employees. As used in this section, the terms “safe” and “safety,” as applied to any employment or place of employment, mean such freedom from danger as is reasonably necessary for the protection of the lives, health, and safety of firefighter employees, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the firefighter employer by this section or by the division under authority of this section do not include personal apparel and protective devices that replace personal apparel normally worn by firefighter employees during regular working hours.

(2) The division shall adopt rules to establish employer cancer prevention best practices relating to personal protective

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equipment, decontamination, fire suppression apparatus, and fire stations.

Section 36. Subsection (1) of section 648.49, Florida Statutes, is amended to read:

648.49 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a license or appointment or in its order suspending the eligibility of a person to hold or apply for such ~~a~~ license or appointment, specify the period during which the suspension is to be in effect, but such period may not exceed 2 years. The license, ~~or~~ appointment, or ~~and~~ eligibility to hold a license or appointment must ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license or appointment that ~~which~~ has been suspended may not be reinstated, nor may ~~shall~~ the eligibility to hold such license or appointment be reinstated, except upon the filing and approval of an application for ~~request for such~~ reinstatement.~~, but~~ The department may not approve an application for ~~grant such~~ reinstatement if it finds that the circumstances for which the license or appointment was suspended still exist or are likely to recur. In each case involving suspension, the department has the discretion to require the former licensee to successfully complete a basic certification course in the criminal justice system, consisting of not less than 80 hours approved by the department.

Section 37. Present subsection (8) of section 717.124, Florida Statutes, is redesignated as subsection (11), a new

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subsection (8) and subsections (9) and (10) are added to that section, and subsection (7) of that section is amended, to read:

717.124 Unclaimed property claims.—

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for $5,000 ~~$1,000~~ or less, the department may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement. The department may adopt rules to implement this subsection.

(8) Notwithstanding any other provision of this chapter, the department may develop and implement an identification verification and disbursement process whereby accounts valued at $2,000 or less, after receipt by the department and after being added to the unclaimed property database, may be disbursed to an apparent owner after the department has verified that the apparent owner is living and has verified the apparent owner's correct, current address. The department shall include with the payment a notification and an explanation of the dollar amount, source, and property type of each account included in the disbursement. The department may adopt rules to administer this subsection.

(9) Notwithstanding any other provision of this chapter, the department may develop and implement a verification and disbursement process whereby accounts, after receipt by the department and after being added to the unclaimed property database, for which the apparent owner is a governmental agency of this state or subdivision thereof; a county government of

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this state or a subdivision thereof; a public school district of this state or a subdivision thereof; a municipality of this state or a subdivision thereof; or a special taxing district of this state or authority may be disbursed to the apparent owner entity or to the successor entity. The department shall include with the payment a notification and explanation of the dollar amount, source, and property type of each account included in the disbursement. The department may adopt rules to administer this subsection.

(10) Notwithstanding any other provision of this chapter, the department may develop a process whereby a registered claimant's representative may electronically submit to the department electronic images of completed claims and claim-related documents pursuant to this chapter, including limited powers of attorney and purchase agreements that have been personally signed and dated by a claimant or by a seller pursuant to s. 717.135 or s. 717.1351, after the original documents provided by the claimant or by the seller to the claimant's representative are physically received and in the claimant's representative's possession for any respective claim. Each claim filed by a registered claimant's representative must include a statement by the claimant's representative or buyer accurately attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or buyer. All original documents must be kept in original form, by claim number, under the secure control of the claimant's representative or buyer and must be made available for inspection by the department or other governmental agencies in

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accordance with s. 717.1315. The department may adopt rules to administer this subsection.

Section 38. This act shall take effect July 1, 2019.

================= 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 the Department of Financial Services; amending s. 17.56, F.S.; requiring the Division of Treasury to maintain, rather than turn over to the Division of Accounting and Auditing, warrants drawn by the Chief Financial Officer; specifying the timeframe during which such warrants must be maintained; making a technical change; amending ss. 497.263 and 497.266, F.S.; deleting a requirement that trust companies, where certain care and maintenance trust funds may be established, must operate pursuant to ch. 660, F.S.; amending s. 497.376, F.S.; specifying required educational credentials for certain applicants for a combination license as both funeral director and embalmer; amending s. 497.377, F.S.; specifying qualifications for certain applicants for a combination funeral director and embalmer intern license; providing application requirements; specifying limitations on and authorized actions of interns; specifying the expiration of intern licenses; authorizing the

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licensing authority to adopt certain rules; amending s. 497.380, F.S.; revising requirements for the supervision of licensed funeral establishments by funeral directors in charge; revising establishments a funeral director may be in charge of; revising funeral director licensing requirements for certain establishments; amending s. 497.385, F.S.; revising requirements for the supervision of licensed centralized embalming facilities; amending s. 497.452, F.S.; deleting a requirement that trust companies must operate pursuant to ch. 660, F.S., to be exempt from a certain preneed licensing requirement; amending s. 497.453, F.S.; specifying annual trust reporting requirements for certain preneed licensees or certain groups of preneed licensees; defining the term "Year 1" and "Year 2"; authorizing the department to adopt certain rules; amending ss. 497.458 and 497.464, F.S.; deleting a requirement that trust companies must operate pursuant to ch. 660, F.S., to enter into certain revocable trust instruments and act as trustees for certain preneed contract purchasers, respectively; amending s. 497.604, F.S.; revising requirements for the supervision of direct disposal establishments; amending s. 497.606, F.S.; revising requirements for the supervision of cinerator facilities; amending s. 626.022, F.S.; conforming a cross-reference; amending s. 626.025, F.S.; conforming a provision to changes made by the act; amending s. 626.175, F.S.; authorizing the department to issue

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nonrenewable temporary licenses authorizing the appointment of personal lines agents; deleting such authorization for industrial fire or burglary agents; revising circumstances under which the department may issue temporary licenses authorizing the appointment of life agents; specifying circumstances under which the department may issue temporary licenses authorizing the appointment of personal lines agents; prohibiting certain licensees from soliciting, negotiating, or effecting contracts of insurance; amending s. 626.207, F.S.; providing an exception from a disqualification period from licensure as an insurance representative for certain persons found guilty or pleading guilty or nolo contendere to certain felonies; authorizing the department to issue licenses on a probationary period for a certain timeframe; specifying when the probationary period ends; amending s. 626.221, F.S.; specifying that a certain exemption from an examination requirement applies to applicants for an all-lines adjuster license; amending s. 626.2815, F.S.; revising the individuals that are subject to a certain continuing education requirement; amending s. 626.321, F.S.; deleting an examination requirement for an applicant for an industrial fire insurance or burglary insurance license; providing that, beginning on a specified date, the license and appointment may be renewed, but no new or additional licenses may be issued and the license may not be reinstated; deleting an examination

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requirement for crop hail and multiple peril crop insurance licenses; amending s. 626.471, F.S.; authorizing an appointing entity to provide a termination notice to the appointee by e-mail; providing that the e-mail must be addressed to the appointee's last e-mail address of record; specifying when notice by e-mail is deemed to have been given; repealing s. 626.521, F.S., relating to credit and character reports; amending s. 626.536, F.S.; deleting a requirement for insurance agencies to report certain administrative actions to the department; amending s. 626.6215, F.S.; adding certain grounds for the department's discretionary refusal, suspension, or revocation of an insurance agency license; amending s. 626.729, F.S.; revising the definition of the term "industrial fire insurance" relating to burglary insurance; repealing s. 626.7355, F.S., relating to a temporary license as a customer representative pending examination; amending ss. 626.8437 and 626.844, F.S.; revising certain grounds for the denial of, suspension of, revocation of, or refusal to renew licenses or appointments of title insurance agents or agencies; amending s. 626.8732, F.S.; revising qualifications for the issuance of a nonresident public adjuster's license; amending s. 627.7015, F.S.; requiring mediators in certain property insurance claim mediations to provide a certain written report to certain parties at the conclusion of the mediation; amending s. 633.216, F.S.; conforming a cross-

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reference; amending s. 633.218, F.S.; deleting a requirement that state-owned or state-leased buildings be identified through use of the United States National Grid Coordinate System; amending s. 633.306, F.S.; specifying requirements for components and parts of installed fire extinguishers and preengineered systems; amending s. 633.312, F.S.; specifying means by which local authorities having jurisdiction may accept inspection reports by contractors inspecting fire hydrants and fire protection systems; requiring the State Fire Marshal to adopt rules implementing a uniform summary inspection report and submission procedures; providing requirements for such report and procedures; amending s. 633.520, F.S.; authorizing the Division of State Fire Marshal to adopt certain rules establishing firefighter employer cancer prevention best practices; amending s. 648.49, F.S.; specifying that reinstatement of a bail bond agent license is contingent upon filing an application with, and approval by, the department; amending s. 717.124, F.S.; increasing the threshold amount of electronically submitted claims under which the department may use alternative identity verification methods; authorizing the department to develop and implement specified identification verification and disbursement processes for certain unclaimed property accounts; authorizing the department to develop processes for certain electronic submissions; specifying requirements for the submission of claims

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and recordkeeping; authorizing the department to adopt rules; providing an effective date.

By Senator Wright

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A bill to be entitled

An act relating to the Department of Financial Services; amending s. 17.56, F.S.; requiring the Division of Treasury to maintain, rather than turn over to the Division of Accounting and Auditing, warrants drawn by the Chief Financial Officer; specifying the timeframe during which such warrants must be maintained; making a technical change; amending s. 24.123, F.S.; adding the Chief Financial Officer to a list of persons receiving the annual financial audit of the Department of the Lottery; specifying the date by when such audits must be submitted; amending s. 215.44, F.S.; specifying the date by when the State Board of Administration must annually publish audited financial statements for the Florida Retirement System; amending s. 215.80, F.S.; specifying the date by when the board must annually publish a certain report by the Division of Bond Finance; amending s. 215.98, F.S.; adding the Chief Financial Officer to a list of persons presented with the division’s annual debt affordability report; revising the date by when such report must be presented; creating s. 497.173, F.S.; requiring that each licensed location under chapter 497, F.S., have a full-time licensee in charge; requiring licensees in charge to have an active license; specifying limitations on licensed locations a licensee in charge may serve; amending ss. 497.263 and 497.266, F.S.; adding national trust companies to a list of entities

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where a care and maintenance trust fund may be established; amending s. 497.376, F.S.; specifying required educational credentials for certain applicants for a combination license as both funeral director and embalmer; amending s. 497.377, F.S.; specifying qualifications for certain applicants for a combination funeral director and embalmer intern license; providing application requirements; specifying limitations on, and authorized actions of, interns; specifying the expiration of intern licenses; authorizing the licensing authority to adopt certain rules; amending s. 497.380, F.S.; revising requirements for the supervision of licensed funeral establishments; providing that, under certain circumstances, a funeral director may serve as funeral director in charge without an embalmer license or combination license; amending s. 497.452, F.S.; adding national trust companies to a list of entities exempt from a certain preneed licensing requirement; amending s. 497.453, F.S.; specifying annual trust reporting requirements for certain preneed licensees or certain groups of preneed licensees; defining the term “Year 1” and “Year 2”; authorizing the department to adopt certain rules; amending s. 626.025, F.S.; conforming a provision to changes made by the act; amending s. 626.175, F.S.; authorizing the department to issue nonrenewable temporary licenses authorizing the appointment of personal lines agents; deleting such authorization for industrial fire or burglary agents;

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

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revising circumstances under which the department may issue temporary licenses authorizing the appointment of life agents; specifying circumstances under which the department may issue temporary licenses authorizing the appointment of personal lines agents; prohibiting certain licensees from soliciting, negotiating, or effecting contracts of insurance; amending s. 626.221, F.S.; specifying that a certain exemption from an examination requirement applies to applicants for an all-lines adjuster license; amending s. 626.2815, F.S.; revising the individuals that are subject to a certain continuing education requirement; amending s. 626.321, F.S.; deleting an examination requirement for an applicant for an industrial fire insurance or burglary insurance license; providing that, beginning on a specified date, the license and appointment may be renewed, but no new or additional licenses may be issued and the license may not be reinstated; deleting an examination requirement for crop hail and multiple peril crop insurance licenses; amending s. 626.471, F.S.; authorizing an appointing entity to provide a termination notice to the appointee by e-mail; providing that the e-mail must be addressed to the appointee’s last e-mail address of record; specifying when notice by e-mail is deemed to have been given; repealing s. 626.521, F.S., relating to credit and character reports; amending s. 626.536, F.S.; deleting a requirement for insurance agencies to report certain administrative actions to the

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department; amending s. 626.6215, F.S.; adding certain grounds for the department’s discretionary refusal, suspension, or revocation of an insurance agency license; amending s. 626.729, F.S.; revising the definition of the term “industrial fire insurance” relating to burglary insurance; repealing s. 626.7355, F.S., relating to a temporary license as customer representative pending examination; amending ss. 626.8437 and 626.844, F.S.; revising certain grounds for the denial of, suspension of, revocation of, or refusal to renew, licenses or appointments of title insurance agents or agencies; amending s. 626.8732, F.S.; revising qualifications for the issuance of a nonresident public adjuster’s license; amending s. 627.7015, F.S.; requiring insurers to report mediation settlements and settlement amounts to all parties within a certain timeframe; amending s. 633.218, F.S.; deleting a requirement that state-owned or state-leased buildings be identified through use of the United States National Grid Coordinate System; amending s. 633.520, F.S.; authorizing the Division of State Fire Marshal to adopt certain rules establishing firefighter employer cancer prevention best practices; amending s. 648.49, F.S.; specifying that reinstatement of a bail bond agent license is contingent upon filing an application with, and approval by, the department; amending s. 717.123, F.S.; increasing the amount of funds the department must retain under the Florida Disposition of Unclaimed

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

Property Act for certain purposes; amending s. 717.124, F.S.; increasing the threshold amount of electronically submitted claims under which the department may use alternative identity verification methods; authorizing the department to develop and implement specified identification verification and disbursement processes for certain unclaimed property accounts; authorizing the department to develop processes for certain electronic submissions; specifying requirements for the submission of claims and recordkeeping; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 17.56, Florida Statutes, is amended to read:

17.56 Division of Treasury to maintain ~~turn over to the Division of Accounting and Auditing~~ all warrants paid.—The Division of Treasury shall maintain ~~turn over to the Division of Accounting and Auditing~~ all warrants drawn by the Chief Financial Officer ~~or the Comptroller~~ and paid by the Division of Treasury for a period of 10 years from the date the warrant was presented for payment. ~~The warrants shall be turned over as soon as the Division of Treasury shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn.~~

Section 2. Subsection (3) of section 24.123, Florida Statutes, is amended to read:

24.123 Annual audit of financial records and reports.—

(3) A copy of any audit performed pursuant to this section must ~~shall~~ be annually submitted by November 30 to the secretary, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and members of the Legislative Auditing Committee.

Section 3. Paragraph (d) of subsection (2) of section 215.44, Florida Statutes, is amended to read:

215.44 Board of Administration; powers and duties in relation to investment of trust funds.—

(2)

(d) The board shall produce a set of financial statements for the Florida Retirement System on an annual basis, which shall be reported to the Legislature and audited by a commercial independent third-party audit firm. For fiscal years beginning on or after July 1, 2020, the board shall annually publish the audited financial statements by November 30.

Section 4. Section 215.80, Florida Statutes, is amended to read:

215.80 Annual report.—The division or the State Board of Administration shall annually publish ~~cause to be made at least once each year~~ a comprehensive report of all debt service or other sinking funds for any bonds issued by the division for the state or any state agencies and the status of all such funds and accounts. Copies of such report must ~~shall~~ be filed with the secretary or assistant secretary of the board and ~~shall~~ be open to public inspection. For fiscal years beginning on or after July 1, 2020, the board shall annually publish the report by November 30.

Section 5. Paragraph (a) of subsection (2) of section 215.98, Florida Statutes, is amended to read:

215.98 State debt fiscal responsibility.—

(2) The Division of Bond Finance shall conduct a debt affordability analysis each year. Proposed capital projects that require funding by the issuance of additional state debt shall be evaluated on the basis of the analysis to assist the Governor and the Legislature in setting priorities among capital projects and related appropriations.

(a) The Division of Bond Finance shall annually prepare a debt affordability report, to be presented to the governing board of the Division of Bond Finance, the President of the Senate, the Speaker of the House of Representatives, ~~and~~ the chair of each appropriations committee, and the Chief Financial Officer by November ~~December~~ 15 of each year, for purposes of providing a framework for the Legislature to evaluate and establish priorities for bills that propose the authorization of additional state debt during the next budget year.

Section 6. Section 497.173, Florida Statutes, is created to read:

497.173 Licensee in charge.—As required under this chapter, each licensed location shall have a full-time licensee in charge. The licensee in charge shall have an active license and may serve as the licensee in charge of no more than 4 licensed locations, provided the 2 furthest locations are no more than 75 miles apart as measured in a straight line.

Section 7. Paragraph (a) of subsection (3) of section 497.263, Florida Statutes, is amended to read:

497.263 Cemetery companies; license required; licensure

requirements and procedures.—

(3) ACTION CONCERNING APPLICATIONS.—If the licensing authority finds that the applicant meets the criteria established in subsection (2), the applicant shall be notified that a license will be issued when all of the following conditions are satisfied:

(a) The establishment of a care and maintenance trust fund containing not less than $50,000 has been certified by a national or state trust company ~~operating pursuant to chapter 660~~, a state or national bank holding trust powers, or a savings and loan association holding trust powers as provided in s. 497.458, pursuant to a trust agreement approved by the licensing authority. The $50,000 required for the care and maintenance trust fund shall be over and above the $50,000 net worth required by subsection (2).

Section 8. Subsection (1) of section 497.266, Florida Statutes, is amended to read:

497.266 Care and maintenance trust fund; remedy of department for noncompliance.—

(1) No cemetery company may establish a cemetery, or operate a cemetery if already established, without providing for the future care and maintenance of the cemetery, for which a care and maintenance trust fund shall be established, to be known as “the care and maintenance trust fund of .....” The trust fund shall be established with a national or state trust company ~~operating pursuant to chapter 660~~, with a state or national bank holding trust powers, or with a federal or state savings and loan association holding trust powers. Trust funds which are with a state or national bank or savings and loan

association licensed in this state on October 1, 1993, shall remain in force; however, when the amount of any such trust fund exceeds the amount that is insured by an agency of the Federal Government, the cemetery company shall transfer that trust fund to a national or state trust company ~~operating pursuant to chapter 660~~, to a state or national bank holding trust powers, or to a federal or state savings and loan association holding trust powers.

Section 9. Section 497.376, Florida Statutes, is amended to read:

497.376 Combination license as funeral director and embalmer permitted; required educational credentials.—

(1) This chapter does not prohibit a person from holding a license as an embalmer and a license as a funeral director at the same time. There may be issued and renewed by the licensing authority a combination license as both funeral director and embalmer to persons meeting the separate requirements for both licenses as set forth in this chapter. The licensing authority may adopt rules providing procedures for applying for and renewing such combination license. The licensing authority may by rule establish application, renewal, and other fees for such combination license, which fees shall not exceed the sum of the maximum fees for the separate funeral director and embalmer license categories as provided in this chapter. Persons holding a combination license as a funeral director and an embalmer shall be subject to regulation under this chapter both as a funeral director and an embalmer.

(2) Except as provided in s. 497.377, an applicant for a combination license as both funeral director and embalmer must

hold the educational credentials required for licensure of a funeral director under s. 497.373(1)(d).

Section 10. Section 497.377, Florida Statutes, is amended to read:

497.377 Combination license as funeral director and embalmer; ~~Concurrent~~ internships.—

(1) To meet internship requirements for combined licensure as a funeral director and an embalmer, the internship requirement for funeral directors and the internship requirement for embalmers ~~and funeral directors~~ may be served concurrently pursuant to rules adopted by the licensing authority.

(2)(a) An applicant who has not completed the educational credentials required for a combination license as funeral director and embalmer is eligible for licensure as a combination funeral director and embalmer intern if the applicant:

1. Is currently enrolled in and attending a college accredited by the American Board of Funeral Service Education (ABFSE) in an ABFSE accredited course of study in mortuary science;

2. Has completed at least 75 percent of the course of study in mortuary science, as certified by the college in which the applicant is currently enrolled; and

3. Has taken and received a passing grade in a college credit course in mortuary law or funeral service law and has taken and received a passing grade in a college credit course in ethics.

(b) An application for internship for a combination funeral director and embalmer license must include the name and address of the funeral director licensed under s. 497.373 or s.

497.374(1) and the embalmer licensed under s. 497.368 or s. 497.369 under whose supervision the intern will receive training and the name of the licensed funeral establishment where the training will be conducted.

(c) A combination funeral director and embalmer intern may perform only the tasks, functions, and duties relating to funeral directing and embalming which are performed under the direct supervision of a licensed funeral director who has an active, valid license under s. 497.373 or s. 497.374(1) and an embalmer who has an active, valid license under s. 497.368 or s. 497.369. However, a combination funeral director and embalmer intern may perform those tasks, functions, and duties under the general supervision of a licensed funeral director and embalmer upon the intern's graduation from a college accredited by the ABFSE with a degree as specified in s. 497.373(1)(d) and passage of the laws and rules examination required under s. 497.373(2)(b) if, after 6 months of direct supervision, the funeral director in charge of the internship training agency certifies to the licensing agency that the intern is competent to complete the internship under general supervision.

(d)1. A combination funeral director and embalmer intern license expires 1 year after issuance and, except as provided in subparagraph 2., may not be renewed.

2. The licensing authority may adopt rules that allow a combination funeral director and embalmer intern to renew her or his funeral director and embalmer intern license for an additional 1-year period if the combination funeral director and embalmer intern demonstrates her or his failure to complete the internship before expiration of the license due to illness,

personal injury, or other substantial hardship beyond her or his reasonable control or demonstrates that she or he has completed the requirements for licensure as a combination funeral director and embalmer but is awaiting the results of a licensure examination.

Section 11. Subsection (7) of section 497.380, Florida Statutes, is amended to read:

497.380 Funeral establishment; licensure; display of license.—

(7) The supervision of facilities is subject to s. 497.173 ~~Each licensed funeral establishment shall have one full-time funeral director in charge and shall have a licensed funeral director reasonably available to the public during normal business hours for the establishment. The full-time funeral director in charge is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. The full-time funeral director in charge must have an active license and may not be the full-time funeral director in charge of any other funeral establishment or of any other direct disposal establishment~~. ~~Effective October 1, 2010,~~ The full-time funeral director in charge must hold an active, valid embalmer license or combination license as a funeral director and an embalmer. However, a funeral director may serve as funeral director in charge without an embalmer license or combination license if the establishment does not have an embalming room or refrigeration onsite, or may continue as the full-time funeral director in charge without an embalmer or combination license if~~, as of September 30, 2010~~:

(a) The funeral establishment and the funeral director both have active, valid licenses.

(b) The funeral director is currently the full-time funeral director in charge of the funeral establishment.

(c) The name of the funeral director was included, as required in subsection (4), in the funeral establishment's most recent application for issuance or renewal of its license or was included in the establishment's report of change provided under paragraph (12)(c).

Section 12. Subsection (2) of section 497.452, Florida Statutes, is amended to read:

497.452 Preneed license required.—

(2)(a) No person may receive any funds for payment on a preneed contract who does not hold a valid preneed license.

(b) The provisions of paragraph (a) do not apply to a national or state trust company ~~operating pursuant to chapter 660~~, to a national or state bank holding trust powers, or to a federal or state savings and loan association having trust powers which company, bank, or association receives any money in trust pursuant to the sale of a preneed contract.

Section 13. Subsection (8) of section 497.453, Florida Statutes, is amended to read:

497.453 Application for preneed license, procedures and criteria; renewal; reports.—

(8) ANNUAL TRUST REPORTS.—

(a) On or before April 1 of each year, the preneed licensee shall file in the form prescribed by rule a full and true statement as to the activities of any trust established by it pursuant to this part for the preceding calendar year.

(b) A preneed licensee that sold, or a group of preneed licensees under common control which sold in aggregate, 15,000 or more preneed contracts in this state in the preceding year shall additionally comply with this paragraph.

1. As used in this paragraph, the term:

a. "Year 1" means a year in which a preneed licensee sells, or a group of preneed licensees under common control sells in aggregate, 15,000 or more preneed contracts in this state.

b. "Year 2" means the year immediately after Year 1.

2. As to each Year 1, the licensee or licensees shall, during Year 2:

a. Prepare, with respect to each such licensee, a report of Florida preneed operations in Year 1 on a form prescribed by department rule;

b. Cause and pay for such report to be audited by an independent certified public accounting firm concerning the accuracy and fairness of the presentation of the data provided in the report; and

c. By December 31 of Year 2, provide the report to the division along with a written and signed opinion of the certified public accounting firm concerning the accuracy and fairness of the presentation of the data reported in the report.

2. The report must be prepared and submitted using forms and procedures specified by department rule. The department may adopt rules specifying the format of the report and the information to be reported.

Section 14. Subsection (4) of section 626.025, Florida Statutes, is amended to read:

626.025 Consumer protections.—To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(4) The submission of credit and character reports~~,~~ as required by s. 626.171 ~~or s. 626.521~~.

Section 15. Subsection (1) of section 626.175, Florida Statutes, is amended to read:

626.175 Temporary licensing.—

(1) The department may issue a nonrenewable temporary license for a period not to exceed 6 months authorizing the appointment of a general lines insurance agent, ~~or a~~ life agent, or personal lines agent ~~an industrial fire or burglary agent,~~ subject to the conditions described in this section. The fees paid for a temporary license and appointment must ~~shall~~ be as specified in s. 624.501. Fees paid may ~~shall~~ not be refunded after a temporary license has been issued.

(a) An applicant for a temporary license must be:

1. A natural person at least 18 years of age.

2. A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.

(b)1. In the case of a general lines agent, the department may issue a temporary license to an employee, a family member, a business associate, or a personal representative of a licensed general lines agent for the purpose of continuing or winding up the business affairs of the agent or agency in the event the licensed agent has died or become unable to perform his or her duties because of military service or illness or other physical or mental disability, subject to the following conditions:

a. No other individual connected with the agent's business

may be licensed as a general lines agent.

b. The proposed temporary licensee shall be qualified for a regular general lines agent license under this code except as to residence, examination, education, or experience.

c. Application for the temporary license shall have been made by the applicant upon statements and affidavit filed with the department on forms prescribed and furnished by the department.

d. Under a temporary license and appointment, the licensee shall not represent any insurer not last represented by the agent being replaced and shall not be licensed or appointed as to any additional kind, line, or class of insurance other than those covered by the last existing agency appointments of the replaced agent. If an insurer withdraws from the agency during the temporary license period, the temporary licensee may be appointed by another similar insurer but only for the period remaining under the temporary license.

2. A regular general lines agent license may be issued to a temporary licensee upon meeting the qualifications for a general lines agent license under s. 626.731.

(c) In the case of a life agent, the department may issue a temporary license:

1. To the executor or administrator of the estate of a deceased individual licensed and appointed as a life agent at the time of death;

2. To a surviving next of kin of the deceased individual, if no administrator or executor has been appointed and qualified; however, any license and appointment under this subparagraph shall be canceled upon issuance of a license to an

executor or administrator under subparagraph 1.; or

3. To an individual otherwise qualified to be licensed as an agent who has completed the educational or training requirements prescribed in s. 626.7851 and who is appointed ~~has successfully sat for the required examination prior to termination of such 6-month period. The department may issue this temporary license only in the case of a life agent~~ to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance.

(d) In the case of a personal lines ~~limited license authorizing appointment as an industrial fire or burglary~~ agent, the department may issue a temporary license:

1. To the executor or administrator of the estate of a deceased individual who was licensed and appointed as a personal lines agent at the time of his or her death;

2. To a surviving next of kin of the deceased individual if no administrator or executor has been appointed and qualified. However, a license and appointment under this subparagraph must be canceled upon issuance of a license to an executor or administrator under subparagraph 1.; or

3. To an individual otherwise qualified to be licensed as an agent, who has completed the educational or training requirements prescribed in s. 626.732 and who is appointed to represent an insurer of the industrial or ordinary-combination class solely for the purpose of collecting premiums and servicing in-force policies. Such licensee may not directly or indirectly solicit, negotiate, or effect contracts of insurance

~~to an individual otherwise qualified to be licensed as an agent who has completed the educational or training requirements prescribed in s. 626.732 and has successfully sat for the required examination prior to termination of the 6-month period~~.

Section 16. Paragraph (e) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(e) An applicant for an all-lines adjuster license who has been licensed as an all-lines adjuster and appointed as an independent adjuster or company employee adjuster if an application for licensure is filed with the department within 48 months following the date of cancellation or expiration of the prior appointment.

Section 17. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 5-hour update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant

to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(d) An individual who holds a license as a customer representative~~, limited customer representative, motor vehicle physical damage and mechanical breakdown insurance agent, or an industrial fire insurance or burglary insurance agent~~ and who is not a licensed life or health agent~~,~~ must also complete a minimum of 5 hours of continuing education courses every 2 years.

Section 18. Paragraphs (b) and (f) of subsection (1) of section 626.321, Florida Statutes, are amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(b) *Industrial fire insurance or burglary insurance.*—License covering only industrial fire insurance or burglary insurance. ~~The applicant for such a license must pass a written examination covering such insurance.~~ A licensee under this paragraph may not hold a license as an agent for any other or additional kind or class of insurance coverage except for life insurance and health insurance. <u>Effective July 1, 2019, all licensees holding such limited license and appointment may renew</u>

<u>the license and appointment, but no new or additional licenses may be issued pursuant to this paragraph and a licensee whose limited license under this paragraph has been terminated, suspended, or revoked may not have such license reinstated.</u>

(f) *Crop hail and multiple-peril crop insurance.*—License for insurance covering crops subject to unfavorable weather conditions, fire or <u>lightning</u> ~~lightening~~, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils which is provided by the private insurance market~~,~~ or which is subsidized by the Federal Group Insurance Corporation including multi-peril crop insurance. Notwithstanding any other ~~provision of~~ law, the limited license may be issued to a bona fide salaried employee of an association chartered under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.~~, who satisfactorily completes the examination prescribed by the department pursuant to s. 626.241(5).~~ The agent must be appointed by, and his or her limited license requested by, a licensed general lines agent. All business transacted by the agent must be on behalf of, in the name of, and countersigned by the agent by whom he or she is appointed. Sections 626.561 and 626.748, relating to records, apply to all business written pursuant to this section. The licensee may be appointed by and licensed for only one general lines agent or agency.

Section 19. Subsection (1) of section 626.471, Florida Statutes, is amended to read:

626.471 Termination of appointment.—

(1) Subject to an appointee’s contract rights, an appointing entity may terminate its appointment of any appointee at any time. Except when termination is upon a ground <u>that</u> ~~which~~

would subject the appointee to suspension or revocation of his or her license and appointment under s. 626.611 or s. 626.621, and except as provided by contract between the appointing entity and the appointee, the appointing entity shall give at least 60 days' advance written notice of its intention to terminate such appointment to the appointee~~, either~~ by delivery thereof to the appointee in person, ~~or~~ by mailing it~~,~~ postage prepaid, or by e-mail. If delivery is by mail or e-mail, the notice must be addressed to the appointee at his or her last mailing or e-mail address of record with the appointing entity. Notice is ~~so mailed shall be~~ deemed to have been given when deposited in a United States Postal Service mail depository or when the e-mail is sent, as applicable.

Section 20. Section 626.521, Florida Statutes, is repealed.

Section 21. Section 626.536, Florida Statutes, is amended to read:

626.536 Reporting of administrative actions.—Within 30 days after the final disposition of an administrative action taken against a licensee ~~or insurance agency~~ by a governmental agency or other regulatory agency in this or any other state or jurisdiction relating to the business of insurance, the sale of securities, or activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty, the licensee ~~or insurance agency~~ must submit a copy of the order, consent to order, or other relevant legal documents to the department. The department may adopt rules to administer this section.

Section 22. Subsection (7) is added to section 626.6215, Florida Statutes, to read:

626.6215 Grounds for discretionary refusal, suspension, or

revocation of insurance agency license.—The department may, in its discretion, deny, suspend, revoke, or refuse to continue the license of any insurance agency if it finds, as to any insurance agency or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such insurance agency, that any one or more of the following applicable grounds exist:

(7) A denial, suspension, or revocation of, or any other adverse administrative action against, a license to practice or conduct any regulated profession, business, or vocation by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof.

Section 23. Section 626.729, Florida Statutes, is amended to read:

626.729 "Industrial fire insurance" defined.—As used in ~~For the purposes of~~ this code, the term "industrial fire insurance" means: ~~is~~

(1) Insurance against loss by fire of either buildings and other structures or contents, which may include extended coverage;

(2) Windstorm insurance;

(3) Basic limits owners, landlords, or tenants liability insurance with single limits of $25,000;

(4) Comprehensive personal liability insurance with a single limit of $25,000; or

(5) Burglary insurance, under which the premiums are collected quarterly or more often and the face amount of the insurance provided by the policy on one risk is not more than $50,000, including the contents of such buildings and other

structures~~, and the insurer issuing such policy is operating under a system of collecting a debit by its agents. A temporary license for an industrial fire or burglary agent issued pursuant to s. 626.175 shall be solely for the purpose of collecting premiums and servicing in-force policies, and such licensee shall not directly or indirectly solicit, negotiate, or effect contracts of insurance~~.

Section 24. <u>Section 626.7355, Florida Statutes, is repealed.</u>

Section 25. Subsection (9) of section 626.8437, Florida Statutes, is amended to read:

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

(9) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of <u>the Florida Insurance Code</u> ~~this act~~.

Section 26. Subsection (2) of section 626.844, Florida Statutes, is amended to read:

626.844 Grounds for discretionary refusal, suspension, or revocation of license or appointment.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent

or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency if it finds that as to the applicant or licensee or appointee, or any principal thereof, any one or more of the following grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.8437:

(2) Violation of any provision of <u>the Florida Insurance Code</u> ~~this act~~ in the course of dealing under the license or appointment.

Section 27. Paragraph (e) of subsection (1) and paragraphs (b) and (c) of subsection (2) of section 626.8732, Florida Statutes, are amended to read:

626.8732 Nonresident public adjuster's qualifications, bond.—

(1) The department shall, upon application therefor, issue a license to an applicant for a nonresident public adjuster's license upon determining that the applicant has paid the applicable license fees required under s. 624.501 and:

(e) Has been licensed and employed as a public adjuster in the applicant's state of residence on a continual basis for the past <u>6 months</u> ~~year~~, or, if the applicant's state of residence does not issue licenses to individuals who act as public adjusters, the applicant has been licensed and employed as a resident insurance company <u>adjuster, a public adjuster,</u> or <u>an</u> independent adjuster in his or her state of residence or any other state on a continual basis for the past <u>6 months</u> ~~year~~.

(2) The applicant shall furnish the following with his or her application:

(b) If currently licensed as a resident public adjuster in the applicant's state of residence, a certificate or letter of authorization from the licensing authority of the applicant's state of residence, stating that the applicant holds a current or comparable license to act as a public adjuster and has held the license continuously for the past 6 months ~~year~~. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

(c) If the applicant's state of residence does not require licensure as a public adjuster and the applicant has been licensed as a resident insurance adjuster in his or her state of residence or any other state, a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as such an insurance adjuster and has held the license continuously for the past 6 months ~~year~~. The certificate or letter of authorization must be signed by the insurance commissioner or his or her deputy or the appropriate licensing official and must disclose whether or not the adjuster has ever had any license or eligibility to hold any license declined, denied, suspended, revoked, or placed on probation or whether an administrative fine or penalty has been levied against the adjuster and, if so, the reason for the action.

Section 28. Subsection (5) of section 627.7015, Florida

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Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(5) All statements made and documents produced at a mediation conference shall be deemed to be settlement negotiations in anticipation of litigation within the scope of s. 90.408. A settlement through mediation, including the settlement amount, must be reported to all parties by the insurer within 10 days after the conclusion of the mediation conference. All parties to the mediation must negotiate in good faith and must have the authority to immediately settle the claim. Mediators are deemed to be agents of the department and shall have the immunity from suit provided in s. 44.107.

Section 29. Paragraph (f) of subsection (1) of section 633.218, Florida Statutes, is amended to read:

633.218 Inspections of state buildings and premises; tests of firesafety equipment; building plans to be approved.—

(1)

~~(f) A state-owned building or state-leased building or space shall be identified through use of the United States National Grid Coordinate System.~~

Section 30. Section 633.520, Florida Statutes, is amended to read:

633.520 Safety; firefighter employer responsibilities; division rules.—

(1) Every firefighter employer shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and do every other thing reasonably necessary

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

to protect the lives, health, and safety of such firefighter employees. As used in this section, the terms “safe” and “safety,” as applied to any employment or place of employment, mean such freedom from danger as is reasonably necessary for the protection of the lives, health, and safety of firefighter employees, including conditions and methods of sanitation and hygiene. Safety devices and safeguards required to be furnished by the firefighter employer by this section or by the division under authority of this section do not include personal apparel and protective devices that replace personal apparel normally worn by firefighter employees during regular working hours.

(2) The division shall adopt rules to establish employer cancer prevention best practices relating to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

Section 31. Subsection (1) of section 648.49, Florida Statutes, is amended to read:

648.49 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a license or appointment or in its order suspending the eligibility of a person to hold or apply for such ~~a~~ license or appointment, specify the period during which the suspension is to be in effect, but such period may not exceed 2 years. The license, ~~or~~ appointment, or ~~and~~ eligibility to hold a license or appointment must ~~shall~~ remain suspended during the period so specified; ~~,~~ subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license or appointment that ~~which~~ has been suspended may not be

reinstated, nor may ~~shall~~ the eligibility to hold such license or appointment be reinstated, except upon the filing and approval of an application for ~~request for such~~ reinstatement. ~~, but~~ The department may not approve an application for ~~grant such~~ reinstatement if it finds that the circumstances for which the license or appointment was suspended still exist or are likely to recur. In each case involving suspension, the department has the discretion to require the former licensee to successfully complete a basic certification course in the criminal justice system, consisting of not less than 80 hours approved by the department.

Section 32. Subsection (1) of section 717.123, Florida Statutes, is amended to read:

717.123 Deposit of funds.—

(1) All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding $30 ~~$15~~ million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund.

Section 33. Present subsection (8) of section 717.124, Florida Statutes, is redesignated as subsection (11), a new subsection (8) and subsections (9) and (10) are added to that section, and subsection (7) of that section is amended, to read:

717.124 Unclaimed property claims.—

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for $5,000 ~~$1,000~~ or less, the department may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement. The department may adopt rules to implement this subsection.

(8) Notwithstanding any other provision of this chapter, the department may develop and implement an identification verification and disbursement process by which accounts valued at $2,000 or less, after receipt by the department and after being added to the unclaimed property database, may be disbursed to an apparent owner after the department has verified that the apparent owner is living and has verified the apparent owner’s correct, current address. The department shall include with the payment a notification and an explanation of the dollar amount, source, and property type of each account included in the disbursement. The department may adopt rules to administer this subsection.

(9) Notwithstanding any other provision of this chapter, the department may develop and implement a verification and disbursement process by which accounts, after receipt by the department and after being added to the unclaimed property database, for which the apparent owner is a governmental agency of this state or subdivision thereof; a county government of this state or a subdivision thereof; a public school district of this state or a subdivision thereof; a municipality of this

state or a subdivision thereof; or a special taxing district of this state or authority, may be disbursed to the apparent owner entity or to the successor entity. The department shall include with the payment a notification and explanation of the dollar amount, source, and property type of each account included in the disbursement. The department may adopt rules to administer this subsection.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a registered claimant’s representative may electronically submit to the department electronic images of completed claims and claim-related documents pursuant to this chapter, including limited powers of attorney and purchase agreements that have been personally signed and dated by a claimant or by a seller pursuant to s. 717.135 or s. 717.1351, after the original documents provided by the claimant or by the seller to the claimant’s representative are physically received and in the claimant’s representative’s possession for any respective claim. Each claim filed by a registered claimant’s representative must include a statement by the claimant’s representative or buyer accurately attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant’s representative or buyer. All original documents must be kept in original form, by claim number, under the secure control of the claimant’s representative or buyer and must be made available for inspection by the department or other governmental agencies in accordance with s. 717.1315. The department may adopt rules to administer this subsection.

Section 34. This act shall take effect July 1, 2019.

Department of Financial Services (DFS)
2019 Legislative Bill Analysis

BILL INFORMATION

Bill Number:	SB 1704
Bill Title:	Department of Financial Services
Bill Sponsor:	Senator Wright
Effective Date:	July 1, 2019

ANALYSIS INFORMATION

Agency Contact:	Meredith Stanfield, Legislative Affairs Director, (850) 413-2890
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Analysis Date:	March 15, 2019

POLICY ANALYSIS

I. SUMMARY ANALYSIS

SB 1704 is the 2019 Legislative Package for the Department of Financial Services (DFS or Department). This bill bolsters the work of the Department of Financial Services through clean-up and clarifying language within the DFS Divisions of Agent and Agency Services, Funeral and Cemetery Services, State Fire Marshal, Treasury, and Unclaimed Property. Specifically, the bill:

- clarifies requirements relating to the maintenance and inter-department sharing of warrants;
- would require an earlier publication of the CAFR, 6 months after the end of the fiscal year, or December 31, rather than February 28.
- establishes a "licensee in charge" and requiring that a "licensee in charge" may serve as such for no more than four licensed establishments or facilities, as long as the two farthest locations are no more than 75 miles apart, as measured in a straight line. The bill then provides that the supervision of all funeral establishments (section 497.380, F.S.), centralized embalming facilities, direct disposal establishments, and cinerator facilities are subject to the newly created section 497.173, F.S.
- clarifies the types of trust companies used by licensees for care and maintenance trust funds and/or preneed trust funds to include national as well as state trust companies and eliminates the requirement that such trust companies operate pursuant to chapter 660, F.S.;
- clarifies the educational credentials and internship required for a combination license as both a funeral director and an embalmer and broadens the time frame for the required internship in that, under limited circumstances, it permits an applicant for a combination funeral director and embalmer license to begin the required internship for the licensure before the educational requirements have been completed;
- requires preneed licensees that sell more than 15,000 preneed contracts in a year to annually submit to the Department a report on their preneed operations from an independent certified public accountant;
- directs the Department to encourage best practices among fire professionals to prevent cancer;
- removes a redundant requirement to identify state-owned and state-leased space;
- eliminates obsolete license types within the Division of Agents and Agency Services and provides clean up language to correct misspellings, align license exams, and allow for use of email in correspondence with licensees, when appropriate;
- provides process efficiencies to allow the Division of Unclaimed Property to more easily return funds to

Floridians and Florida government entities; and
- allows the Division of Unclaimed Property to find efficiencies through the use of electronic submission of documents.

II. PRESENT SITUATION

Section 1:
In accordance with section 17.56, F.S., the DFS Division of Treasury must turn over all paid warrants to the DFS Division of Accounting and Auditing. This requirement was established when the two divisions were housed in separate agencies and this function is no longer necessary to facilitate the work of the Division of Accounting and Auditing. The Department meets this requirement through the Division of Treasury submitting compact disks to the Division of Accounting and Auditing two to three times per month, depending on warrant volume.

Sections 2, 3, 4, and 5:
The Division of Accounting and Auditing Bureau of Financial Reporting is responsible for preparing the state's financial statements, referred to as the comprehensive annual financial report (CAFR). The CAFR is due to the Auditor General by December 31 annually, and must be published by February 28 according to law. Required information is obtained from the State's accounting system and from many external parties, including State agencies and component units, including universities, colleges, and others. Sections 215.44, 215.80, 215.98, and 24.123, F.S.

Sections 6, 9, 10, and 11:
Current statutes essentially require that each funeral establishment, centralized embalming facility, direct disposal establishment, and cinerator facility have a "Funeral Director in Charge." The title of this position varies slightly depending upon the type of facility; however, all require that this person is licensed as both a funeral director and embalmer. (For purposes of this analysis, all such persons are referred to as a "Funeral Director in Charge.") Current statutes and rules generally provide that a Funeral Director in Charge may oversee only one establishment/facility at a time.

Sections 7, 8, and 12:
Trust companies that are utilized by Chapter 497, F.S., licensees must now operate pursuant to chapter 660, F.S. Chapter 660, F.S., sets out the Florida requirements for trust businesses.

Section 13:
The Division is responsible for conducting examinations of all preneed main establishment and cemetery licensees. The purpose of these examinations is solely to confirm that the relevant licensees are in compliance with all applicable statutes and rules pertaining to their trust accounts. There is no requirement as to how frequently such examinations must be completed. As of February 2019, the Division licensed approximately 328 preneed main establishments and 170 cemeteries. The Division's examination team is currently comprised of four employees. Some of the preneed main establishments are owned by large sized corporations and/or sell a larger volume of preneed contracts. An examination of such entities is complicated, time consuming, and may require onsite visits to multiple locations for each such licensee. The Division does not currently have sufficient staff to satisfactorily conduct examinations of the preneed establishments of this size and additionally does not have resources/funding to contract with vendors to conduct such examinations.

Section 14:
Subsection 626.025(4), F.S., currently references section 626.521, F.S., which requires insurers to run credit reports on insurance agents prior to appointing them.

Section 15:
Currently, the Division of Agent and Agency Services oversees the licensure of 108 fully licensed and appointed industrial fire and burglary agents and 14 temporary industrial fire and burglary agents. During 2018, 16 fully licensed and appointed agents were added and only 1 insurer remains which utilizes this license type. In addition, there are currently 18,800 fully licensed and appointed personal lines agents. There are no temporary agents of this type as the license type does not exist in statute. More than 6000 new agents were added to the category during 2018 and 55 insurers utilize this license type.

Both licenses currently require the department to maintain license applications, study manuals, examinations, and computer programming. Consolidating these types will enhance the insurance education level of those in the industrial insurance arena and will remove an extremely small scope license type from the insurance code.

Section 16:
Section 626.221(e), F.S., does not specify an application type when providing an exemption for examination.

Section 17:
Section 626.2815, F.S., provides the continuing education requirement of a minimum of 5 hours of approved courses every 2 years for any individual who holds a license as a customer representative, limited customer representative, motor vehicle physical damage and mechanical breakdown insurance agent, or an industrial fire insurance or burglary insurance agent and who is not a licensed life or health agent. These course types are reviewed and, if applicable, approved by the department.

Section 18:
Section 626.321, F.S., states that an industrial fire insurance or burglary agent license requires a passing score on a written examination covering relevant information. This examination is currently maintained by the department and verified in the application process.

Section 626.321, F.S., has a misspelling of the word lightning. Currently spelled "lightening".

Section 19:
Section 626.471, F.S., states that if an appointing entity wishes to terminate a contract with an appointee, the entity must do so with 60 days' advance notice and through a written notice of termination sent to the appointee's most current address through a United States Postal Service mail depository.

Section 20:
Section 626.521, F.S., requires insurers to run credit reports on insurance agents prior to appointing them. Current law compels credit reports even when insurers feel they are unnecessary or duplicate other information already in their possession. Agents can currently have multiple credit reports pulled when affiliating with a new agency or company group. This causes a reduction in the credit score of the agent due to multiple inquiries against their credit record.

Section 21:
Section 626.536, F.S. states that licensees and insurance agencies must submit documentation relating to administrative actions to the department within 30 days.

Section 22:
Currently, under section 626.6215, F.S., an individual ineligible for an individual license because of prior infractions, could be eligible for an agency license.

Section 23:
Section 626.729, F.S., defines industrial fire insurance while placing limitations on the temporary license type. A temporary industrial fire insurance agent license shall be used solely for the purpose of collecting premiums and servicing in-force policies, and such licensee shall not directly or indirectly solicit, negotiate, or effect contracts of insurance. Section 626.175, F.S. provides qualification information for the temporary industrial fire or burglary agent license type along with other agent license types.

Section 24:
Section 626.7355, F.S., allows for a temporary customer representative license (T4-40) to be granted so long as the individual has filed for a permanent customer service representative license (4-40) and paid all applicable fees, meets the standard licensure requirements, is employed and supervised by a licensed and appointed general lines agent, and shows proof of enrollment in an approved customer representative pre-licensing educational course with the intent of passing the customer representative license examination.

Section 25:
Section 626.8437, F.S., refers to the Florida Insurance Code as "the act".

Section 26:
Section 626.844, F.S., refers to the Florida Insurance Code as "the act".

Section 27:
Section 626.8732, F.S., currently allows non-resident public adjusters to qualify for a license if they pay fees and satisfy predetermined requirements. One of the requirements is that they must either have held a public adjuster license and been employed in the individual's state of resident for the last year or, if that state does not offer a public adjuster licenses, have held a license and been employed as a resident insurance company or independent adjuster for the last year.

Section 28:
The Department of Financial Services administers the Residential Property Mediation program for the State of Florida. The mediator is a third-party, unbiased representative who is licensed by the Department. Currently, settlement reached within a mediation conference is not reported to the parties or to the Department.

Many claims are settled in mediation, saving both policyholders and carriers time and legal fees. Rather than costly litigation, the parties can negotiate a satisfactory settlement agreement. This saves the policyholder time and money, and ultimately helps mitigate the rising cost of insurance premiums by avoiding court costs.

Section 29:
Paragraph 633.218(1)(f), F.S., requires the Division of State Fire Marshal to identify all state-owned or state-leased building or space using the United States National Grid Coordinate System (USNG). Identification of the USNG coordinates is subjective and requires the use of additional technology not currently available to the Division. Moreover, additional identification systems such as satellite positioning and geo-tagging may be a more appropriate and better means of identification of these buildings. The Department of Environmental Protection (DEP) and Department of Management Services developed a legislatively required database to record and maintain the state's inventory of real estate properties that are "owned, leased, rented, or otherwise occupied" by any state government entity through the Florida State-Owned Lands and Information System.

Section 30:
The Chief Financial Officer serves as the State Fire Marshal. The DFS Division of State Fire Marshal within the Department of Financial Services is dedicated to protecting life, property and the environment from the

devastation of fire. Their focus and efforts foster a fire safe environment through engineering, education and enforcement. The Division of State Fire Marshall (SFM) is comprised of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.

Section 31:
Section 648.49, F.S., states that bail bond agents must request for reinstatement.

Section 32:
The DFS Division of Unclaimed Property receipts are deposited into the unclaimed property trust fund, from which the division pays claims and all operational costs of the division. When the cash balance in the trust fund exceeds $15 million, the excess is transferred to the Department of Education (DOE) state school trust fund. The current $15 million maximum limit was adopted in 2004, when the division's annual payments to claimants were less than $100 million. In each of the last two years, the division's payments to claimants have been more than $313 million and nearly $322 million respectively. The division is once again on pace to exceed those records in the current year. The current trust fund maximum limit may require the division to ask for funds to be returned from the DOE in order to promptly pay claims and operational costs. The Division will borrow from other trust funds in order to pay claims and operational costs. The borrowed funds must be repaid prior to the end of the fiscal year.

Section 33:
In September 2015, the DFS Division of Unclaimed Property launched its eClaims functionality, whereby original owners of certain accounts can file claims electronically when valued at a maximum of $1,000. The claimant's and owner's identity and ownership of an account is verified by secure and confidential electronic resources and functionalities. The process has been successful and enabled the Division to regularly process and exceed annual records each year by increased efficiency and productivity, without adding corresponding staff. Nearly 600,000 claims have been electronically submitted successfully since the functionality's launch.

Claimants, in all cases, must first proactively file a claim, either in paper format, or via the eClaims process. Currently, all claims from all sources, except the relatively-limited number filed via eClaims, must be received and manually filed in paper format. This includes those claims filed by a registered claimant's representatives. All paper format claims, accounting for approximately 80% of all claims filed from all sources, must be date-received by the division, sorted, scanned into images. Those images are then indexed (attached) to the applicable files within the database processing system. Registered claimant's representatives, who annually file approximately 20-24% of all claims received, are required to keep a copy of all original claims-related documents, while physically submitting the originals to the division for each claim filed. There is currently no statutory authorization that allows submission of these documents by electronic means.

Section 34:
This act shall take effect July 1, 2019.

III. EFFECT OF PROPOSED CHANGES

Section 1:
The bill would clarify requirements relating to the maintenance and inter-department sharing of warrants. The bill clarifies that the Division of Treasury has sole responsibility for the process of warrant image retention. It is also the intent to require the Treasury, the division with the workload associated with these images, be responsible for all requests associated with the images themselves which is the current practice today.

Sections 2, 3, 4, and 5:
Given the timing of legislative session in even years, the Department seeks to provide our comprehensive annual financial reporting earlier to benefit the state's decision makers and stakeholders. The proposed amendments to

sections 215.44, 215.80, 215.98, and 24.123, F.S., would require an earlier publication of the CAFR, 6 months after the end of the fiscal year, or December 31, rather than February 28.

Sections 6, 9, 10, and 11:
The bill would create section 497.173, F.S., establishing a "licensee in charge" and requiring that a "licensee in charge" may serve as such for no more than four licensed establishments or facilities, as long as the two farthest locations are no more than 75 miles apart, as measured in a straight line. The bill then provides that the supervision of all funeral establishments (section 497.380, F.S.), centralized embalming facilities, direct disposal establishments, and cinerator facilities are subject to the newly created section 497.173, F.S.

The bill permits a funeral director in charge of an establishment to be licensed only as a funeral director (as opposed to the current requirement that the funeral director in charge be licensed as both a funeral director and embalmer), if the establishment does not have an embalming room or refrigeration facility onsite.

Sections 7, 8, and 12:
The bill clarifies the types of trust companies used by licensees for care and maintenance trust funds and/or preneed trust funds to include national as well as state trust companies and eliminates the requirement that such trust companies operate pursuant to chapter 660, F.S. This removes language requiring trusts governed by Chapter 497 to be domiciled in Florida.

Section 13:
The bill would require preneed licensees that sell more than 15,000 preneed contracts in a year to annually submit to the Department a report on their preneed operations from an independent certified public accountant. The bill additionally would provide that the cost for the report, as audited by the independent certified public accounting firm, shall be paid for by the preneed licensee.

Section 14:
Would remove a reference to section 626.521, F.S., which is repealed in Section 20 of this bill.

Section 15:
This section would modify subsection 626.175(1), F.S., to add a temporary license type for the personal lines agent license and language explaining the process and eligibility for obtaining it. The personal lines agent is a newer license type and unlike other agent license types with similar duties, there is no temporary version of this license. The same circumstances which might warrant a temporary general lines, life or health agent could also exist with a personal lines agent, but current law does not provide a mechanism to address this.

This section would also remove the temporary license type for an industrial fire or burglary agent as this bill eliminates the industrial fire or burglary agent type. The scope of the temporary personal lines agent license is drafted such that it would allow this license to fill the void created by the elimination of the temporary industrial fire or burglary agent type.

The role of a temporary personal lines agent who is appointed to collect premiums for existing industrial fire or burglary policies is more clearly articulated than the role previously handled by the temporary industrial fire or burglary agent. Current law indicates that the department should issue a license predicated upon an unknown future event. The revisions would eliminate this concern.

Section 16:
This section would modify paragraph 626.221(2)(e), F.S., to clarify that this law is applicable to those seeking an all-lines adjuster license. As currently worded, the law could be interpreted to indicate that a person previously licensed and appointed as an all-lines adjuster, is eligible to obtain any license type they wish, without have to

meet the qualifications for those licenses. The changes clarify the intent of the statute, which is to allow individuals who voluntarily surrender their all-lines adjuster license to re-obtain it so long as they do so within 48 months.

Section 17:
This section would modify paragraph 626.2815(3)(d), F.S., to repeal specific language from the continuing education portion of the Florida Insurance Code related to currently obsolete limited licenses types and an additional license type made obsolete by this bill.

Section 18:
This section of the bill would modify section 626.321, F.S., to repeal the examination for the Industrial Fire or Burglary Agent and eliminates this license classification prospectively. The industrial fire license would be eliminated for new applicants and the crop hail exam is unnecessary as the agents operate in an extremely limited field of insurance and under the direction of a licensed general lines agent. This would also provide that individuals currently holding industrial fire or burglary licenses may continue to hold the license, but no new licenses of this type would be issued. The approximately 100 existing licensees holding this license type can continue to maintain and utilize their existing licenses.

Section 19:
This section would modify section 626.471, F.S., to add email as a valid method for an appointing entity to notify its appointee of termination of their appointment. Current law only allows appointment cancellations to be transmitted via the United States Postal Service.

Section 20:
This section would repeal section 626.521, F.S., which requires insurers to run credit reports on insurance agents prior to appointing them. This change would not prohibit the use of these reports, it would make obtaining them a business decision rather than a statutory requirement. Current law compels credit reports even when insurers feel they are unnecessary or duplicate other information already in their possession. Agents can currently have multiple credit reports pulled when affiliating with a new agency or company group. This causes a reduction in the credit score of the agent due to multiple inquiries against their credit record. This does not remove the responsibility appointing entities have for the acts of their appointees or the required background checks conducted by the Department prior to issuance of a license.

Section 21:
This section would modify section 626.536, F.S., to remove redundant language; an insurance agency is a type of licensee.

Section 22:
This section would modify section 626.6215, F.S., to bring consistency to the treatment of licenses and applications. This change would apply the same standards to insurance entity applications. The language being added is currently applicable to individuals under subsection 626.621(15), F.S. Currently, an individual ineligible for an individual license due to prior infractions, could be eligible for an agency license.

Section 23:
This section would modify section 626.729, F.S., to eliminate language which is being moved to section 626.175, F.S., and eliminate an explanation of the role of an agent from the definition of a type of insurance.

Section 24:
This section would repeal section 626.7355, F.S., which is obsolete language describing a license type which can no longer be issued because of previous changes to other parts of the insurance code. There are no active licenses of this type.

Sections 25:
This section would modify section 626.8437, F.S., to include the phrase "the Florida Insurance Code" instead of this act. Everywhere else in the insurance code language cites the code, not "this act" and this change conforms to other parts of the code.

Sections 26:
This section would modify section 626.844, F.S., to include the phrase "the Florida Insurance Code" instead of this act. Everywhere else in the insurance code language cites the code, not "this act" and this change conforms to other parts of the code.

Section 27:
This section would modify section 626.8732, F.S., to create consistency between resident and non-resident applicants. Current law for resident applicants is 6 months as provided in paragraph 626.865(1)(e), F.S.

Section 28:
In most mediation programs, when a full or partial agreement is reached, resolved issues are written down and all parties in the dispute and their attorneys (if appearing at the mediation) must sign. The Department seeks to clarify that for all parties that utilize the Residential Property Mediation program, the results are timely and clearly provided to the Department and all parties in writing. This change would increase consumer awareness and, in turn, provide better consumer protection.

Section 29:
The bill would amend section 633.218, F.S., to remove the requirement for the Division of State Fire Marshal to identify all state-owned or state-leased building or space using the United States National Grid Coordinate System (USNG). This would allow the State Fire Marshal the ability to explore alternate identification methods that may provide more value to the state of Florida in the identification of state-owned and state-leased facilities.

Section 30:
The bill would direct the Division of State Fire Marshal within the Department of Financial services to adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations. The incidence of cancer among firefighters appears to be higher on average than other occupations and this change would allow the Department to work to encourage best practices for cancer prevention among Florida fire service professionals.

Section 31:
This section would modify section 648.49, F.S., to create consistency between bail bond agents and all other license types issued by the department. Most insurance licenses issued by the department are subject to chapter 626, F.S, which includes a provision in section 626.641, F.S., which requires an application for reinstatement to be filed prior to reinstatement of a license. This change would add a similar requirement for suspended bail bond agents.

Section 32:
The bill would increase the amount of revenue the Division of Unclaimed Property is allowed to retain in its trust fund. This would allow the division to pay the increasing record numbers of claims, and its operating costs,

without requesting the return of funds from the DOE, subsequently reducing the number of times and the amounts the division must borrow from other trust funds during the fiscal year in order to promptly pay claims and by which to operate.

Section 33:
This section would allow the Division of Unclaimed Property to more thoroughly utilize the developed eClaims system to proactively disburse funds to Floridians and State of Florida government entities by developing an identification verification and disbursement process.

By increasing the eClaims dollar threshold from $1,000 to $5,000, more efficiencies and productivities, as well as additional, improved customer service to Florida residents will be accurately and efficiently realized. The eClaims process also increases the integrity and consistency of claims processing, and also results in added consumer protections, as, claims that successfully pass through eClaims bypass the potential of human processing error. The process has a very highly successful 3.5-year track record of flawless operation.

The Department will create a process to identify, verify, notify and pay certain owners of certain individual-owned or government entity owned accounts without the requirement for that person or entity to first proactively file a claim. For an account valued at $2,000 or less, the Department may disburse funds to a living, apparent owner with a correct and current address. The bill would also allow the Department to disburse funds of an account belonging to a State of Florida entity, including a state agency, county government, public school district, municipality, or special taxing district. The Department shall include with the payment a notification and explanation of the dollar amount, the source, and the property type of each account included in the disbursement.

In addition, the bill requires the development of a process and functionality by which registered claimant's representatives can file all claims-related documents. This will provide these businesses efficiencies and savings to registered while also providing additional efficiencies to the division. The eClaims process launched 3.5 years ago has currently resulted in a decrease of manually handling, processing and imaging approximately 5.5 million documents each year. Registered claimant's representatives file approximately 20-24% of all claims filed each year. Developing a process by which they can submit all claims related documents by electronic means will proportionally reduce manual processing and imaging by the division, as well as provide greater efficiencies and cost reductions to the registrants. In this process, registrants will keep all originals, subject to inspection and audit, while submitting electronic true copies, rather than the current process of submitting all original documents to the division, while keeping copies.

The bill also provides specific rulemaking authority for the division to amend or promulgate forms to administer and enforce these sections.

Section 34:
Provides an effective date of July 1, 2019.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	The bill would authorize DFS to promulgate or amend forms within the Division of Unclaimed Property (Section 33), and to develop rules within the Division of State Fire Marshal related to prevention of fire fighter cancer best practices (Section 30)

Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C.):	69G-20; 69A-62.024

V. DOES THE BILL REQUIRE REPORTS OR STUDIES? Y☐ N☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☒ N☐

Revenues:	This bill would have a positive impact to local governments as the Department would be able to aggregate, pay and disburse unclaimed property owed to any local, county, school or state government entity or subdivision thereof, without that entity first being required to file a claim.
Expenditures:	

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☒

Revenues:	
Expenditures:	
Other:	

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	A functionality and process would need to be developed and implemented to allow registered claimant's representatives to electronically submit all claims related documents to the department. A process would need to be developed and implement to identify and verify owners of accounts to pay without first having to file a claim. This process, however, particularly the functionality, is largely already developed and in place – via the current eClaims process/functionalities and the current proactive notification process/functionalities. These processes would only need to be modified, but not developed.

FEDERAL IMPACT

I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? No D. Rules:

Billmeier, Michael

From:	TWOGOOD.PHILIP
Sent:	Friday, March 15, 2019 3:49 PM
To:	Billmeier, Michael
Subject:	RE: SB 1704

Michael,

The language would shorten our time to complete the report by two months. We will of course work within whatever deadline the Legislature prefers. The earlier deadline will preclude the use of several of our consistently used data sources. Consequently some of our findings will be based on older data than we are accustomed to using.

Also, the new language will not be consistent with the deadline in an earlier part of the section.

Let me know if you have any questions. I appreciate you checking with us on the language.

Phil

From: Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
Sent: Friday, March 15, 2019 10:13 AM
To: TWOGOOD.PHILIP <TWOGOOD.PHILIP@OPPAGA.FL.GOV>
Subject: SB 1704

Hi Phil,

Could you check out Section 2 of SB 1704 and see if it is problem? It requires audits performed pursuant to s. 24.123, F.S., be provided by November 30 (current date is 7 months after the end of the fiscal year). Kathy of the Joint Legislative Auditing Committee staff suggested I check with you.

The bill is here: http://www.flsenate.gov/Session/Bill/2019/1704/BillText/Filed/PDF

- Michael

Michael Billmeier, Chief Attorney
Florida Senate
Committee on Banking and Insurance
850-487-5370

1704

Billmeier, Michael

From: Stanfield, Meredith <Meredith.Stanfield@myfloridacfo.com>
Sent: Tuesday, March 26, 2019 11:25 AM
To: Billmeier, Michael
Subject: RE:

We will use FL-SOLARIS and our partnership with the Department of Management Services, which has oversight of state-leasing activities.

We will not utilize outside vendors.

Meredith Brock Stanfield
Director of Legislative and Cabinet Affairs
Office of Chief Financial Officer Jimmy Patronis
Florida Department of Financial Services
(o): 850-413-2890 (c): 850-509-2753
Meredith.Stanfield@myfloridacfo.com

Subscribe to Weekly Rundown, CFO Patronis' weekly newsletter

From: Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
Sent: Tuesday, March 26, 2019 11:23 AM
To: Stanfield, Meredith <Meredith.Stanfield@myfloridacfo.com>
Subject: RE:

So the DFS will use the Florida State-Owned Lands and Records Information System? Will there be any outside vendors?

From: Stanfield, Meredith <Meredith.Stanfield@myfloridacfo.com>
Sent: Tuesday, March 26, 2019 11:21 AM
To: Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
Cc: Stowers, Austin <Austin.Stowers@myfloridacfo.com>
Subject: RE:

Michael –

The Florida State-Owned Lands and Records Information System serves as the official record.

Thank you!

Meredith Brock Stanfield
Director of Legislative and Cabinet Affairs
Office of Chief Financial Officer Jimmy Patronis
Florida Department of Financial Services
(o): 850-413-2890 (c): 850-509-2753
Meredith.Stanfield@myfloridacfo.com

Subscribe to Weekly Rundown, CFO Patronis' weekly newsletter

Please note that Florida has a broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Therefore, your e-mail message may be subject to public disclosure.

From: Billmeier, Michael <BILLMEIER.MICHAEL@flsenate.gov>
Sent: Tuesday, March 26, 2019 11:19 AM
To: Stanfield, Meredith <Meredith.Stanfield@myfloridacfo.com>
Cc: Stowers, Austin <Austin.Stowers@myfloridacfo.com>
Subject: FW:

With the repeal of 633.218(1)(f), F.S., how will the DFS identify state-owned buildings or state-leased buildings? The agency analysis says the DFS will "explore alternative identification methods that may provide more value to the state." Exactly what does the DFS intend to do? Will there be a fiscal to whatever solution the DFS plans to implement?

Please respond ASAP. I need this info to report the bill out of committee.

Thanks!

- Michael

From: Billmeier, Michael
Sent: Thursday, March 21, 2019 3:05 PM
To: 'Stanfield, Meredith' <Meredith.Stanfield@myfloridacfo.com>
Subject: FW:

Will the DFS use an outside vendor to identify state-owned or state-leased buidlings?

From: Billmeier, Michael
Sent: Thursday, March 21, 2019 3:00 PM
To: 'Stanfield, Meredith' <Meredith.Stanfield@myfloridacfo.com>
Subject:

What is the purpose of section 29? What is the problem with using the National Grid system?

- Michael 487-5370

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

March 8, 2019

The Honorable Doug Broxson
318, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1704 – Department of Financial Services

Dear Chairman Broxson:

Senate Bill 1704, relating to the Department of Financial Services has been referred to the Committee on Banking and Insurance. I am requesting your consideration on placing SB 1704 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright

Tom A. Wright, District 14

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

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1704
Bill Number (if applicable)

Topic: Dept. of Financial Services

Amendment Barcode (if applicable)

Name: Jim Tolley

Job Title: President

Address: 343 west madison st.
Street

Phone: 850 224 7333

Tallahassee FL 32301
City State Zip

Email: Jimt@fpff.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/29/17
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DFS

Name Wendy Wiener

Job Title attorney, Nelson Mullins

Address 209 S. Monroe St
Street

Tal FL 32301
City State Zip

Phone

Email Wendy.wiener@nelsonmullins.com

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

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

Representing Funeral Services, Inc.

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/19
Meeting Date

1704
Bill Number (if applicable)

194676
Amendment Barcode (if applicable)

Topic DFS

Name Wendy Wiener

Job Title Attorney, Nelson Mullins

Address 219 S. Monroe St Suite 400
Street

Phone 850 205 3304

Tall FL 32301
City State Zip

Email wendy.wiener@nelsonmullins.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FCCFA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CFO

Name Clark Smith

Job Title

Address 123 South Adams
Street

Tall FL 32312
City State Zip

Phone 251-3218

Email

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

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

Representing Service Corporation International

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic FDFS

Name PAUL HANDERHAN

Job Title Consultant

Address 120 S monroe street
Street

Tallahassee FL 32301
City State Zip

Phone 561 704 0428

Email Paul@rambaconsult.com

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

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

Representing FAIR

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 25, 2019
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Funeral Provision

Name Detroit Griffin Jr

Job Title Funeral Staff Assistant

Address 4006 Crawfordville Road
Street

Tallahassee FL 32305
City State Zip

Phone 850-942-1950

Email detroitglive@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

SB 1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: FUNERAL DIRECTOR IN CHARGE

Name: JOHN RICCO

Job Title: EXECUTIVE DIRECTOR

Address: 325 John Knox Rd. L-103
Street

TALLAHASSEE, FL 32303
City, State, Zip

Phone: ~~800~~ 800-226-3332

Email: jricco@executiveoffice.org

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

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

Representing: FL CEMETERY, CREMATION & FUNERAL ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/2019
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Funeral Director in Charge

Name: Georgia McKeown

Job Title: Consultant

Address: 501 E Park Ave
Street

Tallahassee FL 32301
City State Zip

Phone

Email

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

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

Representing: Florida Cemetery Cremation & Funeral Assoc

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/25/2019
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Funeral Provision

Name Demarien Hawk

Job Title Funeral Director and Embalmer

Address 58 Walters St.
Street

Havana, Florida 32333
City State Zip

Phone 850-345-1946

Email jermaine01.dh@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Moriticians Asst.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1704
Bill Number (if applicable)

—
Amendment Barcode (if applicable)

Topic DFS

Name Amber Hughes

Job Title Sr Legislative Advocate

Address PO Box 1757
Street

Tallahassee, FL 32302
City, State, Zip

Phone 701-3621

Email ahughes@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-25-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1704

Meeting Date

Bill Number (if applicable)

Topic Department of Financial Services

Amendment Barcode (if applicable)

Name Meredith Brock Stanfield

Job Title Director, Legislative & Cabinet Affairs

Address PL 11, Capitol

Street

Tallahassee FL 32399

City State Zip

Phone 850-413-2890

Email meredith.stanfield@myfloridacfo.com

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

Waive Speaking: [ ] In Support [ ] Against

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

Representing Department of Financial Services

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25
Meeting Date

1704
Bill Number (if applicable)

Topic Funeral Director

Amendment Barcode (if applicable)

Name Bill Helmick

Job Title

Address 303 John Dr
Street

Phone 850 251 3126

Tallahassee FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing VFW / American Legion

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Dept. of Financial Services

Name: Beth A. Vecchioli (Beth V.)

Job Title: Sr. Director Gov't. Consulting

Address: 215 S. Monroe St. Suite 500
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-425-3393

Email: bvecchioli@carltonfields.com

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

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

Representing: Chantal Tuell

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/25
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Funeral Provisions within 1704

Name: Suzanne F. Hood

Job Title: retired DOAH Judge

Address: 817 Beard St
Street

Tallahassee FL 32303
City State Zip

Phone: 850-545-9227

Email: sfhood2010@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic FUNERAL

Name SCOTT WHITEHEAD

Job Title FDIC FAITH F.H.

Address 6972 FL/GA HWY
Street

HAVANA FL. 32333
City State Zip

Phone 850-519-4633

Email

Speaking: ☐ For ☐ Against ☑ Information

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

Representing INDEPENT FUNERAL DIRECTOR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3-25-19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Funeral Provision

Name Victor Robinson

Job Title Pastor

Address 3263 Shamrock St, E
Street

Tallahassee Fl 32309
City State Zip

Phone 850-320-2022

Email vic@vantagechurch.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3-25-19
Meeting Date

SB 1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Department of Financial Services

Name F. James Wylie, Jr

Job Title President

Address 5359 Pembridge Place Tallahassee, FL 32309
Street

Phone 850-567-1785

Tallahassee FL 32309
City State Zip

Email FJamesWylie@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Funeral Cemetery + Consumer Advocacy In

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DFS Agency Bill

Name William Stander

Job Title

Address P.O. Box 1042
Street

Phone 850 212-3250

Tallahassee FL 32302
City State Zip

Email william@williamstander.com

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

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

Representing FL Fire Equipment Dealers Association

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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MARCH 25, 2019
Meeting Date

SB 1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Department of Financial Services

Name Ray Colburn

Job Title Executive Director

Address 221 Pinewood Dr.
Street

Tallahassee FL 32303
City State Zip

Phone 850-900-5180

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Dept of Fin. Services Bill

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison
Street

Tallahassee FL 32301
City State Zip

Phone 850-224-7333

Email RoccoSalvatori@icloud.com

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

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

Representing Florida Professional Firefighters

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/19
Meeting Date

1704
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DFS Agency Bill

Name William Stander

Job Title

Address P.O. Box 1042
Street

Tallahassee FL 32302
City State Zip

Phone 850-212-3250

Email william@williamstander.com

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

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

Representing American Fire Sprinkles Assn. - FL Chapter

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 25
Meeting Date

1704
Bill Number (if applicable)

196676
Amendment Barcode (if applicable)

Topic For Amendment/ For Bill

Name Tim Meenan

Job Title

Address 300 S. Duval St.
Street

Tallahassee FL
City State Zip

Phone 850 425-4000

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/19
Meeting Date

1704
Bill Number (if applicable)

196676
Amendment Barcode (if applicable)

Topic DFS

Name Wendy Wiener

Job Title Attorney, Nelson Mullins

Address 215 S. Monroe St Suite 400
Street

Phone 8502053304

Tall FL 32301
City State Zip

Email wendy.wiener@nelsonmullins.com

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

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

Representing Argent Trust Company

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

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

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S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Banking and Insurance Committee **Judge:**

Started: 3/25/2019 4:01:24 PM
Ends: 3/25/2019 5:47:50 PM Length: 01:46:27

4:01:30 PM	Meeting called to order - quorum present
4:02:15 PM	TAB 5 - S 1210 - Ratification of Rules of Department of Financial Services
4:02:47 PM	Explanation of bill by Senator Book
4:03:16 PM	Sen. Book waives close
4:03:23 PM	roll call vote - Favorable
4:03:53 PM	TAB 2 - S 772 - Stargel - :Liens Against MV and Vessels
4:04:23 PM	Senator Sagel recognized to explain amendment 888030 - voice vote - passes
4:05:31 PM	Back on bill asamended - Roll call vote - Favorable
4:07:46 PM	Motion to TP S 1636
4:08:13 PM	TAB 3 - s 874 by Souson - Consumer Finance Loans
4:08:42 PM	Sen. Rouson cecognied to explain the bill.
4:09:48 PM	Senator Rouson explains Substitute Amendment (153120) - Voice Vote - Adopted
4:11:42 PM	Roll call ote on CS/s 874 - Favorable
4:13:10 PM	Alice Vickers - Fl Alliance for Consumer Services
4:19:44 PM	Voice Vote on (593470)--Fav
4:20:44 PM	roll call S 1034 - FAV/CS
4:21:12 PM	TAB 6 S 1476 by Flores - Citizens Property Insurance Corporation
4:21:43 PM	Senator Flores recxognized to present the bill
4:22:23 PM	Delete all amd. (877038)
4:22:39 PM	Explanation of amendment by Sen. Flores - voice vote - Favorable
4:33:59 PM	Joe Walsh representing Fair Insurance Rates
4:43:23 PM	Senator Flores closes on bill.
4:44:24 PM	Roll call vote on S 1476 - Favorable/CS
4:45:03 PM	TAB 9 - S 1704 by Wright - Dept. of Financial Services
4:46:30 PM	Sen. Wright recognized to explain amendment (196676)
4:47:30 PM	Amd. 196676 (delete all amend) adopted on voice vote
4:54:34 PM	Meredith Brock Stanfield, Dept of Financial Services
5:00:05 PM	F. James Wylie, Jr. - FL Funeral Cemetery and Consumer Advocate
5:07:58 PM	Victor Robinson - Pastor - representing self
5:11:50 PM	Scott Whitehead, Independent Funeral Director
5:13:58 PM	Susanne Hood - representing self
5:14:58 PM	Bill Helnick - VFL - American Legion
5:15:44 PM	Amber Hughes - FL League of Cities
5:17:31 PM	Demarien Hawk, Florida Morticians Asst.
5:23:47 PM	John Ricco - Florida Cemetary Commission
5:27:25 PM	Detroit Griffin, Jr. - Funeral Staff Assistant
5:28:25 PM	Wendy Wiener, FCCFA
5:37:13 PM	Jim Tolley, FL Professional Fire Fighters
5:38:13 PM	Sen. Wright waives close.
5:38:24 PM	Roll call vote on S 1704 - FAV/CS
5:39:06 PM	TAB 1 - S 418 by Simpson - Essential Health Benefits
5:39:27 PM	Delete all Amd. (166758)
5:39:52 PM	Senator Simpson recognized to explain delete all amd.
5:40:14 PM	Voice vote on amd. - adopted
5:42:56 PM	Sen. Simpson closes on bill.
5:43:55 PM	Roll call vote on s 418 - Fav/CS
5:44:28 PM	TAB 9 S 1690 by Broxson - Warranty Associatoins
5:44:50 PM	Senaotr Broxson recognized to explain delete all amd. (229342)
5:45:55 PM	Voice vote on Amd. - favorable
5:46:05 PM	On bill as amended - Sen. Broxson to close on bill.
5:46:52 PM	Roll call bill on CS/S 1690 - Favorable
5:47:30 PM	Meeting adjourned.